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FISCAL IMPACT REPORT

SPONSOR Trujillo, CH **ORIGINAL DATE** _____
LAST UPDATED 2/19/15 **HB** 298

SHORT TITLE In-State Educational Companies & Services **SB** _____

ANALYST Chavez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)

Public Education Department (PED)

SUMMARY

Synopsis of Bill

House Bill 298 adds a new section to the Public School Code that would require the Public Education Department (PED) to actively seek in-state business contracts and prohibit sole source contracts for companies providing testing services. HB 298 also requires testing proposals and contracts to be posted on PED's website, and must include the amount of money paid to both in-state and out-of-state contractors, as well as the cost of each assessment and the total time required for assessments for the school year. The bill also prohibits any contract with a testing company that would limit the ability of educators to review, discuss, or comment on any products or services or that limits the speech of parents, students, or educators or their ability to discuss a test after its administration.

FISCAL IMPLICATIONS

This bill does not contain an appropriation and has no fiscal impact.

SIGNIFICANT ISSUES

PED notes the bill places limits on procurements made by PED without amending the

procurement code (Section 13-1-30 NMSA 1978). PED adds general procurement practices focus on a set of uniform rules that work to ensure consistency and fairness in the purchase of goods and services. Finally, PED notes that establishing procurement requirements for PED that removes uniformity may create unintended consequences that could provide opportunities for unfair procurement practices.

The bill requires PED to actively seek in-state vendors for requests for proposals (RFPs) and invitations to bid (ITB). However, it is unclear what is meant by the term “actively seek”, and how that requirement would be met by PED.

PED asserts the agency already seeks in-state consultants and service providers in keeping with preferences for evaluating proposals under the procurement code. PED notes agency administrators outside PED, such as the Department of Finance and Administration (DFA) and the General Services Department (GSD), establish the rules for posting and entering of contracts and wording of standard terms and conditions protecting state agencies from legal challenges. PED adds the New Mexico Administrative Code (Section 1-4-1 NMAC and Section 2-40-2 NMAC) already imposes limits on sole source contracting by requiring both justification and a period during which competitors can protest, and that these are adequate to protect the interests of taxpayers. PED expresses concern that the procurement procedures as defined on the bill would make the requirements on PED different from other state agencies, adding that attempting to exempt PED from the legal constraints of the procurement code could weaken taxpayer safeguards.

PED also notes that reporting requirements contained in the bill are already executed through reporting requirements of the New Mexico Sunshine Portal.

Finally, PED states that accountability assessments must remain secure so that results are true indications of student learning, adding that allowing students, teachers, and parents to view and discuss assessments renders the test results invalid. Currently, teachers must teach in alignment with approved standards and benchmarks and assessments should indicate student mastery of the standards.

PERFORMANCE IMPLICATIONS

PED notes it administers hundreds of contracts and does so through observing legal limits established in the procurement code. PED adds it is limited by rules that favor competition and care with taxpayer dollars, noting that since these rules are applied and outside PED, they are unlikely to be unfairly applied against competitors for PED education assessments.

ADMINISTRATIVE IMPLICATIONS

PED notes the department currently encourages New Mexico educational consultants, testing companies and other providers of goods and services to provide proposals for a variety of initiatives by posting available competitive bids on its website and, where New Mexico vendors are known to be interested in competing, letting them know of opportunities.

TECHNICAL ISSUES

AGO notes a number of technical issues with the bill:

HB 298 uses several vague or undefined terms and requirements which may make the statute difficult to implement and enforce.

- 1) Clause B requires that “testing proposals and contracts” and “personal service contracts” be posted to the department’s website. However, the clause further provides that such items be posted “within five days of letting the contract.” There is no reference to “personal service proposals.” Its language currently only requires posting of proposals for testing contracts, and not proposals for personal service contracts.
- 2) Clause B also requires a running total of money paid to in-state and out-of-state contractors, but it does not say whether this is to be compiled monthly, quarterly, or annually. It is also unclear how long the information is to be maintained on the department’s website. Clarification should be given to whether this information is refreshed every year or if it is maintained on the website for the life of each contract, a set period of time, or permanently.
- 3) Clause C requires detailed information to be posted to the website, including the cost and time required for each assessment and the total time required for assessments for the year. As written, the clause calls for exact figures, which may be difficult to provide at the time the contract is let by the department. Consideration should be given to whether terms such as “anticipated cost” and “estimated time” should be used in the alternative.
- 4) Clause D provides a prohibition on contracts that limit discussion on administered tests. One measurement is ensuring the ability of educators to “appropriately” review, discuss, or comment on the testing services. The term “appropriately” is vague and subjective and warrants review on its purpose and necessity in the clause. It should be determined whether the legislation intends to prohibit agreements that place any limits on the speech of parents, students, or educators, or if agreements are permissible so long as they do not significantly limit discussion. There is question as to whether agreements that limit speech on parents would even be permissible in the first place given First Amendment considerations.