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FISCAL IMPACT REPORT

ORIGINAL DATE 02/08/10

SPONSOR Picraux LAST UPDATED _____ HB 235

SHORT TITLE Purchasing From Persons With Disabilities SB _____

ANALYST Archuleta

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY10	FY11	FY12	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total	*Indeterminate See fiscal impact	*Indeterminate See fiscal impact	*Indeterminate See fiscal impact			

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Finance and Administration (DFA)
 General Services Department (GSD)
 Division of Vocational Rehabilitation (DVR)
 Development Disability Planning Council (DDPC)
 Department of Health (DOH)
 Children Youth & Families Department (CYFD)
 Correction Department (CD)

SUMMARY

Synopsis of Bill

House Bill 235 amends Section 13-1C-1 NMSA 1978, the State Use Act to allow state agencies and local public bodies seeking to procure a service or services off the list published by the Council (for purchasing from persons with disabilities) to seek to “opt out” of the Act if the agency or body takes the position that the available service on the list is not suitable for its needs or is available elsewhere for a lower price. If the agency or body takes this position, it can appear in front of the Council at an evidentiary hearing.

After the hearing, the Council must render a final, non-appealable decision agreeing with the agency or body’s position (thus allowing the agency or body to procure the service pursuant to Procurement Code); adjusting the price and requiring the service be provided pursuant to the Act; or deciding that the price is a fair price or that the service is suitable for the agency or body, and requiring the service be provided pursuant to the Act.

The bill also amends the Act to allow agencies and local public bodies the discretion to procure professional services through the Act or through the Procurement Code; and indicates that sole source and emergency procurements must be effectuated through the Procurement Code.

FISCAL IMPLICATIONS

Little to none for GSD unless there is excessive State Purchasing Agent (the only statutorily required Council position) involvement required.

DFA notes that there is no direct fiscal impact to state agencies or local public bodies from this bill. There could be an indirect impact in regard to pricing of services or goods where an agency or local public body is able to attain those things at a lesser price by not proceeding pursuant to the State Use Act.

The impact to the CD is indeterminate. It may be that the bill will allow CD to utilize the Procurement Code to secure professional services and also other services (if the Council agrees after the requisite evidentiary hearing) at a cheaper cost than going through the Act. However, utilizing the evidentiary hearing process to challenge the prices or suitability of certain services on the Council's list may prove to be too onerous and time consuming (which generally takes about 40 days) for most agencies and local public bodies. Thus, the cost savings may actually be none or only minimal.

SIGNIFICANT ISSUES

GSD notes the following:

- The hearing/research/finding process could significantly increase the workload of the Council – an all volunteer group with no resources at their disposal.
- “Sole Source” or “Emergency” determinations could increase as a means of circumventing the requirements of the Act.
- It is not clear whether the proposed legislation refers to pure professional service only or whether a contract containing a mixture of professional services and (either) non-professional services or tangible personal property would also be exempt from the State Use Act.

DOH's responsibility under the Developmental Disabilities Medicaid Waiver is to find and enhance strong employment opportunities for persons with disabilities. DOH promotes individual community employment related to a person's interests at competitive wages in integrated settings, including businesses owned by people with disabilities. DOH promotes that the State Use Act be used to the benefit of individual business owners with disabilities.

However, the procedure proposed in the bill by allowing the New Mexico Council for Purchasing from Persons with Disabilities to take 30 days to make the decision that the Procurement code is applicable to certain types of procurement and 10 days to notify the Agency of the decision could significantly delay the procurement process.

PERFORMANCE IMPLICATIONS

The State Use Act established pricing may not be the lowest price, but the proposed remedy represents an additional administrative burden that would not be cost effective or efficient.

Under current law, the State Use Act vendor must respond to the Agency within 10 days as to whether or not they can provide the needed services. The additional burden of a hearing to determine whether the SUA vendors can provide services and do so at an effective price is burdensome and inefficient.

ADMINISTRATIVE IMPLICATIONS

DOH indicates that the bill would create an additional administrative burden by delaying procurement up to 40 additional days. In addition, the established price may not be in the current budget or in the best interest of the department.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to Senate Bill 168

OTHER SUBSTANTIVE ISSUES

GSD notes the following:

- The bill would amend the State Use Act to allow an agency to procure professional services contract either pursuant to the processes established in the New Mexico Procurement Code or the State Use Act at the agency's discretion. This bill would permit the Property Control Division to continue to procure its professional services for architect, engineers, landscape architects, surveyors and construction manager through the qualification-based selection process provide for in Sections 13-1-120 through 13-1-124 of the Procurement Code. This would be beneficial to the state in that it would maintain the integrity of the process used to select these professionals already established.
- This amendment seeks to remedy potential conflict of interest problems inherent in the State Use Act. In addition, this Amendment preserves constitutional rights of a free market to businesses in the State of New Mexico. There are concerns regarding the qualifications of the Central Non-Profit Agency or "CNA", to determine fair market price of professional services, including selection of providers on its list from which it receives remuneration. There are concerns regarding the qualifications of the CNA itself in determining the suitability and qualifications of professional services providers on its list of providers. Clearly, certain professions are licensed and regulated and State agencies would be negligent to hire from a list provided by the CNA simply because the State Use Act requires it. Not only are licensure issues involved, but professional ethics supersedes any entity's determination regarding professional judgment, components of a service or right of an individual to choose the service provider. Incidentally, the CNA itself is selected by the Council based on the Procurement Code, and not based on the requirements of the State Use Act.

DDPC notes the following:

- The State Use Act was designed to encourage the employment opportunities and entrepreneurship of people with disabilities, something the DDPC truly supports. It is designed to expand the market for services delivered by persons with disabilities and is implemented by the New Mexico Council for Purchasing from Persons with Disabilities (“Council”). However, the Council approves the Fair Market Value of the available services as well as certifying the potential providers. In addition, a non-profit organization, called the “Central Non-Profit Agency” or “CNA” selected through a competitive procurement (according to the Procurement Code) assists in developing and collecting data to support the Council’s verification that the price is fair market. The CNA has the first right of refusal to provide any service needed by an agency if that service appears on its list of potential services approved by the Council on behalf of the CNA. State agencies are required to contract with the CNA to procure the service, which also determines that a potential provider is qualified and capable of providing the service. This is a conflict of interest.

ALTERNATIVES

CD suggests an amendment to the State Use Act clarifying that agencies and local public bodies always have the discretion to purchase services through the Procurement Code or through the State Use Act. This sort of flexibility would enable the purchase of the most suitable services at the best prices. If there is concern that some agencies or bodies would never use the State Use Act, the bill could be amended to clarify that the agency must maintain documentation showing that the price it got was better than that on the Council’s list or explaining why the service on the Council’s list was not suitable for its needs.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The State Use Act and the procurement process for state and local agencies would remain as it currently functions. In addition, GSD believes such issues will continue to be resolved in an informal manner; which has not proven to be significant problem in the past.

DA/svb