

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: HB 298

52nd Legislature, 1st Session, 2015

Tracking Number: .198885.1

Short Title: In-State Educational Companies & Services

Sponsor(s): Representative Christine Trujillo and Others

Analyst: Travis Dulany

Date: February 24, 2015

Bill Summary:

HB 298 adds a new section to the *Public School Code* to require the Public Education Department (PED) to actively seek in-state educational consultants, testing companies, and other providers of educational goods and services when purchasing or contracting for such goods or services.

Among its provisions, the bill:

- eliminates sole source contracting with testing companies;
- requires PED to post all proposals and contracts on the department's website, including information such as:
 - a running total of contractual money paid to both in-state and out-of-state contractors; and
 - the cost of each assessment and the time required to take it; and
- prescribes certain contract provisions, such as prohibiting PED from entering into any testing contracts that limit the ability of educators to appropriately review the products or services or that limit the ability of teachers, parents, and students to discuss the test after its administration.

Fiscal Impact:

HB 298 does not contain an appropriation.

Technical Issues:

In order to allow PED to comply with the requirements of HB 298, the sponsor may wish to consider defining, or otherwise providing performance measures for, the term "actively seek."

Additionally, the Attorney General's Office (AGO) notes the following:

- Subsection B does not require the posting of personal services proposals; rather, it only requires the posting of personal services *contracts*;
- Subsection B requires that the department's website include a running total of contractual money paid to in-state and out-of-state contractors; however, the bill is silent on how

often this information will be updated (i.e., monthly, quarterly, or yearly) and for how long it will be maintained;

- it may be difficult for the department to provide the exact costs and time requirements under Subsection C; AGO suggests use of the phrases “anticipated cost” and “estimated time”; and
- with regard to Subsection D, “the term ‘appropriately’ is vague and subjective and warrants review on its purpose and necessity in the clause.”

Substantive Issues:

The State Auditor’s Government Accountability Office notes that, to the extent that HB 298 enhances reporting and disclosure requirements with regard to expenditures for contracting for educational goods and services, this legislation would provide a greater degree of transparency that may be helpful during Office of the State Auditor investigations. Specifically, according to the Government Accountability Office, this type of information may be useful in the examination of potential conflicts of interest and allegations of *Procurement Code* violations.

In addition to PED-procured assessments, a recent survey by Legislative Education Study Committee (LESC) staff found that individual school districts contract for a significant number of educational services and tests, including developmental, formative, and interim assessments (see “Background,” below). To this end, the Legislature may wish to consider extending the in-state sourcing and transparency measures proposed in HB 298 to local school districts and charter schools.

Provisions in the *Sunshine Portal Transparency Act* require that a website maintained by the Department of Information Technology must provide access to certain information, including contracts that a state agency enters into for the lease, sale, or development of state land and state contracts that have a total contract price of more than \$20,000. This information must name the:

- recipient of the contract;
- purpose of the contract; and
- amounts expended.

In addition, the *Sunshine Portal Transparency Act* requires that each local education provider – defined as local school districts and state-chartered charter schools – must provide the following information to PED for online publication on the Sunshine Portal, in a downloadable format, for free public access:

- the annual operating budget;
- salary schedules and policies;
- a directory of the local education provider’s employee positions by school name, title, and salary;
- monthly expenditures by category;
- monthly revenue by source; and
- an inventory of all real property owned by the local education provider, including:
 - the location of the property;
 - the size of the property; and
 - a description of the improvements on the property and a description of the use of the property.

The PED analysis asserts that:

- allowing teachers to access and discuss assessments, as required under Subsection D of HB 298, would compromise test independence and invalidate results; and
- the department already encourages New Mexico educational consultants, testing companies, and other providers of goods and services to provide proposals for a variety of initiatives.

Background:

LESC Testing Survey

During the 2014 interim, LESC staff issued a statewide survey to understand the amount of time spent on testing, the results of which were presented at the December meeting.

Reflecting responses from 55 of the state's 89 school districts (including Albuquerque Public Schools) and considering all state- and district-mandated assessments, the survey found that:

- at any of the grade levels, English language learner (ELL) students spend four to five more hours on testing than non-ELL students, partly because ELL students take additional language placement and language proficiency assessments;
- it appears that grades 3, 7, and 8 are the most tested for both ELL and non-ELL students;
- the average testing times per student for these school grades are as follows:
 - in third grade, ELL students average 27.11 hours of testing and non-ELL students 21.64 hours;
 - in seventh grade, ELL students average 27.86 hours of testing and non-ELL students 22.69 hours; and
 - in grade 8, ELL students average 27.37 hours and non-ELL students 22.20 hours;
- in grades K-3, formative assessments represent half of the testing time for a given student;
- in grade 9 the proportion of formative assessments in relation to the total of assessments increases 75 percent; and
- for other grades (grades 4-8 and grades 10 and 11), the proportion of formative assessments drops to 25 percent.

Among other points, the survey:

- found that, in general, the range in time that districts spend testing narrows as students move up in grades; and
- suggests the need for further research, perhaps to determine whether the variation in formative assessments across school grades affects the scores on summative assessments.

Types of Assessments

Assessments can be categorized in any number of ways, but it may be helpful to classify them in the following groups:

- summative assessments;
- developmental, formative, or interim assessments;
- ELL and bilingual assessments; and
- college readiness assessments.

Likewise, assessments are either mandatory pursuant to state or federal law or discretionary pursuant to district or school policies or practices.

Summative Assessments

Summative assessments evaluate a student’s development at a particular point in time. Because the focus is on the outcome of a program, each summative assessment is typically administered only one time each year, generally toward the end of the school year.

Mandatory Summative Assessments

Among its provisions, the *Assessment and Accountability Act* requires the following assessments:

- for grades 3-8 and 11, standards-based assessments in mathematics, reading and language arts, and social studies;
- for grades 3-8, a standards-based writing assessment with the writing assessment scoring criteria applied to the extended response writing portions of the language arts standards-based assessments;
- for one of the grades 3-5, 6-8, and 11, standards-based assessments in science;
- during the fall semester of grade 11, one or more of the following chosen by the student:
 - a college placement assessment;
 - a workforce readiness assessment; or
 - an alternative demonstration of competency using standards-based indicators.

Additionally, provisions relating to graduation in the *Public School Code* require final examinations to be administered to all students in classes offered for high school credit, and end-of-course exams are used for certain student graduation requirements and the state’s Educator Effectiveness System mandated in PED rule.

Discretionary Summative Assessments

Although the responses to the LESC survey noted above indicated that no districts administer summative assessments that are not mandated by law, some districts indicated participation in the National Assessment of Educational Progress, which presents its results as an aggregate sampling at the state level.

Additionally, some assessments of college preparation, which are commonly provided by school districts, appear substantially similar to a summative assessment.

Developmental, Formative, and Interim Assessments

Developmental, formative, and interim assessments fall into the broader category of diagnostic testing. These assessments are used by teachers during the learning process in order to modify teaching and learning activities to improve student outcomes. As such, the results of these

assessments typically include qualitative, as opposed to quantitative, feedback focusing on the details of content and performance. These tests are also known as short-cycle assessments.

Mandatory Developmental, Formative, or Interim Assessments

Certain developmental, formative, or interim assessments are required by statute or PED rule as listed below:

- DIBELS Next is required for grades K-3; and
- districts are required to provide at least one short-cycle assessment for grades 9-10 (but are encouraged by PED to provide the test for grades 4-10) from the following approved vendors:
 - the Northwest Evaluation Association, which produces the Measures of Academic Progress (MAP) assessment;
 - Discovery, which produces the Discovery Reading and Math assessments;
 - Renaissance Learning, which produces the STAR Math, Reading, and Early Literacy assessments; or
 - Houghton-Mifflin: Riverside, which produces the Assess2Know reading, math, and science benchmark assessments.

Discretionary Developmental, Formative, or Interim Assessments

Responses to the LESC survey indicated that many school districts employ these types of assessments beyond what is required by law. According to those responses, school districts used the following assessments:

- expanded use of the previously mentioned assessments to grades for which they are not mandatorily administered;
- district-developed, grade- or program-level interim assessments using a curriculum-based measurement model; or
- elective modules for mandatory assessments, such as the DAZE module for DIBELS Next;
- identification and intervention assessments, including:
 - Mclass: Math;
 - BURST Vocabulary; and
 - Scholastic Reading Inventory; and
- digital learning platforms that allow for computer-adaptive differentiated learning with seamless prescriptive and formative assessment, including:
 - Accelerated Math;
 - Accelerated Reader;
 - Lexia;
 - Apex; and
 - IXL.

English Language Learner and Bilingual Assessments

Another kind of assessment required by law, but also frequently administered at the discretion of school districts, falls under the heading of ELL and bilingual assessments. Their administration is typically limited to those students requiring ELL services, for whom the assessments are mandated by state or federal provisions, or those students seeking to demonstrate mastery in a second language, for whom the assessments are typically discretionary to the district.

Mandatory English Language Learner and Bilingual Assessments

Certain ELL and bilingual assessments are required by statute or PED rule as listed below:

- ACCESS for ELLs;
- Alternate ACCESS; and
- the World-Class Instructional Design and Assessment (WIDA) ACCESS Placement Test (W-APT).

Among this group of mandatory assessments, with the exception of the initial year within a school district when the W-APT is required for benchmarking and placement, a student will generally take only a single assessment annually, either the ACCESS for ELLs or the Alternate ACCESS in the case that the student has accessibility issues with the standard assessment.

Discretionary English Language Learner and Bilingual Assessments

Survey responses indicated that many of the responding school districts employ these types of assessments beyond what is required by law. According to those responses, school districts used the following additional ELL or bilingual assessments:

- LAS Links;
- the Woodcock-Munoz assessment;
- the IPT Dual Language assessment; and
- an oral assessment of Diné language skills.

College and Vocational Readiness Assessments

This group of assessments can also be differentiated between:

- college readiness assessments, which provide an evaluation of a student's current skills and aptitudes relative to skill levels that are generally indicative of success in postsecondary education;
- college entrance examinations, which are used by postsecondary institutions in their selection of potential applicants for admission; and
- college placement examinations, which indicate the potential course level a student would place in at the start of his or her postsecondary education, and which also include exams that would allow a student to gain college-level credit prior to attendance.

Provisions in current statute require that end-of-course tests must be aligned with the college placement tests administered by two- and four-year public postsecondary educational institutions in New Mexico.

Discretionary College and Vocational Readiness Assessments

Responses to the LESC survey indicated that many of the responding school districts employ these types of assessments even though they are not required by law. According to those responses, school districts used the following college and vocational readiness assessments:

- college readiness examinations, including:
 - Preliminary Scholastic Aptitude Test (PSAT)/National Merit Scholarship Qualifying Test (NMSQT);
 - ACT Plan and ACT Explore, which are being replaced by ACT Aspire;
- college entrance examinations, including:
 - SAT Reasoning Test; and
 - ACT;
- college placement examinations, including:
 - ACT Compass;
 - ACCUPLACER; and
 - Advanced Placement exams; and
- vocational aptitude exams, including:
 - the Armed Services Vocational Aptitude Battery (ASVAB).

Committee Referrals:

HGEIC/HEC

Related Bills:

HB 15 *Limit School Days for Statewide Tests*
HB 129 *Clarify School Test Individual Choice*
HB 176 *Limit School Assessments*
HB 177 *Common Core Implementation Standards*
HB 308a *School Workforce Assessment System*
*HB 315 *Audit Resources for Student Assessments*
HB 539 *Eliminate Certain Grade 9 & 10 Assessments*
HJM 3 *Standardized Test Contract Fund Reports*
SB 127a *Development of End-of-Course Tests by Teacher*
SB 203 *Certain Students Tested in Native Language*
SB 217 *Individual Choice on Some School Tests*
SB 357 *High School Equivalency Credentials*
SB 390 *Align School Code with Assessment Practices*
SJM 9 *Standardized Test Contract Reporting*