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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/22/15

SPONSOR Candelaria LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Health Care Emergency Procurements and Audits SB 320

ANALYST Hanika-Ortiz

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY14	FY15		
	\$100.0	Nonrecurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of Finance and Administration (DFA)  
 Human Services Department (HSD)  
 Attorney General's Office (AGO)  
 General Services Department (GSD)  
 Department of Health (DOH)

### SUMMARY

#### Synopsis of Bill

SB 320 eliminates the health care exemption to the Procurement Code, clarifies that certain situations do not qualify as emergency procurements, and requires the state to contract annually and in advance for audit and on-call health care services. SB 320 also confers standing on the AGO, state auditor and the LFC to seek judicial review of certain purchasing practices.

More specifically, SB 320:

Section 2 amends the Audit Act requiring the state auditor to pre-approve a list of audit firms to conduct audits of state and federal health care programs.

Section 3 eliminates the health care exemption to the Procurement Code.

Section 4, relating to sole source procurements, provides that the attorney general, state auditor or the LFC may seek judicial review if due diligence was not used, best price not pursued, or specifications were drafted too narrowly so that only one predetermined source would satisfy.

Section 5, relating to emergency procurements, excludes purchases of audit services, leased goods or equipment, and temporary or professional health services pursuant to fraud allegations and allows the attorney general, state auditor or LFC to seek judicial review if otherwise.

Section 6 adds a new section to the Procurement Code that provides:

- a state agency shall contract annually, and in advance, of the need for:
  - services to investigate alleged health care overpayments or fraud, and
  - health care services necessitated due to an allegation of fraud.
- a state agency shall use a competitive sealed proposal process for audit, health care or other professional services, and apply the resident business preference;
- a state agency shall not accept a proposal:
  - for health care or professional services unless the offeror and providers are registered, licensed or certified to provide services in N.M, and
  - for audit services unless the offeror is approved by the state auditor to conduct audits of state and federal health care programs;
- contracts for temporary health or other professional services pursuant to an allegation of fraud shall be three months or less and may not be renewed;
- proposals for audit, health or other professional services shall within five business days of award, be posted on the agency web site and Sunshine Portal;
- the provisions do not apply to procurements by the AGO or state auditor to investigate alleged health care overpayments or fraud; and
- the AGO, state auditor or LFC may seek judicial review of actions of the state purchasing agent or other state agencies if contrary to these requirements.

Section 7 appropriates \$100 thousand to the state auditor to compile a list of approved auditors.

Section 8 carries an emergency clause.

## **FISCAL IMPLICATIONS**

The appropriation of \$100 thousand contained in this bill to the state auditor to compile and maintain a list of approved audit firms is a nonrecurring expense to the general fund. Any unexpended or unencumbered balance at the end of FY16 shall revert to the general fund.

The current general fund appropriation to the state auditor should be sufficient to compile a list.

The bill will require agencies with health care missions to encumber audit funds beforehand.

GSD notes it would need additional resources to respond further to any judicial reviews.

HSD notes the department may have to allow an alleged fraud to continue during the procurement process or cut off services or goods while the procurement is being conducted.

DOH notes it currently uses the health care exemption to distribute approximately \$8 million statewide to various emergency, trauma and disaster-preparedness providers.

## **SIGNIFICANT ISSUES**

SB 320 provides that an investigation of alleged health care overpayments or fraud is not an emergency condition that justifies an emergency procurement; contracts for temporary health care or other professional services pursuant to an allegation of fraud shall be three months or less and may not be renewed or extended; and the AGO, state auditor or LFC may seek judicial review of actions of the state purchasing agent or state agencies if contrary to these requirements.

## **PERFORMANCE IMPLICATIONS**

The AGO analysis indicates the bill does not appear to present any significant legal issues.

## **ADMINISTRATIVE IMPLICATIONS**

HSD provided the following comments:

Efforts to combat fraud were consolidated and strengthened under Public Law 104-191, the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The Act established a comprehensive program to combat fraud committed against all health plans, both public and private. The legislation required the establishment of a national Health Care Fraud and Abuse Control Program (HCFAC), under the joint direction of the Attorney General and the Secretary of the Department of Health and Human Services (HHS). The HCFAC program is designed to coordinate Federal, State and local law enforcement activities with respect to health care fraud and abuse. SB 320 undercuts such coordination by interfering with the Medicaid agency's ability to enter into program integrity auditing contracts with qualified agencies.

## **TECHNICAL ISSUES**

The maximum contract period of three months to provide health care and other professional services may be too short a period of time to pursue from a vendor's point of view.

## **OTHER SUBSTANTIVE ISSUES**

The emergency procurement method may only be used when there exists a serious threat to the functioning of government, the preservation or protection of property, or the health or safety of a person. However, when a public entity has failed to plan a timely procurement, some agencies often invoke the emergency clause and bypass the normal procurement process. The failure of the agency to properly plan ahead should *not* provide the basis for an emergency purchase. Truly unforeseeable circumstances that absolutely demand an immediate response *do*. Preplanning for emergency situations can negate much of the need for these types of emergency procurements.

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

State agencies will continue to procure goods and services pursuant to the Procurement Code.

AHO/bb/aml