

LFC Requester:	Rachel Gudgel
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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 checked="" type="checkbox"/>	Amendment	<input type="checkbox"/>	Date	Feb. 4, 2015
Correction	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Bill No:	HB 298

Sponsor:	Reps. Christine Trujillo	Agency Code:	Attorney General's Office
Short Title:	In-State Educational Companies & Services	Person Writing	Joseph Dworak, AAG
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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)

Duplicates/Conflicts with/Companion to/Relates to:
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 298 would create add a new section to the Public School Code. The bill would require the department to seek in-state business contracts and prohibit sole source contracts for companies providing testing services. HB 298 would also require testing proposals and contracts to be posted on the department’s website, and include the amount of money paid to both in-state and out-of-state contractors as well as the cost and time of each assessment for the school year. The bill also prohibits any contract with a testing company that would limit review, discussion, or comments regarding the test and the testing administration.

FISCAL IMPLICATIONS

SIGNIFICANT ISSUES See technical issues, below.

PERFORMANCE IMPLICATIONS N/A

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

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.

OTHER SUBSTANTIVE ISSUES N/A

ALTERNATIVES N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL Status quo

AMENDMENTS

N/A