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FISCAL IMPACT REPORT

SPONSOR Campos DATE TYPED 03/15/05 HB _____

SHORT TITLE State Use Act for Persons With Disabilities SB 744/aSPAC/aSJC

ANALYST Geisler

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			\$0.1 See narrative		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates: HB 498

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General (AG)

General Services Department (GSD)

Commission for the Blind

Division of Vocational Rehabilitation (DVR)

Developmental Disabilities Planning Council (DDPC)

SUMMARY

Synopsis of SJC Amendments

The Senate Judiciary Committee amendments to Senate Bill 744 clarify membership on the nine member NM council for purchasing from disabilities:

- 1) The state purchasing agent or the agent's designee;
- 2) Two persons, appointed by the governor, who represent state agencies that purchase significant amount of goods and services from the private sector, or their designees;
- 3) A person, appointed by the governor, who is a state-employed vocational rehabilitation counselor and who is familiar with employment needs of persons with disabilities and with current pricing and marketing of goods and services; and

- 4) Two persons with disabilities and a person who is familiar with employment needs of persons with disabilities and with current pricing and marketing of goods and services and two persons who represent community rehabilitation programs that provide employment services to persons with disabilities, all selected by mutual agreement of the persons above in items 1-3.

Synopsis of SPAC Amendments

The Senate Public Affairs Committee amendments to Senate Bill 744:

- 1) Clarifies that the State Use Act is to serve qualified individuals as well as community rehabilitation programs.
- 2) Clarifies the definition of “persons with disabilities” and adds a definition of “qualified individual.”
- 3) Deletes all references related to “products” and “producing products.” The emphasis of the State Use act is now on facilitating opportunities for individual with disabilities to provide services by state agencies and local public bodies.
- 4) Adds a section to ensure that the NM council on purchasing from persons with disabilities created by the bill will adopt rules facilitating that work provides opportunities for integration with non-disabled persons, fair pay, and add value to the service provided.
- 5) Amend council membership to include one state-employed vocational rehabilitation counselor.
- 6) Clarify that the State Use Act will not interfere with Horace DeVargas Act’s priority for blind persons to operate food and vending facilities on state property.
- 7) Ensure that DVR and Commission for the Blind can purchase products and services for clients with disabilities in a timely manner.

Synopsis of Original Bill

Senate Bill 744 creates the State Use Act with a council, appointed by the governor, for purchasing from persons with disabilities. The council is responsible for developing and implementing rules to establish a list of products and services produced by persons with disabilities in community rehabilitation programs and to establish a fair market price for those products and services.

The council must certify the community rehabilitation program and decide if the products and services are suitable for sale to state agencies and local public bodies. When state agencies or local public bodies want to procure items on the council list they must do so if the product or service is available within the period required by the state agency or local public body.

The council shall establish a procedure to approve a central nonprofit agency responsible for the contracts and a fee structure for its services. The nonprofit agency is responsible for the equitable distribution of orders and marketing the products. Procuring products and services from the list established by the council pursuant to the State Use Act are exempt from the Procurement Code.

Significant Issues

The bill will help promote opportunities and employment for persons with disabilities. However, a number of concerns have been raised about specific bill provisions:

1) Requirement for state and local governments to purchase goods and services from community rehabilitation programs. The AG notes that the preference given to these groups may not meet the requirements of Article IV Section 26 of the New Mexico Constitution: *“The legislature shall not grant to any corporation or person, any rights, franchises, privileges, immunities or exemptions, which shall not, upon the same terms and under like conditions, inure equally to all persons or corporations; no exclusive right, franchise, privilege or immunity shall be granted by the legislature or any municipality in this state.”* The AG continues that the constitutional provision appears to be part of the determination to prevent unequal and partial legislation or action on the part of government, favoring certain groups or individuals.” Op. Atty Gen. 70-53. This bill seems intended to favor groups employing persons with disabilities and may implicate that constitutional provision.

The AG also notes that although the bill has the good public purpose of helping the disabled, by exempting some purchases from the procurement code (including competitive bidding) it may weaken the objective the code (NMSA Section 13-1-29C) “The purposes of the Procurement Code are to provide for the fair and equitable treatment of all persons involved in public procurement, to maximize the purchasing value of public funds and to provide safeguards for maintaining a procurement system of quality and integrity.

2) The roles, responsibilities, and administration of the newly created Council for Purchasing from Persons With Disabilities and the central non-profit agency need additional clarification. DVR notes that the role of the council in the process of determining which products and services are suitable for sale to state agencies and local public bodies will be a time consuming task which will require funding and administrative support. The workload and lack of per-diem and travel may hamper the operation of the 9 member council.

The role of the “central non-profit agency” which will be approved pursuant to the rules of the council to facilitate the equitable distribution of product orders among the community rehabilitation is also unclear. The AG notes that the reference in Section 5 A (5) to the agency “holding contracts” could be construed as requiring the state or local government to procure from that agency, which would conflict with the Procurement Code exemption. It is also unclear as how that agency will perform its “equitable distribution” of orders for goods and services, and whether this prohibits the governmental entity from deciding to purchase for a given community rehabilitation program. It is also unclear as to who would pay the fee to the central nonprofit agency.

FISCAL IMPLICATIONS

Both the GSD and AG note that costs are likely to increase due to the lack of competition and the fee structure to operate the central non-profit agency. Because the bill would require the state and local public bodies to purchase products and services at “fair market prices” from lists pro-pounded by the council, it is conceivable that governmental entities will be pay more for those goods and services than they would have through competitive procurement. Even though the bill states that council members shall serve without compensation, they presumably would be considered “public officers” entitled to reimbursement for per diem and mileage.

The bill requires payment of a fee to a central nonprofit agency which would “hold contracts” and distribute orders from state and local governments for goods and services produced by eligi-

ble community rehabilitation programs. However, there is no appropriation for payment of that fee and it is unclear whether the state or local government must pay the fee to that agency for the privilege of procuring from those programs.

ADMINISTRATIVE IMPLICATIONS

There will be an added administrative burden to state and local governments to determine, when conducting procurement, whether goods and services required are on the council's list.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Duplicates HB 498.

TECHNICAL ISSUES

The Commission for the Blind notes that its Business Enterprise Program provides blind persons with food vending opportunities on state property. The State Use Act might negatively impact that program if the Horace DeVargas Act is not given priority. The Commission recommends amending the State Use Act to preserving the right of the Commission for the Blind to do business with the state in the same manner as a Community Rehabilitation Provider and to amend the State Use Act to recognize the Horace DeVargas Act's priority for blind persons to operate food and vending facilities on state property.

OTHER SUBSTANTIVE ISSUES

DVR and DDPC note that the council membership consists of only 22% of members with disabilities. An amendment should be considered to include on the council those state and other agencies that represent and advocate for persons with disabilities.

ALTERNATIVES

The AG notes that the bill could be amended to merely exempt purchases from community rehabilitation programs from the Procurement Code without requiring the purchase of goods and services from those programs, and without mandating price lists and equitable distribution of orders by a separate private entity. This might encourage state agencies and local governments to purchase goods and services from organizations employing persons with disabilities.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

State and local governments will continue to conduct procurements in accordance with the Procurement Code without regard to the characteristics of the people employed by the businesses providing the goods or services.

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