

LFC Requester:	Theresa Rogers
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**AGENCY BILL ANALYSIS
2017 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>3/6/2017</u>
Correction	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Bill No:	<u>HB278/aHSIVC</u>

Sponsor:	<u>Representative James E. Smith Senator Daniel A. Ivey-Soto</u>	Agency Code:	<u>924</u>
Short Title:	<u>NOTICE & REVIEW OF EXEMPT PROCUREMENTS</u>	Person Writing	<u>Aguilar/Rael</u>
		Phone:	<u>505-827-6519</u>
		Email	<u>Paulj.aguilar@state.nm.us</u>

SECTION II: FISCAL IMPACT

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Indeterminate	Indeterminate		Recurring	Agency Operating Budgets

(Parenthesis () Indicate Expenditure Decreases)

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis of the HSIVC Amendment

The HSIVC amendment changes the requirement of the original bill that an agency post its “intent to enter into an exempt procurement at least 30 days prior to entering in to an exempt agreement” to requiring that an agency post the exempt procurement on the sunshine portal within 30 before or after entering into the procurement.

The amendment also removes the provision repealing all exempt procurements.

These changes can be seen as favorable in addressing the PED’s concerns with the original bill.

Synopsis of the original bill:

House Bill 278 (HB-278) requires that entities desiring to use any of the exemptions to the procurement code provide for in statute provide a 30 day notice on the Sunshine Portal of its intent to use the exemption. The bill also provides for a review by the General Services Department and the Legislative Finance Committee and to make recommendations to the legislature.

The bill also contains a delayed repeal of the statute that provides for all exemptions to the procurement code be repealed as of July 1, 2019.

SIGNIFICANT ISSUES

This bill requires a posting notification from an agency to the Sunshine Portal 30 days prior to entering into the procurement. In reviewing the current exemptions, PED has identified areas where this requirement may cause delays in services and business operations. Examples include:

- 13-1-98A-Eighty percent of Contracts processed within the Public Education Department utilize exemption 13-1-98A, with NM School Districts and other local public bodies that administer and provide services to School Districts. By implementing this bill it may delay and possibly impede services at school districts.
- 13-1-98F-By implementing this bill it would impact employee travel and site visits to school districts for unforeseen programmatic or fiscal issues that could result in investigating fraud, waste, and abuse.
- 13-1-98R-By implementing this bill it would preclude the agency from its ability to serve ethical violators with their summons in a timely manner or where immediate action is necessary.
- 13-1-98Y-By implementing this bill, parent training and information centers designed to increase parent participation, projects and initiatives designed to improve outcomes for students with disabilities and other projects and initiatives relating to the administration of improvement strategy programs pursuant to the federal Individuals with Disabilities Education Act would require PED to post an RFP and may delay services due to the average 90 day contract and would leave students with the highest needs without proper accommodations.

ADMINISTRATIVE IMPLICATIONS

The PED would be required to inform school districts, state-chartered charter schools and regional education cooperatives (RECs) of the change in statute requiring the posting of a notice thirty days prior to the intent to enter into an exempt procurement agreement. As many intergovernmental agreements (IGAs) supporting students, parents, and educators are for a period of one year with a term date coinciding with the end of the fiscal year, the PED would need additional time added to the contract process in order to accommodate the thirty day notice requirement of SB278. This could impact the delivery of services to the school community including, but not limited to, parent training and information center support designed to increase parent participation, projects and initiatives designed to improve outcomes for students with disabilities and other projects and initiatives relating to the administration of improvement strategy programs pursuant to the federal Individuals with Disabilities Education Act.. Provisions

contained in the bill would also impede the continuity in services, without interruption, from one fiscal year to the next for the delivery of the United States Department of Education (USDE) 21st Century Community Learning Centers afterschool programming among others due to the extended time that would be needed to draft, obtain approval, post for thirty days those exempt procurements, and fully executed any applicable contract or IGA. Potentially, this could create an interruption in services provided to the school community from one fiscal year to the next.

It is unclear if a “local public body” would be inclusive of school districts, and state-chartered charter schools and universities and if the same thirty day notice requirement prior to the intent of entering into an exempt procurement agreement would apply to these entities. If so, then it is possible that a further delay in the implementation of services benefitting students, parents, and educators could occur were the school districts, state-chartered charter schools, or universities needing to subcontract a scope of work, or portion of a scope of work from a PED IGA as it would appear to require these entities to also post a thirty day notice, subsequent to the PED’s thirty day notice before entering into a subcontract for the provision of services where an exemption to the procurement code exists.

As regional education cooperatives, per §22-2B-3, are “individual state agencies”, it is unclear if an additional thirty day posting of a notice prior to the intent to enter into an exempt procurement agreement for a scope of services outlined in a PED IGA for any subcontract would also be needed. This would cause additional significant delays in the continuity of services.

OTHER SUBSTANTIVE ISSUES

§22-2B-3, provides authorization to RECs to join with other local school boards or other state-supported educational institutions to form cooperatives to provide education-related services. Cooperatives shall be deemed individual state agencies administratively attached to the department. As such, the impact of SB278 could further delay the continuity of services to students, parents, and educators through multiple thirty day posting requirements for a given scope of work between the PED and the REC that is exempt to the procurement code through 13-1-98 and for which a subcontract may be required to be developed by the REC.

AMENDMENTS

The HTPWC is recommending a pass with the following amendments:

The analysis does not change other than the posting can now occur after the procurement has been completed.