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FISCAL IMPACT REPORT

ORIGINAL DATE 02/16/11

SPONSOR Keller LAST UPDATED HB

SHORT TITLE Government Food Purchasing Requirements SB 63

ANALYST Graeser

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		>\$250.0		>\$250.0	Biennial report	General Fund (Department of Agriculture)

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
 New Mexico Municipal League (NMML)
 New Mexico Department of Health (DoH)
 Public Education Department (PED)
 General Services Department (GSD/SPD)

SUMMARY

Synopsis of Bill

Senate Bill 63 requires a minimum percentage of the total dollar amount of food purchased by state agencies and local public bodies to be food produced in New Mexico. The percentage is only applied to food purchased with sealed bids by state agencies and local public bodies.

The minimum percentage requirement is no less than:

- 2% by July 1, 2012;
- 5% by July 1, 2014
- 10% by July 1, 2016

The bill requires the Department of Agriculture to prepare and distribute a biennial report (beginning by December 1, 2011) on the progress toward and success of each state agency and local public body in reaching the minimum percentage requirement.

Many existing exceptions to the procurement code would become subject to the food procurement goals. Food procured for the governor's mansion, by construction industries, by home rule municipalities, for privately operated jails or for institutions of higher learning or state hospitals would be subject to the New Mexico produced food percentage goals.

FISCAL IMPLICATIONS

No fiscal impact. Even if "food processor" were narrowly defined, the ordinary jobber/wholesaler food distribution chain would probably be within the narrow definition. Therefore, any bid for foodstuffs by a New Mexico jobber/wholesaler would qualify the procurement toward the New Mexico-produced food goal, even though the actual food could have been produced anywhere.

The bill's goals would not add to agency costs to prepare the procurement RFP or to the costs of foodstuffs purchased by sealed bid procurement process.

The report required of the Department of Agriculture is shown in the table as > 250.0. While the report would be relatively easy to write and produce, the data would be exceptionally difficult to gather and track back through the jobber/wholesaler/producer to determine the actual percentage of New Mexico grown foodstuffs delivered through the procurement. The Department of Agriculture has been asked to confirm or refute this contention.

SIGNIFICANT ISSUES

Food is procured by sealed bid by the Department of Health for the state hospitals, by CYFD and NMCD for prisons and other correctional facilities, by institutions of higher education for student residence refectories, by local public schools providing free or reduced breakfasts and lunches (federal program) and by counties and municipalities procuring food for jails and detention facilities. There is no credible means of estimating the overall value or quantity of food procured by sealed bid procedures.

The Department of Health notes the following:

The Department of Health operates six health care facilities: New Mexico Behavioral Health Institute, New Mexico Veterans Center (NMSVC), Fort Bayard Medical Center, Turquoise Lodge Hospital, Sequoyah Adolescent Treatment Center and New Mexico Rehabilitation Center. These facilities enter into contracts for the procurement of food for the patients and residents they serve.

There is concern among the agencies that the provisions and goals of the bill may be well intended, but will be difficult or impossible to implement with truly New Mexico-produced food.

Although the bill establishes goals for New Mexico produced food procured through sealed bid, there is no reasonable means of enforcing the attainment of the goal. There are no penalties for failure to purchase New Mexico produced food, nor any relief from the procurement code's requirement of purchasing the food from a responsive bidder offering the food at the lowest price. There is no satisfactory means of determining whether the requisite percentage of New Mexico-produced food actually passes through the hands of a New Mexico producer or processor. Avoidance of the New Mexico-produced food goals would be relatively easy. A New Mexico resident food "processor" could make arrangements with out-of-state jobbers or wholesalers who would provide the food that would pass through the hands of the resident "processor" and count

toward the New Mexico-produced goal.

If a food procurement RFP specifies the minimum New Mexico-grown percentage then brokering will occur. There is no definition in the bill of “food processing” so the ordinary jobber/wholesaler currently responding to food procurement RFPs will probably qualify the bid as 100% “New Mexico Grown Food.”

Ultimately, economics will overcome legislated requirements. State and local agencies are required under the procurement code to purchase from the lowest cost responsive bidder. If New Mexico produced food is lower in cost for the same quality of food imported from outside the state, then the bidder including New Mexico produced food will win the contract. While some New Mexico produced foods (including transportation and handling costs) are lower cost than imported foods, others are more expensive. If the low cost New Mexico foods are specified in the procurement, then New Mexico produced foods will participate in the low-cost procurement. If food stuffs are specified for which New Mexico is not the low-cost producer, then those higher cost foods will not be a part of the procurement.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB 19 amends the procurement code to change resident preference qualifications. The purpose of SB 19 is to restrict “brokering” and implement a true resident preference.

HB 309 eliminates any possibility of “pay-to-play” in current contracts and leases and to extend that promise to future contracts and leases.

HB 128, which proposes new procedures for making sole source procurements. Unlike HB 309, however, HB 128 does not require the Governor’s approval of sole source procurements.

OTHER SUBSTANTIVE ISSUES

It would be very difficult for the Department of Agriculture to gather data that tracked food through the grower/jobber/wholesaler chain to determine the actual percentage of New Mexico grown food sold on a sealed bid basis to a government agency and consumed in New Mexico.

ALTERNATIVES

GSD suggests that a possibly workable requirement would be to award New Mexico-grown foodstuffs (not New Mexico “processed”) a procurement preference similar to the resident business and resident manufacturer preferences in the current Procurement Code. It would not be important to reform the resident business definition as suggested by SB 19, so that brokering could not occur, but it would be important to require the bidder to certify the New Mexico source of the food. If the bidder could not certify the source of the foodstuffs at the required percentage, the bid would not be eligible for the preference, even though the bidder was a resident. If no New Mexico-grown foodstuffs were available, then no bidder would receive the preference, but all bidders would still be responsive. The problem with this approach is if a bidder, in good faith, expected New Mexico-produced food to be available under the contract, but acts-of-God (fire, flood, drought, etc.) interfered with production quotas, then the New Mexico grown percentage goal promised in the bid could not be met.