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FISCAL IMPACT REPORT

SPONSOR: Snyder DATE TYPED: 3/13/03 HB _____

SHORT TITLE: Identify Certain State Government Functions SB 741

ANALYST: Padilla

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			Substantial – See Narrative	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 338 (Contract Management Act)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Human Services Department
 Attorney General’s Office
 Energy, Minerals and Natural Resources Department
 State Highway and Transportation Department
 General Services Department

No Response Received

Department of Finance and Administration

SUMMARY

Synopsis of Bill

Senate Bill 741 does the following:

1. It establishes a process for identifying current state government functions that are “not inherently governmental.”
2. It requires state government agencies to report annually on their activities that are “not inherently governmental” pursuant to definitions and guidance in the bill. Agencies must develop an

nual lists that will be submitted to DFA and made available to the public and to the legislature.

3. It provides a means for private entities that offer services and others to challenge omissions from the lists.

4. It requires agency heads to review the lists of not inherently governmental functions. If an activity is selected for contracting out, the bill requires the agency head to use a competitive process to select the supplier pursuant to the Procurement Code.

The bill establishes that the following activities are “inherently governmental” functions:

- Interpreting New Mexico law and executing it in a way to
 - 1) bind the state by contract, policy, regulation, etc.,
 - 2) determine, protect and advance New Mexico’s interests,
 - 3) significantly affect the life, liberty or property of private persons,
 - 4) appoint or direct officers or employees of the states, or to
 - 5) “ultimately” control state property or state funds.

The bill establishes that the following activities are not normally inherently governmental:

- Gathering information for or providing advice or ideas to state government officials.
- Functions that are primarily “ministerial and internal” in nature, including:
 - 1) Building security
 - 2) Mail operations
 - 3) Operations of cafeterias
 - 4) Housekeeping
 - 5) Facilities operations and maintenance
 - 6) Warehouse operations
 - 7) Motor vehicle fleet maintenance
 - 8) Other routine electrical or mechanical services.

Significant Issues

This bill would institute an ongoing process of identifying what executive agency functions would be made available for potential contracting out, based on the bill’s definitions of what is or is not an inherently governmental function.

The bill appears to be modeled on the “Federal Activities Inventory Reform Act of 1998” which is now being implemented by the Office of Management and Budget through OMB Circular No. A-76. Unlike the federal act, however, Senate Bill 741 provides no process for cost comparisons or any requirements that “not inherently governmental functions” be contracted out.

A better, or additional, public policy question than the one addressed by this bill might be to consider which entity--whether governmental or private--can offer the best service at the best price.

The following issues were identified by a number of agencies:

Definitions: A number of the terms used in the bill are ambiguous. The term “executive agency” is not defined. The “definitions” section of the bill does not define “not inherently governmental.” It appears that a number of sensitive state government functions, especially those of policy advisors and attorneys, would fall, perhaps unintentionally, in

the not inherently governmental category. Section 2 refers to the giving of “advice, opinions” as not inherently governmental. A number of agencies commented that this definition is problematic. HSD, for example, points out that some agency staff exists in large part to gather information and to provide advice, opinions or recommendations to upper management.

Duplication of Existing Law and Practice: Several agencies commented that existing law allows for the outsourcing of services that are the subject of Section 13-1-187, and which are already subject to the competitive sealed bid process outlined in Section 13-1-103. Some functions described in SB 741 would fit the definition of “professional services” under Section 13-1-76 and are already subject to a competitive sealed proposal process.

GSD points out that the “not inherently governmental” definition in the bill would cover many of the services it currently performs, some of which currently compete with private companies for the opportunity to provide business services to other state agencies.

Motor Vehicle Fleet Management Operations: The State Highway and Transportation Department noted that fleet management is specifically identified by the bill as not inherently governmental. SHTD believes, however, that its fleet management services, which support activities such as snow removal, mowing, shoulder widening, and guard rail and fence repair, *also* meet the definition of an *inherently governmental* function because of its role in providing safe and clean roads to the traveling public. SHTD points out that every state department of transportation in the United States has fleet operations.

Possible Conflict with Procurement Code: Section 3 (D) of the bill requires an agency head to use a competitive process to select a supplier for a service that has been deemed not inherently governmental. However, several provisions of the Procurement Code do not require competitive procurement processes, such as small purchases or the list of exemptions in Section 13-1-98.

FISCAL IMPLICATIONS

This bill does not contain an appropriation. A number of agencies that responded believe they may require additional resources to carry out the tasks required by the bill. DFA will be required to bear the recurring cost of publishing notices.

ADMINISTRATIVE IMPLICATIONS

Most of the agencies that submitted analysis of this bill believe they will need additional resources to carry out the tasks identified by the bill.

RELATIONSHIP

This bill could relate to HB 338, the Contract Management Act. Section 3 of HB 338 states:

A. Prior to making the decision to contract, an agency shall evaluate the need for the contract using an evaluation methodology that is similar to the federal office of management

and budget's evaluation for the performance of commercial activities. The agency shall include an objective evaluation of state resources. . .

The federal OMB's evaluation for the performance of commercial activities is based on the Federal Activities Inventory Reform Act mentioned previously.

OTHER SUBSTANTIVE ISSUES

GSD notes that currently, any offeror or interested party can find a list of current state government requests for proposals at GSD's Purchasing Division's website, www.state.nm.us/spd.

POSSIBLE QUESTIONS

1. Once agencies identify functions that are not inherently governmental according to this bill, what should happen?

LP/njw