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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/11/13

SPONSOR Rodriguez LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Local Business & Contractor Preference SB 399

ANALYST Trowbridge

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		TBD*	TBD*	TBD*	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General's Office (AGO)

General Services Department (GSD)

Department of Finance and Administration (DFA)

### SUMMARY

#### Synopsis of Bill

Senate Bill 399 (SB 399) proposes changes to procurement processes for public bodies by (1) creating "local resident businesses" and "local resident contractors" and establishing criteria effective July 1, 2013; (2) enacting requirements for "local public bodies" in considering the bid or proposal of a local resident business or contractor; and (3) eliminating preferences for "resident veteran businesses" and "resident veteran contractors" effective July 1, 2022 (as stated by the Attorney General's Office review). The local preference would be applied by local public bodies at a rate of eight-percent. The targeted vendors include businesses and contractors that would be required to apply for the preference certificate from the Taxation and Revenue Department. Local public bodies would apply either the resident business/contractor preference or the local business preference/contractor preference but not the veteran's preference.

### FISCAL IMPLICATIONS

The Taxation and Revenue Department, which is administratively impacted by SB 399, did not file an analysis on this legislation. The General Services Department (GSD) states as this new preference is to be applied by local public bodies, it is not anticipated State Purchasing would

have any involvement in its application. State Purchasing does have responsibility to advise local public bodies on the application of the Procurement Code, and it is anticipated that time would be devoted to training all procurement entities on the application of this new preference.

## SIGNIFICANT ISSUES

The GSD cites the following issues are presented by the bill:

**Section 1:** amends Chapter 72, Section 1, 13-1-21 F to clarify the order of precedence in the application of a preference in a joint bid or joint proposal. This clarification is helpful; however, the amount of preference to be applied should be based strictly on the percentage of work performed by the vendor with the preference, without the dollar amount of the goods or services being the base for the percentage. Neither the current law, nor SB 399, addresses the situation of what to do when a single vendor qualifies for a certain preference, but does little to none of the work, and subcontracts out to otherwise non-qualifying entities almost all of the work acquired by application of the preference. State Purchasing has no issue with the clarification of Section 13-1-21 H to require only one preference being applied.

**Section 2:** Apart from the confusing technical language of what is being repealed and added, this portion of the bill disallows consideration of the veteran preference when applying the local preference. This seems duplicative as Section 1 appears to cover this application for all preferences.

**Section 3:** A new Section 13-1-21.3 is being added for local resident business. This addition would allow local public bodies to apply an eight-percent preference to bids or proposals. This section does not allow more than one preference to be applied

**Section 4:** Amends 13-1-22 NMSA in Chapter 184, Section 1 to add the local resident business preference to the application for preference. This section states that Taxation and Revenue shall not issue more than one local business preference during the three-year period that a certificate is valid.

**Section 5:** Section 13-1-22 NMSA 1978 is repealed and a new section 13-1-22 Certification for Resident Preference—Procedures is added. This addition is for the application for a resident business or local business but does not include veterans. Section 4 above covers this for all preferences.

**Section 6:** Section 13-4-2 Application of Preference is amended to add language to clarify the awarding by use of preference for resident and veteran contractors. State Purchasing has no issue with this clarification.

**Section 7:** Section 13-4-2 NMSA 1978, Chapter 56, Section 6, is repealed and a new Section 13-4-2 Application of Preference Resident Contractor is added. This addition is for the awarding of a public works contract but does not include veterans. Section 6 above covers this for all preferences.

The GSD additionally states that it is unclear if the new sections are replacing the portions of the existing preference that becomes effective when the current preference law sunsets in 2022.

**ADMINISTRATIVE IMPLICATIONS**

The Department of Finance and Administration states that actually applying the preferences for veterans' businesses can be problematic at times since they are applied via a stepped process depending on the revenue of the business.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

The preferences will be applied as the current law requires for all government agencies.

TT/svb