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FISCAL IMPACT REPORT

SPONSOR:	Varela	DATE TYPED:	02/07/00	HB	40
SHORT TITLE:	Review Professional Service Contracts			SB	
				ANALYST:	Carrillo

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY00	FY01	FY00	FY01		
		*	*		

(Parenthesis () Indicate Expenditure Decreases)

*See fiscal implication section.

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY00	FY01			

(Parenthesis () Indicate Revenue Decreases)

Duplicates/Conflicts with/Companion to/Relates to

SOURCES OF INFORMATION

LFC Files

General Services Department

Department of Labor

Economic Development Department

Health Policy Commission

Office of Cultural Affairs

Office of the Attorney General

Administrative Office of the Districts Attorneys

Department of Agriculture

Board of Examiners for Architects

Department of Game and Fish

Administrative Office of the Courts

New Mexico Veterans' Services Commission

SUMMARY

Synopsis of Bill

The House Bill 40 (HB40) proposes to amend Section 13-1-118 NMSA 1978 to require additional review and analysis of requests for proposals and of select professional services contracts. The review and analysis is to be conducted by the State Budget Division (SBD) and the Management and Contracts Review Division (administratively referred to as the Contracts Review Bureau - CRB) of the Department of Finance and Administration (DFA). The review and analysis is to include a cost and benefit evaluation similar to that described in the federal Office of Management and Budget Performance of Commercial Activities Circular. The cost and benefit evaluation will include a comparison between state resources (personnel, materials, supplies, overhead, capital, ...) and private resources (contract price, contract administration, conversion costs, gain on assets, state taxes, ...).

Significant Issues

HB 40 serves to provide a mechanism to ensure greater safeguards and accountability of public funds.

FISCAL IMPLICATIONS

The bill does not include an appropriation. The estimated impact is minimal and should be absorbed within existing agency resources.

ADMINISTRATIVE IMPLICATIONS

HB 40 would require the formal involvement of the SBD and CRB in the professional services contract review process.

[Currently, the Judicial and Legislative branches, the State Highway and Transportation

Department, the New Mexico State Fair Commission, and state educational institutions' boards of regents are exempt from review by DFA but are not exempt from compiling with the provisions of the New Mexico Procurement Code, Section 13-1-1 through 13-1-199 NMSA 1978).]

The Department of Labor (DOL) staff comments: the bill requires DFA to review all DOL contracts. Currently, DOL is exempt from DFA review pursuant to DFA Rule 2 NMAC 40.2. This bill would place DOL under DFA oversight for professional services contracts.

The staff from the Administrative Office of the District Attorneys (AODA) states this bill will have little to no administrative impact on the district attorneys (DAs) and AODA, as they are exempt from this process. The NM Constitution places the DAs in the Judicial Branch which is exempt.

RELATIONSHIP

HB 40 relates to SJM 3 (Study State's Purchasing Process) and SB 80 (SHTD Contract Review).

TECHNICAL ISSUES

Amend the bill to include a provision to reject an RFP or contract if the review criteria is not met.

DOL staff suggests deleting the phrase "may supplant state employees..." in Section B of the bill as it is ambiguous. DOL staff is not clear who would determine that a review of a professional services contract is necessary, DFA or the agency. DOL asks: Is DFA suppose to review all professional services contracts?

The Office of the Attorney General comments: Is there logical sense that an agency who must make a determination that they do not have the funding and the FTE in Section B (1) would be able to afford an outside contractor to do this work? Also, it is not clear what would happen should these questions be answered in the negative. Will DFA disapprove such contract or RFPs (request for proposal) where there appears to be adequate staff, adequate money, etc?

OTHER SUBSTANTIVE ISSUES

The staff from the General Services Department notes the language of the proposed legislation requires oversight by the two division of the DFA to only "**review**" all proposed requests for proposals and proposed professional services contracts... There is absent language that would also give DFA the authority to reject such proposals or contracts.

The Economic Development Department staff suggests obtaining SBD and CRB approval during the RFP process. This review would require the same documentation and objectives as outlined in HB 40.

According to the staff at the Office of Cultural Affairs:

Agencies submit their budget request, which includes proposed contractual services with justification as to their need. The State Budget Division reviews the itemized request for funding and the level of funding is included in their budget recommendation which is then reviewed and appropriated by the Legislature.

The staff from the Administrative Office of the District Attorneys believe DFA should use the Budget Adjustment Request (BAR), not the contract review process, to scrutinize agencies on a case-by-case regarding their use of funds to privatize or contract out functions currently being performed by state employees. Agencies should be required to justify their actions, but on a case by case basis and not at the expense of every other agency.

WJC/njw