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FISCAL IMPACT REPORT

ORIGINAL DATE 2-8-06

SPONSOR Arnold-Jones LAST UPDATED _____ HB 830

STATE INTERNET PURCHASE PROCUREMENT

SHORT TITLE EXEMPTION SB _____

ANALYST Hadwiger

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY06	FY07		
	None		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Department of Finance and Administration (DFA)
 General Services Department (GSD)
 Human Services Department (HSD)
 Department of Health (DOH)
 Public Education Department (PED)

SUMMARY

Synopsis of Bill

House Bill 830 would exempt purchases by state agencies of services or tangible personal property through the internet from the state Procurement Code.

FISCAL IMPLICATIONS

To the extent that this bill encourages procurement without a competitive process, the price of goods and services purchased by state agencies would increase. It is not possible to determine the exact fiscal impact.

SIGNIFICANT ISSUES

DFA noted there is a potential to save money by ordering through the internet and taking advantage of bargain prices that might become unavailable if the usual procurement process is gone

through. Since that process can sometimes take days, purchasing at discount prices offered only for a short period can become problematical. DFA added there are several significant issues. First of all, as there is no limit to the amount of purchase, literally anything could be purchased from the Internet. This creates a large loophole in the Procurement Code and allows state agencies to maneuver around the intent of the Procurement Code completely (bid and proposal processes). Also, ordering via the Internet can currently be done via the procurement card system. This is a well-controlled and well-audited system that is already in place.

GSD indicated that

- The Procurement Code is based on the principle that all businesses should have an equal opportunity to compete for government business, and that competition will give agencies the best price available for services and tangible personal property. HB 830 would eliminate the competitive process established by the Procurement Code.
- Since most goods are available through the internet (e.g. Wal-Mart) and many services can be arranged over the internet, only purchases from businesses without internet ordering capability would be subject to the Procurement Code.
- Without requiring competition for the best price available for goods or services, tax dollars could be spent without regard to the most cost-effective purchases or the principle of fair access to government procurement.

HSD commented that, although the cost to implement the proposed change would be minimal, without requiring competition for the best price available for goods or services purchased through the internet, tax dollars would be spent without regard to the most cost-effective purchases, including the quality of these purchases.

HSD added that the Procurement Code is based on the principle that all businesses should have an equal opportunity to compete for government business, and that competition will give agencies the best price available for services and tangible personal property. HB830 would eliminate the competitive process established by the Procurement Code, for purchases by state agencies of services or tangible personal property through the Internet. HSD was concerned that the bill could affect the preferences given to New Mexico companies. It could give larger, out-of-state companies an advantage over New Mexico-based companies. Also, there was concern that this bill might thwart savings from the Save Smart program by allowing state agencies to make purchases outside the Save Smart contracts.

ADMINISTRATIVE IMPLICATIONS

AOC noted that, if the bill passes, agencies would need to establish their own internal controls and/or policies and procedures regulating employees' usage of purchasing or procuring items via the internet. PED recommended that tight controls via agency policy or DFA/GSD directive would be recommended for purchases through the internet to avoid irregularities or abuse. DOH agreed, noting that policies and procedures would need to be promulgated by GSD and DOH in order for HB 830 to be successfully implemented.

TECHNICAL ISSUES

DFA noted that the proposed language uses the word "services." In the Procurement Code, the word "services" sometimes stands for only services (that is, "non-professional services") while at other places the word "services" clearly encompasses both professional and non-professional

services. It would be advisable to delineate here whether "services" encompasses both professional and non-professional or just non-professional.

DFA explained HB830's ordering system does not include the exemption in HB 412. If both bills were to be passed, the exemption ordering system would remain uncorrected and could become even more confusing since the same exemptions are given different letters in the two conflicting bills.

DOH indicated HB 830 would be strengthened by clarifying whether the purchase of services or tangible personal property through the internet is to be a centralized activity in each department or if access to these purchases would be allowed at all field offices and institutions. It would also be useful to provide guidance on how purchasing procedures would work. GSD and DOH would not be prepared to implement HB 830 by July 1, 2006. HB 830 would represent a change in current purchasing practices of most departments and would be in competition with the implementation of the SHARE Project. Agencies would not be able to implement both purchasing procedures simultaneously.

ALTERNATIVES

PED suggested one alternative might be to amend the bill to narrow scope of internet purchases exempt from the Procurement Code and or include limits.

DFA agreed with this item and also suggested the bill clearly delineate whether "services" means non-professional services only or both non-professional and professional services.

DH/mt