

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR Aragon DATE TYPED 02/06/04 HB _____

SHORT TITLE Contract Employment for U.S. Citizens Only SB 416

ANALYST Geisler

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY04	FY05	FY04	FY05		
			Unknown		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Attorney General (AG)
Department of Finance and Administration (DFA)

SUMMARY

Synopsis of Bill

SB 416 proposes to amend the Procurement Code and require that public contracts contain a provision that specifies that only citizens of the United States and persons authorized to work in the United States pursuant to federal law may be employed in the performance of services or professional services under the contract, or any subcontract awarded under the contract. This bill is made expressly applicable to home rule municipalities.

Significant Issues

The AG provides that while undocumented immigrants generally are not a suspect class for purposes of equal protection, this bill still may be vulnerable to attack on equal protections grounds, an attack it would survive only if supported by a legitimate state purpose or goal unrelated to immigration concerns. See, e.g., State Dep't of Rev. v. Cosio, 858 P.2d 621, 627-28 (AK 1993). A state law that applies to undocumented immigrants differently than to other residents is evaluated under a relatively lenient rational basis standard and will stand if rationally related to a legitimate state goal. Plyler v. Doe, 457 U.S. 202, 216, 225 (1982).

DFA provides that of 2500 contracts, there are 15 foreign contractors doing business with the State of New Mexico. These contractors are doing business with the State Investment Council,

Tourism Department, Department of Economic Development and Gaming Control Board. Not being able to contract with foreign contractors would have a significant impact on these agencies and impede them from performing their respective missions.

FISCAL IMPLICATIONS

None noted by agencies.

ADMINISTRATIVE IMPLICATIONS

The AG states passage of the bill may result in increased case load if they are called upon to defend state agency contracts that include provisions specifying that only U.S. citizens and persons authorized to work in the U.S. pursuant to federal law may be employed in the performance of a public contract.

DFA provides that the contracts review bureau would need to set up procedures for verification of citizenship in order to approve a contract, which would add another layer to the approval process.

OTHER SUBSTANTIVE ISSUES

DFA provided additional information on current foreign contracts:

The State Investment Council is involved with international investments. The contracts with foreign companies allow the Council to keep informed on what business and the markets are doing in specific areas where New Mexico is investing. Without such contracts, the Investment Council would be very limited in how they could invest in other countries.

The Tourism Department contracts for services in Mexico, Germany, Canada and England. These services include making contact with suppliers and consumers interested in New Mexico as a tourist destination. It is felt this is the best and most economical way to reach these markets.

The Department of Economic Development has contractors in Mexico, Taiwan and Israel. Having contacts in these areas allow offices to be manned by citizens of the respective countries who know the language, business customs, laws, and culture. This helps expedite New Mexico interests to these countries. \$1 million in exports translates to 23 new jobs created.

The Gaming Control Board has one contract with an independent testing company to test gaming related software and hardware. There is only one company in the United States that does this testing and this company has provided testing for the Board. However, if separate testing is needed, this contract would be available.

GG/lg:yr