FISCAL IMPACT REPORT

		ORIGINAL DATE	03/12/15		
SPONSOR	HGEIC	**LAST UPDATED**		**HB**	557/HGEICS
SHORT TITLE	Resident Veteran Business Preference Act			**SB**	
				ANALYST	Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

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

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to SB 69 and SB 212.

SOURCES OF INFORMATION
LFC Files

Responses Received From

Veteran Services Department (VSD)
General Services Department (GSD)
Attorney General's Office (AGO)
Children, Youth and Families Department (CYFD)
Department of Cultural Affairs (DCA)

SUMMARY

Synopsis of Bill

The House Government, Elections and Indian Affairs Committee Substitute for House Bill 557 amends sections of the Procurement Code and the law governing public works contracts relating to the preferences conferred on resident veteran businesses. It repeals the various resident veteran business preferences that are based on a graduated scale depending on the business's annual revenues, and instead establishes a single resident veteran business preference for such a business, including all of its subsidiaries, "with annual gross revenues up to $3 million in the preceding tax year to be 10 percent lower than the bid actually submitted." When a procurement is conducted through a formal request for proposals and the contract is awarded based on points, additional points equivalent to ten percent of the total possible points shall be awarded to a resident veteran business with annual gross revenues up to that $3 million cap (including all of the business' subsidiaries).

The bill also amends the two sections that limit the yearly resident veteran business preference conferred to an aggregate of $10 million in purchases by public bodies from all resident veteran businesses receiving preferences. In their place, it sets a 10 year limit during which a resident veteran business may benefit from the preference. It also bars a person from benefiting from the resident veteran business preference based on more than one business concurrently.

Section 3 of CS/HB 557 directs the Secretary of GSD to promulgate rules necessary to implement these changes to the resident veteran business preference.

The effective date of this bill is July 1, 2015.

FISCAL IMPLICATIONS

GSD reported in its analysis of the previous version of this bill that it is unknown at present how much staff time would need to be devoted to its State Purchasing Division's (SPD) involvement since the number of future bid proposals involving preferences given the higher level annual revenue cap for the ten percent resident veteran business preference are not predictable. Currently, the preference application process is staffed by SPD and the time devoted to this task is provided as necessary.

SIGNIFICANT ISSUES

VSD advised in its analysis of the earlier version of this bill that the current statute is complicated and unmanageable. It reported that during the 2014 session, the House passed HM 1, which called for VSD to assemble a task for to look at this issue. VSD brought together members from the construction industry, veteran business owners, procurement officers from local bodies, procurement officers from University of New Mexico and Central New Mexcio, as well as representatives from the Association of Counties. This task force came up with suggestions that were presented to the Military and Veteran Interim Committee in November that would simplify the process. It appears that those suggestions are not included in this bill.

GSD/SPD first advised it supports this legislation. It then addressed the change in cap on annual revenue from $1 million to $3 million in order to receive the ten percent preference, along with the new 10 year limit for receiving this preference:

> What is the basis for choosing a $3 million cap? If the intention is to help more small emerging veteran businesses through expanding the preference, then this change opens the door a bit wider through a higher revenue cap, but does it go far enough in the desired direction? If the goal is to make preferential awards for start up resident veteran businesses, then there is an argument for focusing on how long the company has been in business.
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> Also, the 10 year limit for using this preference may lead to a protected cottage industry. New Mexico does have an interest in supporting emerging resident veteran businesses through procurement preferences, and slight modification to this bill will better target the desired entity group.

In light of these comments, GSD/SPD provided suggested amendments below.

In its analysis of the earlier version of this bill, CYFD points out that limiting the time period in which a resident veteran business can claim additional points in the RFP process raises concerns about ensuring compliance: the bill does not specify how to track this qualifying factor or where to obtain the information. It also noted that this bill may result in a preference being given to providers with higher bids or prices in proposals, and may result in preference being given to providers with less than the best qualifications.

DCA's earlier analysis reported that the amount it awards annually for professional services varies, largely depending on capital outlay appropriations. In FY 2014, DCA awarded approximately $5.5 million in contracts for professional services. It comments that this bill will affect how DCA selects contractors by impacting the allocation of points in RFPs. The Procurement Code establishes a process for the expenditure of state money thorough a fair and equitable process to ensure the state obtains goods and services at the lowest cost and allowing agencies to consider quality and experience. Preferences under the protections of the Procurement Code are made in Sections 13-1-21 and 13-4-2 (both amended in this bill); and exceptions to the Code are made in Sections 13-1-98 through 13-1-98.2 and also the State Use Act (Sections 13-1C-1 through 7), which gives persons with disabilities and business employing at least 75 percent persons with disabilities the right of first refusal over all contracts for professional services, before the public agency ever issues an RFP.

PERFORMANCE IMPLICATIONS

GSD/SPD commented that the proposed legislation will not significantly impact the procurement process, although targeting the emerging resident veteran businesses through procurement preferences may miss the intended entities by extending the eligibility by too many years (e.g., 10 years).

CYFD noted the ability of contractors to perform their functions effectively and efficiently can have an effect on departmental performance measures.

RELATIONSHIP

Relates to SB 69, Resident Business Set-Aside, and SB 212, Extend Veteran's Preference to Families.

TECHNICAL ISSUES

Section 4 of the bill repeals the existing two sections of law being amended in this bill. The intent of these repeals appears to be avoidance of the repeals of these sections enacted in 2012 to be effective July 1, 2022, although the impact of Section 4 may be confusing to one reading this bill or this piece of legislation should it be enacted.

OTHER SUBSTANTIVE ISSUES

GSD/SPD commented on existing language not being amended in this bill concerning recycled content goods. In Section 1(A)(5), that term is defined as 25 percent or more of recycled materials. It asks whether a specification should be made for weighting "post-consumer" recycled waste at a higher level than manufacturing process waste? For example, many paper manufacturers count trimmings generated within the manufacturing facility as recyclable content, when the goal is to target post-consumer recycling.

AMENDMENTS

GSD/SPD suggested the bill be amended to reduce the dollar maximum to suit an emerging, small veteran business as well as reducing the 10 year eligibility time period to target emerging resident veteran businesses.

It also suggested the preference for "Recycled content goods" be weighted at a higher level when it contains "post-consumer" recycled waste.

MD/bb/aml