F I S C A L   I M P A C T   R E P O R T

SPONSOR SPAC **DATE TYPED** 3-17-05 **HB**

SHORT TITLE Fort Bayard Medical Center Contractor **SB** 1055/SPACS/aSFl#1/aHAFC

ANALYST Collard

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			Significant		Various

(Parenthesis ( ) Indicate Expenditure Decreases)

Conflicts with SB 935, substituted
Relates to Appropriation in the General Appropriation Act

SOURCES OF INFORMATION
LFC Files

Responses Received From
Department of Health (DOH)
General Services Department – Property Control Division (GSD)
Attorney General (AG)
State Personnel Office (SPO)
Health Policy Commission (HPC)

Responses Not Received From
Taxation and Revenue Department (TRD)
Department of Finance and Administration (DFA)
State Land Office (SLO)

SUMMARY

Synopsis of HAFC Amendment

The House Appropriations and Finance Committee amendment to the Senate Public Affairs Committee substitute for Senate Bill 1055 strikes the first Senate Floor amendment, which allows for all current and future employees of FBMC to remain state employees and inserts in lieu thereof language clarifying all current and future employees, *with the exception of the management employees of the contractor*, will remain state employees.

Synopsis of SFl #1 Amendment

The first Senate Floor amendment to the Senate Public Affairs Committee substitute for Senate Bill 1055 clarifies language in Section C of the bill to indicate that all current and future employees of Ft. Bayard Medical Center will remain state employees, entitled to all the rights and responsibilities of state employees.

Synopsis of Substituted Bill

The Senate Public Affairs Committee substitute for Senate Bill 1055 offers the secretary of DOH the option of contracting with a private company, or facility owner, to operate the Ft. Bayard Medical Center (FBMC) or to construct a replacement center in Grant county. The bill allows the DOH secretary, in conjunction with the appropriate agency such as GSD or the State Land Office, to enter into a long-term lease or use agreement, not to exceed 25 years, with a private company for the provision of or operation of a facility to replace FBMC. The bill exempts such agreements from the Procurement Code. The committee substitute for the bill includes a section relating to the continuation of state employee benefits. The section also indicates the independent contractor shall provide management and supervision to the state employees, including provision of work assignments, evaluations, and promotional and disciplinary actions. Finally, the committee substitute adds an emergency clause.

Significant Issues

The AG's Office indicates current exemptions to the Procurement Code are general in nature. The amendment to Section 13-1-98 specifically permits the operation of Ft. Bayard outside the Procurement Code, and would set a precedent.

DOH describes FBMC as a long-term care nursing facility and chemical dependency treatment center. The services include nursing home, medical, social and therapy capabilities. The campus is designated as a National Landmark in the Federal Register.

The November 2004 preliminary Facility Assessment Report prepared by 3D/I for GSD in November 2004 estimates repair costs for the hospital portion of the facility at over $4 million and replacement costs at approximately $22.3 million. For the chemical dependency unit (Yucca Lodge) at FBMC 3D/I estimates repair costs at $451.2 thousand and replacement costs at $4.8 million. Without investment in substantial repairs, the facility faces increasing difficulties in meeting its licensing and accreditation requirements.

It should be noted the 3D/I Facility Assessment Report, as of March 8, 2005 is not finalized and GSD has yet to assess the estimated needs of FBMC, as identified by 3D/I. See attached executive summary.

DOH indicates FBMC serves between 181 and 210 patients, plus a chemical dependency unit that has a capacity of 18 and in January 2005, was serving 9 patients. Based on current expenditure trends and January census information, FMBC is spending $21.6 million per year or $114 thousand per patient. By way of comparison, one private pay nursing home in Santa Fe, charges approximately $60 thousand for a private pay nursing home patient.

DOH also indicates the facility is over-spending its FY05 current budget by several hundreds of thousands of dollars and is operating per an austerity plan. The facility has been placed under new temporary management, because the previous director did not meet licensure requirements, as set by state law. The new management team and DOH project that FMBC will not be able to balance its FY05 budget. The facility was cited recently as violating operating requirements and is being fined pursuant to federal Medicaid procedures.

This facility faces unique challenges in meeting its mission of providing quality and cost effective nursing home and substance abuse care:

- There are not bathrooms in rooms used for nursing home patients. Many of the patients use walkers and it is a very long way to the bathroom. DOH indicates the facility has experienced a relatively high patient fall rate.
- The patient rooms are located along long hallways, making it difficult for the nursing staff to have good line of sight to patients to monitor their safety.
- The facility was built as a tuberculosis sanatorium in the early 1900's and is not designed in conformance with current nursing home standards.
- The facility is 80 years old and in need of significant repair.
- To repair the hospital portion of the facility would cost some $22.3 million, and the state would still be left with an 80 year old nursing home facility and a 103 year-old chemical dependency unit.
- The facility is "like a small city" and must maintain old systems, such as its own water system.
- The facility is located on 462 acres, which presents maintenance challenges.
- There are about 53 buildings on site, of which 45 are in use and are in various state of repair.
- Environmental hazards, such as asbestos and lead paint in ancillary building.
- Several areas in the facility have uneven floors, which present trip hazards.
- Sidewalks and curbs are not American Disabilities Act compliant.
- Management estimates the roofs will fail within 8 years.
- The fire alarm system is in need of $400 thousand in repairs.
- The kitchen and dining areas are in need for $400 thousand in repairs.
- The boilers need to be retrofitted, at an estimated cost of $750 thousand.

GSD indicates if a private contractor operates a DOH program in a state-owned facility, the current space use agreement between GSD and DOH would require modification to require the operator to properly maintain the facility. If the contractor provides a new facility for the FBMC program and the state facility is abandoned, GSD in conjunction with other agencies and the Legislature will have to address the purpose and potential uses of the vacated facility.

GSD also notes that DOH programs at Fort Stanton in Lincoln County and Los Lunas Medical Center in Valencia County were moved out of state-owned facilities in the mid-1990s. GSD states it has been difficult to retrofit these facilities for tenants, and funds to maintain the facilities have been increasingly difficult to obtain. As a result, these assets are deteriorating.

PERFORMANCE IMPLICATIONS

DOH notes, if an independent contractor were to provide a replacement facility in Grant county, the community could explore other uses for the current FBMC campus.

With a new facility, DOH would have options not now available, given the condition of the current facility, for changing its programs to provide a combination of community based and 24-

hour residential services. This program design could reflect best practices in programs for the disabled, elderly and those needing chemical dependency treatment. Given the expected significant increase in the elderly population, along with unmet needs of the disabled population, the need for chronic care facilities can be expected to increase over the next several years. While this administration has a priority the reduction of the number of uninsured and under-insured population, the state will continue to need to serve as a safety net service provider into the future. DOH needs cost effective alternative service delivery options to meet these needs.

FISCAL IMPLICATIONS

There is no appropriation contained in this bill; however, the fiscal implication may be significant, depending on the option taken by DOH. The substituted bill allows for all state employees to remain state employees, with all included benefits. DOH requested just over $15 million for personal services and employee benefits for FBMC employees in FY06.

FBMC also receives funding from the permanent fund through the State Land Office. DOH projects $700 thousand for the facility from the land grant permanent fund in FY06. If privatized, these funds would no longer be available to FBMC.

Additionally, if privatized, the hospital would no longer be exempt from gross receipts taxes. Assuming revenues for the private hospital are $15 million to $20 million (the current budget is $20.3 million), gross receipts revenues would be $1 million to $1.3 million, with 60 percent of this going to the state general fund and the remainder to local governments.

SPO notes it is not indicated in the bill where funding would come from to compensate the independent contractor who engages in contract to operate the facility. Although this bill does appear to be the place for such appropriation, funding should be included in the general appropriations act or other appropriate funding bill.

ADMINISTRATIVE IMPLICATIONS

DOH indicates FMBC employs approximately 385 staff to serve 190 patients and is a major employer in Silver City. A plan to use the option provided in the bill, would need to address the interests of these employees, many of who are union employees.

DOH indicates the substituted bill would address these issues by retaining all FBMC employees employed at the time of an agreement to operate the existing or new facility will remain as state employees with all the associated benefits, such as retirement and health insurance. If DOH elects to take advantage of the provisions of the substituted bill, it is likely that a DOH employee would be assigned to assist in assuring that the state employees are supervised as state employees per SPO rules and regulations in place at the time of an agreement.

SPO indicates systems and mechanisms would need to be set up so that the independent contractor administers the human resource system in a way that ensures consistency with how other state employees are being treated. Classified employees are subject to State Personnel Rules. Special care would need to be given to any changes with SPO rules, applicable state law, etc.

The AG's Office notes DOH would continue to be responsible for FBMC, even if the daily operation of the facility was under the authority of an independent contractor.

GSD indicates it would have to look for another tenant for the FBMC facility as well as provide necessary maintenance if the current program moves into another facility.

CONFLICT

The Senate Public Affairs Committee substitute for Senate Bill 1055 conflicts with the Senate Finance Committee substitute for Senate Bill 935, which authorizes the New Mexico Finance Authority to issue revenue bonds up to $8 million for improvements at FBMC.

OTHER SUBSTANTIVE ISSUES

SPO indicates it appears that the bill provides for continued employment of FBMC employees who are employed at the time of the agreement, but it is not clear if, through attrition, new employees would be hired as state employees (or equivalent) or as employees of the independent contractor. If the latter is true, it could present human resource problems with some employees being state employees and other being private employees or contractors. This could result in differing pay scales and rates as well as different benefit packages – which could ultimately put the state at a disadvantage when recruiting and retaining employees. In addition to compensation, separate human resource systems could result in disparate treatment in terms of work assignments, evaluations, and promotional and disciplinary actions.

SPO states almost all of the employees at FBMC are represented by a collective bargaining agreement. This bill may conflict with existing or proposed language regarding "contracting out services" in the collective bargaining agreement with AFSCME. Assurances should be made that existing contractor employees are eligible for all of the rights and privileges of other state employees.

It is clear that state employees will be provided continued employment to existing employees, but it is not clear as to the effect this agreement may have on future FBMC employees.

One major objective of DOH is to address gaps in needed services. The Gap Analysis done by DOH indicates a need to provide additional substance abuse and mental health services in this part of the state. If the state had a new facility that is not as difficult and costly to operate, DOH may be better positioned to expand services within current budget resources.

DOH suggests consideration should be given if it is appropriate to exempt the transaction from the competitive Procurement Act process. If the transaction is exempted, the project could proceed on an expedited timeframe, but would not benefit from competition. Further, by exempting this transaction from the Procurement Code, the state would not be ensuring fair pricing or high quality service for the residents.

HPC notes the substituted bill recognizes that given the state of the facility and the nature of the long term care business nationally and in New Mexico that a prospective operator/developer would not likely go through due diligence time and expense required to make a decision to assume responsibility for FBMC or develop a new campus if the operator/developer had to go through a public bidding/procurement process.

Additionally, HPC notes the substitute bill may allow DOH to not have a DFA fair market approval or the time and monies involved in a Request for Proposal process in the event a facility operator/developer was identified. This exemption would likely make the process of contracting more attractive to a prospective operator/developer.

The substituted bill allows the state some flexibility as well as a contractor to possibly do a lease for a nominal sum or a management contract or a new facility development agreement with a facility operator. It also ensures that the facility would continue to be located in Grant County.

It should also be noted, if FBMC is contracted out, DOH needs an approved plan in place to ensure a smooth transition for residents of FBMC.

KBC/lg:njw:yr
Attachment