

LFC Requester:	Aurora Sánchez
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**AGENCY BILL ANALYSIS
2015 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original	<input type="checkbox"/>	Amendment	<input checked="" type="checkbox"/>	Date	<u>February 16, 2015</u>
Correction	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Bill No:	<u>HB 130a</u>

Sponsor:	<u>Rep. Garcia Richard</u>	Agency Code:	<u>Attorney General's Office</u>
Short	<u>State Procurement</u>	Person Writing	<u>Luis Carrasco, AAG</u>
Title:	<u>Committee & Reviews</u>	Phone:	<u>827-6040</u> Email <u>LCarrasco@nmag.gov</u>

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

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

(Parenthesis () Indicate Expenditure Decreases)

Relates to: HB100 and SB69

Duplicates/Relates to Appropriation in the General Appropriation Act:

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Letter. This is a staff analysis in response to an agency’s, committee’s, or legislator’s request.

BILL SUMMARY

Synopsis: House Bill 130 (“HB130”), as amended by the House Government, Elections & Indian Affairs Committee, is an act making substantive and technical amendments to several sections of the state Procurement Code. Section 1 of HB130 modifies the Procurement Code’s definition of “small business” by creating a new basis by which a business entity can be considered a “small business.” If enacted, HB130 would allow independent businesses with an average number of employees for the preceding three fiscal years that does not exceed 150 to qualify as a “small business,” whereas current law only extends that definition to independent businesses with an average annual volume for the preceding three fiscal years which does not exceed \$1,500,000.00. Satisfying either of these criteria would bestow the “small business designation” on the qualifying business entity under HB130, which makes other non-substantive edits to NMSA 1978, Section 13-1-188.

Section 2 of HB130 amends NMSA 1978, Section 13-1-162 of the Procurement Code, which establishes the State Procurement Standards and Specifications Committee (“Committee”). Substantively, HB130 would increase the membership of the Committee from 11 to 14, by increasing the number of private sector representatives from 2 to 4 and adding one representative from the department of environment, and clarifies that the State Purchasing Agent (who shall serve as a non-voting ex-officio member of the Committee) and members of the Committee are appointed by the Secretary of the General Services Department (“GSD”), with approval by the Governor. Section 2 also makes technical amendments to reflect changes in agency names.

Section 3 of HB130 amends NMSA 1978, Section 13-1-163 of the Procurement Code, which establishes the Committee’s powers and duties. HB130 would cause this section to explicitly reference the Committee, and to require the Committee to conduct montly meetings at which it would review a random sampling of published requests for proposals to identify any concerns with the preparation or contents of the requests for proposals and to inform relevant agenceis of its concerns and recommendations to remedy those concerns. Additionally, HB130 would require the State Purchasing Agent to report annually to the GSD Secretary and the legislature with regard to the Committee’s identified concerns pertaining to requests it has reviewed, among other things.

FISCAL IMPLICATIONS

HB130 does not address whether the Attorney General's Office ("AGO") or GSD attorneys are to be utilized by the Commission with regard to legal issues that will arise in connection with its new duties to conduct monthly meetings to review certain requests for proposals. Currently, the Attorney General's Office does not provide regular legal advice and representation to the Commission. If it is contemplated that the AGO is to act as legal advisor to the Commission, an appropriation to the AGO for additional staff would be appropriate and necessary.

SIGNIFICANT ISSUES

As highlighted by DFA and GSD, changing the definition of "small business" as contemplated in HB130 may have the unintended consequence of permitting some business with large annual volumes to qualify as a small business simply because they have fewer than 150 employees on average for the preceding three fiscal years. If the legislature does not wish to permit this, it should consider not enacting the proposed amendment to Section 13-1-88, or, alternatively, to amend HB130 to require that a company must have volume not in excess of \$1,500,000 and an average number of employees for the preceding three fiscal years that does not exceed 150 in order to qualify as a small business. If the legislature's intent is to subject local public bodies to HB130's requirements concerning RFPs, and not have it apply only to state agencies, it may be helpful to make specific provisions to that effect in HB130.

PERFORMANCE IMPLICATIONS

As noted above, if the AGO will be called upon to advise the Committee in connection with its newly established obligation to conduct monthly review meetings, additional resources will be expended by the AGO. In light of current staffing and funding shortages the AGO is experiencing, if no appropriation to the AGO for additional resources to perform the additional work is made, the AGO's performance with regard to other duties and responsibilities will be diminished.

ADMINISTRATIVE IMPLICATIONS

As noted above, additional AGO staff time may be dedicated to assist the Committee in meeting the obligations of the Committee.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB130 is related to HB100 and SB69.

TECHNICAL ISSUES

See SIGNIFICANT ISSUES above.

OTHER SUBSTANTIVE ISSUES

None noted.

ALTERNATIVES

See SIGNIFICANT ISSUES above.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The status quo will remain; the only factor used to determine whether a business entity is a “small business” for purposes of the procurement code will be the average annual volume for the preceding 3 fiscal years; the composition of the Committee will remain at 11 members, with only two members representing the private sector and no representative from the department of environment; the Committee will have no obligation to conduct monthly meetings to review requests for proposals.

AMENDMENTS

See SIGNIFICANT ISSUES above.