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## FISCAL IMPACT REPORT

ORIGINAL DATE 01/23/21

SPONSOR Serrato/Maestas LAST UPDATED 02/11/21 HB 82/aHCEDC/aHSEIC

SHORT TITLE Historically Underutilized Businesses SB \_\_\_\_\_

ANALYST Jorgensen

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

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>GSD</b>	\$0.0	\$70.0	\$70.0	\$140.0	Recurring	General Fund
<b>TRD</b>	\$28.8	\$140.6	\$140.6	\$310.0	Recurring	General Fund
<b>Total</b>	\$28.8	\$210.6	\$210.6	\$450.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to Senate Bill 53

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

General Services Department (GSD)

Taxation and Revenue Department (TRD)

### SUMMARY

#### Synopsis of HSEIC Amendment

The House State Government, Elections and Indian Affairs Committee amendment to House Bill 82 requires state agencies, upon completion of a contracted project, to report any subcontract made to a historically underutilized business for the purchase of goods or services and report the total dollar amount of payments issued pursuant to that subcontract.

#### Synopsis of HCEDEC Amendment

The House Commerce and Economic Development Committee amendment to House Bill 82 moves the definition related to a facilitating non-profit from Section 3(A) to Section 3(B). It changes “minorities” in Section 3(A) (3) to “communities of color”. In Section 4 it changes the mandate that GSD to allow non-profit entities to qualify to having GSD qualify non-profits. It amends the language in Section 4(E)(3) from asking every state agency to track the number of contracts to tracking the total number and dollar amount of contracts to historically underutilized

businesses.

### Synopsis of Original Bill

House Bill 82 (HB 82) creates the Historically Underutilized Business Opportunity Act, which encourages state agencies to procure goods and services from historically underutilized businesses (HUB). This bill defines a “historically underutilized business” as a for-profit business organization, corporation, sole proprietorship, partnership or joint venture that has a valid HUB certificate issued by the Taxation and Revenue Department (TRD). The business must have an average gross revenue for the preceding three fiscal years that does not exceed five million dollars (\$5,000,000) or an average number of employees for the same time period that does not exceed 50 employees; the business must be certified as a “Resident Business” by TRD pursuant to Section 13-1-22 NMSA 1978; and the business must be more than 50 percent owned by a woman or by a specified minority. Section 5 of this bill states that each state agency must set specific goals for the use of HUBs, and maintain and compile monthly reports that provide the information to the General Services Department (GSD) for this act and any other information required by GSD.

### **FISCAL IMPLICATIONS**

Should the provisions of HB82 be enacted, GSD estimates the need for an additional employee to develop and manage training sessions, seminars, and other means to inform HUBs about opportunities and procedures for doing business with the state and to approve each agency’s proposed procedures. GSD will also need the employee to prepare an annual consolidated report and post it on GSD’s website and the sunshine portal with a copy to the LFC. GSD estimates this employee will cost \$50 thousand in salary and \$20 thousand in benefits.

GSD may face additional costs to develop and maintain a web portal for agency reporting.

TRD estimates the need for two additional employees at a cost of \$140.6 thousand per year to fulfill the requirements of HB82. Additionally, \$28.8 thousand will be needed for initial computer programming costs related to the HUB certification system.

### **SIGNIFICANT ISSUES**

TRD notes the following:

As a matter of policy, TRD requests only as much information as is necessary from the public to ensure compliance with the tax and motor vehicle laws of this state. This bill would require TRD to certify “historically underutilized businesses,” which would require collection of data to include gross revenue, average number of employees, and gender, race and ethnic identity relating to business ownership. TRD does not currently collect data specific to race and ethnic identity for the administration of tax or motor vehicle programs. [...]TRD may be required to establish data sharing agreements with federal or state agencies to verify the criteria of the certification that is supplied on the application.

According to GSD, no New Mexico disparity study has been conducted to establish a minority contract award baseline from which to measure need or progress. As such, it will be difficult to

provide guidance to agencies as to how targets should be set.

## PERFORMANCE IMPLICATIONS

GSD reports that “[e]xecuting procurements will take even more time to execute because an additional analysis will be required to ascertain whether HUBs were included, respondents’ HUB subcontracting plans were submitted, and HUBs offered opportunities under the act.”

## CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB53 provides a scheme of HUB preferences.

## TECHNICAL ISSUES

TRD notes the following issues:

“nonprofit” used on page 2 line 9: If this agency required to have an Internal Revenue Service designation? If yes, TRD suggests adding, “nonprofit” means an organization that has been granted exemption from federal income tax by the United States internal revenue services as an organization described in Section 501(c)(3) of the Internal Revenue Code. (Similar language exists in 7-9-41.5).

“gross revenue” used on page 2 line 23: Is this a number that should be taken from taxes reported for income taxes or gross receipts tax for the business? There are certain types of income that would not be included with either number. TRD would prefer that “gross revenue” is defined to ensure that TRD is using the correct number.

The language starting on page 2 line 25 says “New Mexico resident employees.” It is not clear if the intent is that the company can have employees who are not residents working in New Mexico or if the count should include anyone working in New Mexico. We suggest using “employees in New Mexico” regardless of their residency status.

**[Section 4]** In order to share information with GSD, TRD recommends that Section 7-1-8.8 NMSA 1978 be amended to include General Services Department (GSD) among the state agencies authorized to receive information from TRD and that the bill define what information may be shared with GSD. Section 4 (B) (starting on page 3 line 23) of the bill charges GSD with establishing the searchable database of certified “historically underutilized businesses,” but TRD will need to transfer to GSD the relevant data elements of certified businesses. Without amendment to 7-1-8.8, TRD will not be legally allowed to share the required information with GSD.

Section 4 (B) instructs GSD to develop procedures to approve of the qualification of “facilitating nonprofit entities” on page 4 line 1. The role of the “facilitating nonprofit entities” defined under Section 4 (B) involves various assistance to businesses to establish “historically underutilized businesses” certification including precertification screening of eligibility. The bill establishes TRD as the certifying agency. As these are non-government entities, statute will need to define procedures between GSD and TRD to involve these entities in precertification, appeals, revocation, and recertification.

TRD notes that the bill contemplates that a business that does not receive certification

from TRD may appeal that determination, but does not specify the appeal procedures applicable to TRD's determination. TRD would prefer that this process is outlined in the bill.

GSD states:

This legislation does not define contract nor subcontract. For example, is unclear whether "contract" includes statewide price agreements procured by State Purchasing when no goods or services are purchased until such time an agency need exists. [...] Similarly, it is unclear whether the term "contract" includes the thousands of weekly purchase orders generated by state agencies under these statewide price agreements. It may help to have a dollar threshold limit for the minimum amount to trigger reporting in order to reduce the data gathering and reporting work at each agency.

CJ/al/rl