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FISCAL IMPACT REPORT

ORIGINAL DATE 02/25/11

SPONSOR Boitano LAST UPDATED _____ HB _____

SHORT TITLE Procurement from Persons with Disabilities SB 566

ANALYST Archuleta

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		See Fiscal Impact	See Fiscal Impact			

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
 General Services Department (GSD)
 Department of Health (DOH)
 Department of Transportation (DOT)
 New Mexico Municipal League (NMML)

No Response Received From

Developmental Disabilities Planning Council (DDPC)

SUMMARY

Synopsis of Bill

Senate Bill 566 requires all state agencies and local public bodies to develop a plan to acquire goods and services from disabled persons. Plan includes targets for percentage of contracts, number of contracts, dollar amount or other appropriate measure for the calendar year. The plan will be filed with the state purchasing agent and the New Mexico council for purchasing and also posted on the website of applicable entity if one exists. The initial plan/policy will be due no later than January 1, 2012 and then evaluated yearly whether the targets were met and adjust the policy for the next year's plan. Lastly, the bill changes the wording for the State Use Act from mandatory to desirable for the procurement of services by disabled parties through New Mexico Abilities.

FISCAL IMPLICATIONS

DOT suggests the bill would have a substantial positive impact on the agency by allowing it

more negotiating power and qualification review in its efforts to hire the disabled under the SUA. Overall, NMDOT could cut by 5%, if not more, the money spent contracting with the disabled. Budgeting and encumbering funds for projects would be less unpredictable.

SIGNIFICANT ISSUES

The Attorney General's Office identified the following issue:

This bill in Section 2 removes the mandatory “shall” from the State Use Act. The Legislature adopted the State Use Act in 2005. See NMSA 1978, §§ 13-1C-1 through -7 (2005). The Legislature wrote that the Act's purpose is “to encourage and assist persons with disabilities to achieve ... useful and productive employments by ensuring an expanded and constant market for services delivered by persons with disabilities...and minimizing their dependence on welfare and entitlements.” NMSA 1978, § 13-1C-2. The Act created a nine-person New Mexico Council for Purchasing from Persons with Disabilities Council (“Council”) and gave it the authority to “publish a list of all the services...provided by persons ... [that] are suitable for sale to state agencies and local public bodies.” Id. § 13-1C-5(A)(1)-(2).

GSD identified the following issue:

Additional work by the agencies, local public bodies, state purchasing agent, and New Mexico Council for Purchasing will be required. It is uncertain how the collected plans and data will be used or assimilated to better the State of New Mexico. There are no penalties for non-compliance.

DOT indicates it fully supports and works toward providing opportunities for persons with disabilities, outside of the SUA. Historically, DOT has contracted with several organizations that employ disabled persons to provide maintenance services at its highway rest areas, which amounts to more than \$4 million annually.

Through its Office of Equal Opportunity Programs, DOT runs a successful Disadvantaged Business Enterprise (DBE) program that ensures nondiscrimination in the award and administration of federally funded contracts. Under this program, contracts are awarded on the basis of several factors; one being that the general contractor hires a certain number of subcontractors that are “disadvantaged,” which includes the disabled.

In addition, since the inception of the SUA, DOT has given 21 contracts to disabled companies and individuals, equaling about \$5.3 million in contract dollars.

On the other hand, the SUA imposes procurement and budget constraints on DOT. These include the following:

1. The right of first refusal – if an SUA contractor is not located – slows the process, to broadly seek bids and proposals from resident and out-of state companies.
2. The contractor is chosen by New Mexico Abilities, which limits the opportunity of the hiring manager to interview candidates, evaluate their qualifications, work experience and how they would approach the project.

3. Unless the SUA contractor declines the work, DOT must hire the contractor.
4. The established rates of the companies under the SUA are not negotiable.
5. DOT's the ability to manage its budget and encumber funds are impaired by the lack of negotiation of fees and qualification review of the SUA contractor.
6. DOT pays New Mexico Abilities' administrative fee, which is 5% of the value of the contract.

Overall, by reducing competition, DOT ends up paying more for services than they would under the procurement code.

DOT presently has a successful program – DBE program – that involves setting, monitoring and meeting goals. In this same form, setting policy and goals is appropriate for continuing efforts to provide opportunities to the disabled.

PERFORMANCE IMPLICATIONS

Additional work by the agencies, local public bodies, state purchasing agent, and New Mexico Council for Purchasing will be required. No personnel or budget are provided, so compliance will potentially cause delay in other responsibilities from the effected parties.

NMML cites concern that the bill provides little guidance, concerning the types or goals or targets for procurement from persons with disabilities is expected. It leaves the development of goals and targets to the individual state agency or local government entity.

ADMINISTRATIVE IMPLICATIONS

Additional work by the agencies, local public bodies, state purchasing agent, and New Mexico Council for Purchasing will be required. No personnel or budget are provided, so compliance will potentially cause delay in other responsibilities from the effected parties.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This is related to numerous preference bills being considered by the legislature; including SB19, SB32, SB63, and SB149 among others.

DA/mew