

POLICY SERVICES

ADVISORY

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CONTENTS

Policy Advisory No. 98 Students	IHBCA—Programs for Pregnant / Parenting
Policy Advisory No. 99	JIE—Pregnant / Parenting Student
Policy Advisory No. 100	JJIB—Interscholastic Sports

Important information regarding Bills approved in the 2013 legislative session.

Introductory Comments

The following advisories, information and discussions are regarding legislation passed by the legislature and signed by the governor following the 2013 legislative session. A large part of the legislation effecting school districts during this legislative session concerned procurement. Procurement is circumscribed by many specific and detailed statutes and parts of the administrative code. School districts should maintain an up to date copy of the procurement code contents and the requirements as expressed in the New Mexico Administrative code and pamphlets (PSAB) or circulars by the School Budget & Finance Analysis Bureau. Procurement is spoken to in School Board Policy by code reference but because procurement has its own set of specific guidelines, districts should maintain a written set of procedures within the procurement office (internal guidelines) subject to modification as the Public Education Department and its bureau provide such changes.

Policy advisory discussion.

Policy Advisory No. 98 Students	IHBCA—Programs for Pregnant / Parenting
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House Bill 300 added a new section of Chapter 22, Article 12 NMSA 1978, yet to be codified that provides excused absences and opportunities for make up work for pregnant and parenting students with documented pregnancies, and absences of a parenting student caring for the student's child who is under the age of thirteen. Districts have a policy in place that with an additional sentence will call attention to the legal citations and cross references of the policy. Administrators and attendance personnel can use the legal and cross references to find and implement the excused absences and make up work indicated by the new statute as found in new policy JIE- Pregnant / Parenting Student.

Policy Advisory No. 99 JIE—Pregnant / Parenting Student

House Bill 300 added a new section of Chapter 22, Article 12 NMSA 1978, yet to be codified, that provides excused absences for pregnant and parenting students for documented pregnancies, birth of a student's child, and absences of a parenting student caring for the student's child who is under the age of thirteen. It also provides for reasonable make up of work missed during those absences.

The Legislature, by mandating four days per semester of excused absence in addition to the number of excused absences for all students may have complicated both the truancy policies and attendance policies referring to minimum requirements for both course attendance and credit. Legal references and cross references at the bottom of the policy were added to assist in processing these types of absences. The cross references are to other policies that may need to be consulted when implementing the new laws.

Districts need to make attendance officers aware of the exception to attendance requirements given specifically to the Pregnant / Parenting Student. It will also be necessary to consult with the truant officer or office responsible for truancy enforcement to coordinate the implementation of this new legislation.

Policy Advisory No. 100 JJIB—Interscholastic Sports

In review of policies related to Senate Bill 302 and allowing home schooled students to enroll in public school classes, it was noted that the Interscholastic Sports policy JJIB related to home schooled students participation needs updating to indicate that home school students may participate, if they meet eligibility requirements, in up to three activities per 22-8-23.8 NMSA 1978. This minimal change has been made to the policy and included in this advisory.

Important information regarding Bills approved in the 2013 legislative session.

In the legislative session just concluded there were several bills that rose to the level of important changes for school districts but which do not require policy modification in the district Policy Manual. In order of presentation they are Senate Bills 182, 443 and 464. Most of these bills are

intended to implement changes in contracting and procurement, a field in which most activities are circumscribed by State statutes and Administrative Code leaving little or no room for the Board to exercise policy making authority.

Senate Bill 182 revises Section 13-1-98 EXEMPTIONS FROM THE PROCUREMENT CODE; Section 13-1-126 SOLE SOURCE PROCUREMENT; Section 13-1-127 EMERGENCY PROCUREMENT; Section 13-1-128 SOLE SOURCE AND EMERGENCY PROCUREMENT—PUBLICATION OF AWARD TO AGENCY WEB SITE AND SUNSHINE PORTAL; Section 13-1-199 PENALTIES, requiring additional procedures for sole source and emergency procurement, restricting who may make emergency procurements, and adding two (2) new sections to the procurement code by expanding who may protest a procurement award and requiring maintenance for three years of all records relating to the award of a contract through sealed bid or competitive sealed proposal process.

The School District procurement office should read the attached Senate Bill 182 and prepare internal procedures accordingly.

Senate Bill 302 relating to Home School Student enrollment in one or more classes. *This is a funding issue and no policy change is required.* This bill enacts a new section of the Public School Finance Act which makes an exception to 22-8-2 NMSA 1978 defining a qualified student as one who is regularly enrolled in one-half or more of the minimum course requirements approved by the Public Education Department for public school students. It permits home schooled students to take one or more classes in a public school of residence and authorizes home school student program units be paid to the school district. Program units are determined by the cost differential factor of 0.25 per class per student up to the enrollment required for the student to meet the definition of "qualified student" per 22-8-2 NMSA 1978.

Senate Bill 443 relating to procurement, provides that on or before January 1 of each year beginning in 2014 and every time a chief procurement officer is hired thereafter, the public body shall provide to the state purchasing agent the name of the public body's chief procurement officer. Further, on and after January 1, 2015, only certified chief procurement officers (certified by the state purchasing agent) may make determinations regarding exemptions to the Procurement Code; issue purchase orders and authorize small purchases pursuant to the Procurement Code; and approve procurement pursuant to the Procurement Code with the following *exception*. Persons using procurement cards may continue to issue purchase orders and authorize small purchases.

The Bill provides that all procurement for local public bodies shall be performed by a central purchasing office designated by the governing authority of the local public body except as otherwise provided in the Procurement Code. *From this statute and that of the Superintendent's hiring statute it would appear that the Local Board*

designates the membership and titles of the central purchasing office while the Superintendent hires the persons staffing such an office.

The district should read Senate Bill 443 as attached and implement internal procedures to comply with the requirements.

Senate Bill 464 was a brief but important bill which for the 2013-2014 school year allows the Secretary of Public Education to waive requirements of the Public School Code and rules promulgated in accordance with that code. The areas that may be waived are:

1. Individual class load
2. Teaching load
3. Length of school day
4. Staffing patterns
5. Subject areas
6. Purchases of instructional materials.

This temporary provision of Section 22-1-10 NMSA 1978 was provided to give flexibility to meet state fiscal solvency requirements and goes far beyond the current provision in 22-2-2.1 and 22-5-14 NMSA 1978 permitting waiver of Administrative Code rules.

Policy Services suggests school districts relate these areas to budget limitations and request waivers through the Secretary of Public Education as needed.

If you have any questions, call Policy Services at (505) 469-0193. Ask for Donn Williams, Policy Services Director, or E-mail to the following address [nmsbapolicy@cox.net].

Note: This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.

Policy Advisory No. 98

I-2550—IHBCA

**PROGRAMS FOR PREGNANT/
PARENTING STUDENTS**

Pregnant students should have the same educational opportunities as their peers. Such students may also need additional counseling and health services that are available through the public schools.

Pregnant students may elect to remain in the regular school program and shall not be involuntarily excluded from any part of the school program, provided, however, that reasonable safeguards are maintained both for the school's and the student's best interests.

Pregnant students shall notify school authorities of their status as soon as it is ascertained. Pregnant and parenting students shall be permitted additional excused absences for such purposes in accord with policy and statute. The Superintendent will establish procedures as necessary to implement this policy.

Parenting students shall not bring their children to school during the regular school day. Student's children will only be permitted in specified classes when requested by an instructor with the approval of the building administration. They are not to be in any other area of the school campus.

Adopted: date of manual adoption

LEGAL REF.: 22-12-2 NMSA (1978)
22-12-8 NMSA (1978)
22-12- NMSA (1978)

CROSS REF.: AD - Educational Philosophy/School District Mission
JIE - Pregnant / Parenting Student
IHBF - Homebound Instruction

Policy Advisory No. 99

J-3200—JIE

PREGNANT / PARENTING
STUDENT

A pregnant or parenting student (parenting a child under thirteen years of age) may be permitted excused absences for the pregnancy and for limited parenting purposes along with the opportunity to make-up work missed during the absence, provided the student communicates the pregnancy and parenting status to the appropriate school personnel.

- Ten days of excused absences will be permitted for a student who provides documentation of the birth of the student's child and additional days of excused absence shall be permitted if deemed medically necessary by the student's physician for the pregnancy or care of the birthed child and reported to the school attendance office.
- Four days per semester of excused absences, in addition to the number of allowed absences for all students (see cross referenced policies below) shall be permitted for students who provide appropriate documentation of pregnancy or that the student is the parent of a child under the age of thirteen needing care.
- Additionally, the pregnant or parenting student shall be allowed at least a time period to make up the work the student missed that equals the number of days the student was absent.

The school district shall provide a copy of this policy to all students in middle, junior high and high schools in the system.

Adopted: date of manual adoption

LEGAL REF.: 22-12-2 NMSA (1978)
22-12-8 NMSA (1978)
22-12- NMSA (1978)

CROSS REF.: IHBF - Homebound Instruction
IKEA - Make Up Opportunities
JE - Student Attendance
JHB - Truancy
JIE - Pregnant/Parenting Student

Policy Advisory No. 100

J-4350—JJIB

INTERSCHOLASTIC SPORTS (School Athletic Activities)

General

School athletic activity means a sanctioned middle school, junior or senior high school function that the New Mexico activities association regulates.

The purpose of school athletic activities is both educational and recreational. The school sports program should encourage participation by as many students as possible and should always be conducted with the best interests of the participants as the first consideration. Districts shall provide comparable athletic opportunity in school athletic activities for both sexes. The district has the option of prohibiting participation by both sexes on the same team, where comparable or separate athletic opportunity exists for both sexes.

District participation in school athletic activities shall be subject to approval by the Board. This shall include approval of membership in any leagues, associations, or conferences, and of any new agreements with other schools for a series of games or events.

The following rules shall be observed for participation by individual students:

- For each type of sport in which the student engages, the parents or guardian must give written consent.
- The student must be determined by a physician to be physically fit for the sport.
- Before participation in school athletic activities, a brain injury information form shall be provided to a student athlete and the student athlete's parent or guardian. The school district shall receive signatures on the brain injury information form from the student athlete and the student athlete's parent or guardian before allowing participation in school athletics.
- The student must obtain or have catastrophic health or accident insurance.

The Superintendent shall set up other rules for participation, such as those governing academic standing, in accordance with policies of the District and pertinent regulations and recommendations of the state interscholastic athletic association.

Charter School Student Participation

Charter school students in grades seven (7) through twelve (12) may participate in School District extracurricular activities sanctioned by the New Mexico Activities Association in the School District attendance zone in which the student lives (participating in only one [1] public school program) if they meet eligibility requirements other than enrollment and if the charter school does not offer such activities sanctioned by the New Mexico Activities Association.

Home School Student Participation

Home school students may participate in ~~one~~ three (~~±~~ 3) School District athletic activities sanctioned by the New Mexico Activities Association in the School District attendance zone in which the student lives if they meet the eligibility requirements other than enrollment in the school.

Health and Safety of Participants

The health and safety of participants in interscholastic athletic activities must receive careful consideration. Participants must be provided access to water at all times during practice sessions, games, or other interscholastic athletic activities.

A coach shall not allow a student athlete to participate in a school athletic activity on the same day a coach, a school official or a student athlete reports, observes or suspects that a student athlete exhibits signs, symptoms or behaviors consistent with a brain injury or has been diagnosed with a brain injury.

A coach may allow a student athlete who has been prohibited from participating in a school athletic activity to participate in a school athletic activity no sooner than one (1) week after the student athlete has received a brain injury and only after the student athlete:

- no longer exhibits any sign, symptom or behavior consistent with a brain injury; and
- receives a medical release from a licensed health care professional.

Each school athletic activities coach is required to have training on brain injury recognition and follow-up provided by the New Mexico activities association.

The Superintendent shall require that regulations for health and safety of participants in school athletic activities be developed, implemented, and enforced. Such regulations may, at the discretion of the Superintendent, be incorporated into this policy as an administrative regulation.

Adopted: date of manual adoption

LEGAL REF.: 22-2-2 NMSA (1978)
22-8-18 NMSA (1978)
22-8C-8 NMSA (1978)
22-8-23.8 (1978)
22-13-31 NMSA (1978)
22-31-1 et seq. NMSB (1978)
6.13.4.8 NMAC

CROSS REF.: JJJ - Extracurricular Activity Eligibility
JLCA- Physical Examination of Students

Relevant Bills and Statutory or Regulatory Information

AN ACT

RELATING TO PUBLIC SCHOOLS; REQUIRING SCHOOL DISTRICTS AND CHARTER SCHOOLS TO ESTABLISH POLICIES THAT PROVIDE EXCUSED ABSENCES FOR PREGNANT AND PARENTING STUDENTS FOR DOCUMENTED PREGNANCIES, FOR THE DOCUMENTED BIRTH OF THE STUDENT'S CHILD AND FOR ABSENCES OF A PARENTING STUDENT TO CARE FOR THE STUDENT'S CHILD WHO IS UNDER THE AGE OF THIRTEEN; REQUIRING STUDENTS TO BE GRANTED TIME FOR MAKE-UP WORK; REQUIRING DISTRIBUTION OF POLICIES TO ALL SECONDARY EDUCATION STUDENTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of Chapter 22, Article 12 NMSA 1978 is enacted to read:

"EXCUSED ABSENCES FOR PREGNANT AND PARENTING STUDENTS.--

A. Each school district and charter school shall maintain an attendance policy that:

(1) provides at least ten days of excused absences for a student who provides documentation of the birth of the student's child and provides excused absences for any additional days missed by a pregnant or parenting student for which a longer period of absence is deemed medically necessary by the student's physician; provided that the student shall be allowed a time period to make up the work that the student missed that equals the number of days the student was absent for the birth of a child; and

(2) provides four days per semester of excused absences, in addition to the number of allowed absences for all students, for a student who provides appropriate documentation of pregnancy or that the student is the parent of a child under the age of thirteen needing care; and allows the student a time period to make up the work that the student missed that equals the number of days the student was absent.

B. The pregnant or parenting student is responsible for communicating the student's pregnancy and parenting status to the appropriate school personnel if the student chooses to disclose the information.

C. The school district or charter school shall provide a copy of the pregnant and parenting student absence policies to all students in middle, junior high and high schools."

1 AN ACT

2 RELATING TO PUBLIC SCHOOL FINANCE; ALLOWING HOME SCHOOLED
3 STUDENTS TO ENROLL IN CLASSES AT PUBLIC SCHOOLS; PROVIDING
4 FOR THE CALCULATION AND DISTRIBUTION OF PROGRAM UNITS.

5
6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

7 SECTION 1. A new section of the Public School Finance
8 Act is enacted to read:

9 "HOME SCHOOLED STUDENT PROGRAM UNITS.--Notwithstanding
10 the provision in Section 22-8-2 NMSA 1978 defining a
11 qualified student as one who is regularly enrolled in
12 one-half or more of the minimum course requirements approved
13 by the department for public school students, home schooled
14 students may take one or more classes at public schools and,
15 if so, shall generate program units as provided in this
16 section. The home schooled student program unit for a school
17 district is determined by multiplying the number of home
18 schooled students who are enrolled in one or more classes by
19 the cost differential factor 0.25 per class per student up to
20 the enrollment required for the student to meet the
21 definition of "qualified student". The home schooled student
22 program units shall be paid to the school district in which
23 they are generated. A home schooled student is eligible to
24 enroll in a public school in the attendance zone in which the
25 student resides or in another public school outside the

1 attendance zone as provided in Section 22-1-4 NMSA 1978. The
2 school district shall verify each home schooled student's
3 academic and other eligibility to enroll in the class."

4 SECTION 2. APPLICABILITY.--This act applies to the
5 2014-2015 school year and subsequent school years. _____

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1 AN ACT
2 RELATING TO PROCUREMENT; EXEMPTING FROM THE PROCUREMENT CODE
3 PROCUREMENTS OTHERWISE EXEMPTED UNDER OTHER LAW; REQUIRING
4 ADDITIONAL PROCEDURES FOR SOLE SOURCE AND EMERGENCY
5 PROCUREMENT; RESTRICTING WHO MAY MAKE EMERGENCY PROCUREMENTS;
6 EXPANDING WHO MAY PROTEST A PROCUREMENT AWARD; INCREASING
7 PENALTIES FOR VIOLATING THE PROCUREMENT CODE.

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

10 SECTION 1. Section 13-1-98 NMSA 1978 (being Laws 1984,
11 Chapter 65, Section 71, as amended) is amended to read:

12 "13-1-98. EXEMPTIONS FROM THE PROCUREMENT CODE.--The
13 provisions of the Procurement Code shall not apply to:

14 A. procurement of items of tangible personal
15 property or services by a state agency or a local public body
16 from a state agency, a local public body or external
17 procurement unit except as otherwise provided in
18 Sections 13-1-135 through 13-1-137 NMSA 1978;

19 B. procurement of tangible personal property or
20 services for the governor's mansion and grounds;

21 C. printing and duplicating contracts involving
22 materials that are required to be filed in connection with
23 proceedings before administrative agencies or state or
24 federal courts;

25 D. purchases of publicly provided or publicly

1 regulated gas, electricity, water, sewer and refuse
2 collection services;

3 E. purchases of books and periodicals from the
4 publishers or copyright holders thereof;

5 F. travel or shipping by common carrier or by
6 private conveyance or to meals and lodging;

7 G. purchase of livestock at auction rings or to
8 the procurement of animals to be used for research and
9 experimentation or exhibit;

10 H. contracts with businesses for public school
11 transportation services;

12 I. procurement of tangible personal property or
13 services, as defined by Sections 13-1-87 and 13-1-93 NMSA
14 1978, by the corrections industries division of the
15 corrections department pursuant to rules adopted by the
16 corrections industries commission, which shall be reviewed by
17 the purchasing division of the general services department
18 prior to adoption;

19 J. minor purchases not exceeding five thousand
20 dollars (\$5,000) consisting of magazine subscriptions,
21 conference registration fees and other similar purchases
22 where prepayments are required;

23 K. municipalities having adopted home rule
24 charters and having enacted their own purchasing ordinances;

25 L. the issuance, sale and delivery of public

1 securities pursuant to the applicable authorizing statute,
2 with the exception of bond attorneys and general financial
3 consultants;

4 M. contracts entered into by a local public body
5 with a private independent contractor for the operation, or
6 provision and operation, of a jail pursuant to
7 Sections 33-3-26 and 33-3-27 NMSA 1978;

8 N. contracts for maintenance of grounds and
9 facilities at highway rest stops and other employment
10 opportunities, excluding those intended for the direct care
11 and support of persons with handicaps, entered into by state
12 agencies with private, nonprofit, independent contractors who
13 provide services to persons with handicaps;

14 O. contracts and expenditures for services or
15 items of tangible personal property to be paid or compensated
16 by money or other property transferred to New Mexico law
17 enforcement agencies by the United States department of
18 justice drug enforcement administration;

19 P. contracts for retirement and other benefits
20 pursuant to Sections 22-11-47 through 22-11-52 NMSA 1978;

21 Q. contracts with professional entertainers;

22 R. contracts and expenditures for litigation
23 expenses in connection with proceedings before administrative
24 agencies or state or federal courts, including experts,
25 mediators, court reporters, process servers and witness fees,

1 but not including attorney contracts;

2 S. contracts for service relating to the design,
3 engineering, financing, construction and acquisition of
4 public improvements undertaken in improvement districts
5 pursuant to Subsection L of Section 3-33-14.1 NMSA 1978 and
6 in county improvement districts pursuant to Subsection L of
7 Section 4-55A-12.1 NMSA 1978;

8 T. works of art for museums or for display in
9 public buildings or places;

10 U. contracts entered into by a local public body
11 with a person, firm, organization, corporation or association
12 or a state educational institution named in Article 12,
13 Section 11 of the constitution of New Mexico for the
14 operation and maintenance of a hospital pursuant to
15 Chapter 3, Article 44 NMSA 1978, lease or operation of a
16 county hospital pursuant to the Hospital Funding Act or
17 operation and maintenance of a hospital pursuant to the
18 Special Hospital District Act;

19 V. purchases of advertising in all media,
20 including radio, television, print and electronic;

21 W. purchases of promotional goods intended for
22 resale by the tourism department;

23 X. procurement of printing services for materials
24 produced and intended for resale by the cultural affairs
25 department;

1 Y. procurement by or through the public education
2 department from the federal department of education relating
3 to parent training and information centers designed to
4 increase parent participation, projects and initiatives
5 designed to improve outcomes for students with disabilities
6 and other projects and initiatives relating to the
7 administration of improvement strategy programs pursuant to
8 the federal Individuals with Disabilities Education Act;
9 provided that the exemption applies only to procurement of
10 services not to exceed two hundred thousand dollars
11 (\$200,000);

12 Z. procurement of services from community
13 rehabilitation programs or qualified individuals pursuant to
14 the State Use Act;

15 AA. purchases of products or services for eligible
16 persons with disabilities pursuant to the federal
17 Rehabilitation Act of 1973;

18 BB. procurement, by either the department of
19 health or Grant county or both, of tangible personal
20 property, services or construction that are exempt from the
21 Procurement Code pursuant to Section 9-7-6.5 NMSA 1978;

22 CC. contracts for investment advisory services,
23 investment management services or other investment-related
24 services entered into by the educational retirement board,
25 the state investment officer or the retirement board created

1 pursuant to the Public Employees Retirement Act;

2 DD. the purchase for resale by the state fair
3 commission of feed and other items necessary for the upkeep
4 of livestock;

5 EE. contracts entered into by the crime victims
6 reparation commission to distribute federal grants to assist
7 victims of crime, including grants from the federal Victims
8 of Crime Act of 1984 and the federal Violence Against Women
9 Act; and

10 FF. procurements exempt from the Procurement Code
11 as otherwise provided by law."

12 SECTION 2. Section 13-1-126 NMSA 1978 (being Laws 1984,
13 Chapter 65, Section 99, as amended) is amended to read:

14 "13-1-126. SOLE SOURCE PROCUREMENT.--

15 A. A contract may be awarded without competitive
16 sealed bids or competitive sealed proposals regardless of the
17 estimated cost when the state purchasing agent or a central
18 purchasing office determines, in writing, that:

19 (1) there is only one source for the
20 required service, construction or item of tangible personal
21 property;

22 (2) the service, construction or item of
23 tangible personal property is unique and this uniqueness is
24 substantially related to the intended purpose of the
25 contract; and

1 (3) other similar services, construction or
2 items of tangible personal property cannot meet the intended
3 purpose of the contract.

4 B. The state purchasing agent or a central
5 purchasing office shall use due diligence in determining the
6 basis for the sole source procurement, including reviewing
7 available sources and consulting the using agency, and shall
8 include its written determination in the procurement file.

9 C. The state purchasing agent or a central
10 purchasing office shall conduct negotiations, as appropriate,
11 as to price, delivery and quantity in order to obtain the
12 price most advantageous to the state agency or a local public
13 body.

14 D. A contract for the purchase of research
15 consultant services by institutions of higher learning
16 constitutes a sole source procurement.

17 E. The state purchasing agent or a central
18 purchasing office shall not circumvent this section by
19 narrowly drafting specifications so that only one
20 predetermined source would satisfy those specifications."

21 SECTION 3. Section 13-1-127 NMSA 1978 (being Laws 1984,
22 Chapter 65, Section 100, as amended) is amended to read:

23 "13-1-127. EMERGENCY PROCUREMENTS.--

24 A. The state purchasing agent or a central
25 purchasing office may make emergency procurements when there

1 exists a threat to public health, welfare, safety or property
2 requiring procurement under emergency conditions; provided
3 that emergency procurements shall be made with competition as
4 is practicable under the circumstances.

5 B. An emergency condition is a situation that
6 creates a threat to public health, welfare or safety such as
7 may arise by reason of floods, fires, epidemics, riots, acts
8 of terrorism, equipment failures or similar events and
9 includes the planning and preparing for an emergency
10 response. The existence of the emergency condition creates
11 an immediate and serious need for services, construction or
12 items of tangible personal property that cannot be met
13 through normal procurement methods and the lack of which
14 would seriously threaten:

15 (1) the functioning of government;

16 (2) the preservation or protection of
17 property; or

18 (3) the health or safety of any person.

19 C. Emergency procurements shall not include the
20 purchase or lease purchase of heavy road equipment.

21 D. The state purchasing agent or a central
22 purchasing office shall use due diligence in determining the
23 basis for the emergency procurement and for the selection of
24 the particular contractor. The determination shall be in
25 writing and included in the procurement file.

1 E. Money expended for planning and preparing for
2 an emergency response shall be accounted for and reported to
3 the legislative finance committee and the department of
4 finance and administration within sixty days after the end of
5 each fiscal year."

6 SECTION 4. Section 13-1-128 NMSA 1978 (being Laws 1984,
7 Chapter 65, Section 101, as amended) is amended to read:

8 "13-1-128. SOLE SOURCE AND EMERGENCY PROCUREMENTS--
9 PUBLICATION OF AWARD TO AGENCY WEB SITE AND SUNSHINE PORTAL--
10 CONTENT AND SUBMISSION OF RECORD.--

11 A. Prior to award of a sole source procurement
12 contract, the state purchasing agent or central purchasing
13 office shall:

14 (1) provide the information described in
15 Subsection E of this section to the department of information
16 technology for posting on the sunshine portal; and

17 (2) forward the same information to the
18 legislative finance committee.

19 B. Prior to the award of a sole source procurement
20 contract, the local public body central purchasing office
21 shall post the information described in Subsection E of this
22 section on the local public body web site, if one exists.

23 C. Within three business days of awarding an
24 emergency procurement contract, the awarding central
25 purchasing office within a state agency shall:

1 (1) provide the information described in
2 Subsection E of this section to the department of information
3 technology for posting on the sunshine portal; and

4 (2) forward the same information to the
5 legislative finance committee.

6 D. Within three business days of awarding an
7 emergency procurement contract, the local public body central
8 purchasing office shall post the information described in
9 Subsection E of this section on the local public body web
10 site, if one exists.

11 E. All central purchasing offices shall maintain,
12 for a minimum of three years, records of sole source and
13 emergency procurements. The record of each such procurement
14 shall be public record and shall contain:

15 (1) the contractor's name and address;

16 (2) the amount and term of the contract;

17 (3) a listing of the services, construction
18 or items of tangible personal property procured under the
19 contract;

20 (4) whether the contract was a sole source
21 or emergency procurement contract; and

22 (5) the justification for the procurement
23 method."

24 SECTION 5. Section 13-1-199 NMSA 1978 (being Laws 1984,
25 Chapter 65, Section 172) is amended to read:

1 "13-1-199. PENALTIES.--Any business or person that
2 willfully violates the Procurement Code is guilty of:

3 A. a misdemeanor if the transaction involves fifty
4 thousand dollars (\$50,000) or less; or

5 B. a fourth degree felony if the transaction
6 involves more than fifty thousand dollars (\$50,000)."

7 SECTION 6. A new section of the Procurement Code is
8 enacted to read:

9 "SOLE SOURCE CONTRACTS--NOTICE--PROTEST.--

10 A. At least thirty days before a sole source
11 contract is awarded, the state purchasing agent, a central
12 purchasing office or a designee of either shall post notice
13 of the intent to award a sole source contract on its web
14 site. If a central purchasing office does not maintain a web
15 site, it shall post the notice on the state purchasing
16 agent's web site. The notice shall identify at a minimum:

17 (1) the parties to the proposed contract;

18 (2) the nature and quantity of the service,
19 construction or item of tangible personal property being
20 contracted for; and

21 (3) the contract amount.

22 B. Any qualified potential contractor who was not
23 awarded a sole source contract may protest to the state
24 purchasing agent or a central purchasing office. The protest
25 shall be submitted in writing within fifteen calendar days of

1 the notice of intent to award a contract being posted by the
2 state purchasing agent or a central purchasing office."

3 SECTION 7. A new section of the Procurement Code is
4 enacted to read:

5 "COMPETITIVE SEALED BIDS AND PROPOSALS--RECORD
6 MAINTENANCE.--A central purchasing office shall maintain, for
7 a minimum of three years, all records relating to the award of
8 a contract through a competitive sealed bid or competitive
9 sealed proposal process."

SB 182
Page 12

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1 AN ACT

2 RELATING TO PROCUREMENT; PROVIDING DUTIES OF STATE AGENCIES,
3 LOCAL PUBLIC BODIES AND THE STATE PURCHASING AGENT; PROVIDING
4 EXEMPTIONS FROM THE PROCUREMENT CODE FOR CERTAIN PURCHASES;
5 REVISING SMALL PURCHASE AMOUNTS; DEFINING "CHIEF PROCUREMENT
6 OFFICER"; ESTABLISHING TRAINING REQUIREMENTS.

7
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

9 SECTION 1. A new section of the Procurement Code is
10 enacted to read:

11 "DEFINITION--CHIEF PROCUREMENT OFFICER.--"Chief
12 procurement officer" means that person within a state
13 agency's or local public body's central purchasing office who
14 is responsible for the control of procurement of items of
15 tangible personal property, services or construction. "Chief
16 procurement officer" includes the state purchasing agent."

17 SECTION 2. Section 13-1-37 NMSA 1978 (being Laws 1984,
18 Chapter 65, Section 10) is amended to read:

19 "13-1-37. DEFINITION--CENTRAL PURCHASING OFFICE.--
20 "Central purchasing office" means that office within a state
21 agency or a local public body responsible for the control of
22 procurement of items of tangible personal property, services
23 or construction. "Central purchasing office" includes the
24 purchasing division of the general services department."

25 SECTION 3. A new section of the Procurement Code is

1 enacted to read:

2 "CHIEF PROCUREMENT OFFICERS--REPORTING REQUIREMENT--
3 TRAINING--CERTIFICATION.--

4 A. On or before January 1 of each year beginning
5 in 2014, and every time a chief procurement officer is hired,
6 each state agency and local public body shall provide to the
7 state purchasing agent the name of the state agency's or
8 local public body's chief procurement officer and information
9 identifying the state agency's or local public body's central
10 purchasing office, if applicable.

11 B. The state purchasing agent shall maintain a
12 list of the names of the chief procurement officers reported
13 to the state purchasing agent by state agencies and local
14 public bodies. The state purchasing agent shall make the
15 list of chief procurement officers available to the public
16 through the web site of the purchasing division of the
17 general services department and in any other appropriate
18 form.

19 C. The state purchasing agent shall offer a
20 certification training program for chief procurement officers
21 each year.

22 D. On or before January 1, 2015, the state
23 purchasing agent shall establish a certification program for
24 chief procurement officers that includes initial
25 certification and recertification every two years for all

1 chief procurement officers. In order to be recertified, a
2 chief procurement officer shall pass a recertification
3 examination approved by the secretary of general services.

4 E. On and after July 1, 2015, only certified chief
5 procurement officers may do the following, except that
6 persons using procurement cards may continue to issue
7 purchase orders and authorize small purchases:

8 (1) make determinations, including
9 determinations regarding exemptions, pursuant to the
10 Procurement Code;

11 (2) issue purchase orders and authorize
12 small purchases pursuant to the Procurement Code; and

13 (3) approve procurement pursuant to the
14 Procurement Code."

15 SECTION 4. Section 13-1-95 NMSA 1978 (being Laws 1984,
16 Chapter 65, Section 68) is amended to read:

17 "13-1-95. PURCHASING DIVISION--CREATION--DIRECTOR IS
18 STATE PURCHASING AGENT--APPOINTMENT--DUTIES.--

19 A. The "purchasing division" is created within the
20 general services department.

21 B. Subject to the authority of the secretary, the
22 state purchasing agent shall be the administrator and
23 director of the purchasing division. The state purchasing
24 agent shall be appointed by the secretary with the approval
25 of the governor.

1 C. The purchasing division and state purchasing
2 agent shall be responsible for the procurement of services,
3 construction and items of tangible personal property for all
4 state agencies except as otherwise provided in the
5 Procurement Code and shall administer the Procurement Code
6 for those state agencies not excluded from the requirement of
7 procurement through the state purchasing agent.

8 D. The state purchasing agent shall have the
9 following additional authority and responsibility to:

10 (1) recommend procurement rules to the
11 secretary;

12 (2) establish and maintain programs for the
13 development and use of procurement specifications and for the
14 inspection, testing and acceptance of services, construction
15 and items of tangible personal property;

16 (3) cooperate with the state budget division
17 of the department of finance and administration in the
18 preparation of statistical data concerning the acquisition
19 and usage of all services, construction and items of tangible
20 personal property by state agencies;

21 (4) require state agencies to furnish
22 reports concerning usage, needs and stocks on hand of items
23 of tangible personal property and usage and needs for
24 services or construction;

25 (5) prescribe, with consent of the

1 secretary, forms to be used by state agencies to requisition
2 and report the procurement of items of tangible personal
3 property, services and construction;

4 (6) provide information to state agencies
5 and local public bodies concerning the development of
6 specifications, quality control methods and other procurement
7 information; and

8 (7) collect information concerning
9 procurement matters, quality and quality control of commonly
10 used services, construction and items of tangible personal
11 property.

12 E. The state purchasing agent shall, upon the
13 request of the central purchasing office of a local public
14 body, procure a price agreement for the requested services,
15 construction or items of tangible personal property. The
16 state purchasing agent may procure a price agreement for
17 services, construction or items of tangible personal property
18 for a state agency or local public body that does not have a
19 chief procurement officer."

20 SECTION 5. Section 13-1-97 NMSA 1978 (being Laws 1984,
21 Chapter 65, Section 70) is amended to read:

22 "13-1-97. CENTRALIZATION OF PROCUREMENT AUTHORITY.--

23 A. All procurement for state agencies shall be
24 performed by the state purchasing agent except as otherwise
25 provided in the Procurement Code.

1 B. All procurement for state agencies excluded
2 from the requirement of procurement through the office of the
3 state purchasing agent shall be performed by a central
4 purchasing office, the chief procurement officer or as
5 otherwise provided in the Procurement Code.

6 C. All procurement for local public bodies shall
7 be performed by a central purchasing office designated by the
8 governing authority of the local public body except as
9 otherwise provided in the Procurement Code. Local public
10 bodies shall identify their designated central purchasing
11 office to the state purchasing agent and shall report their
12 chief procurement officers to the state purchasing agent."

13 SECTION 6. Section 13-1-98 NMSA 1978 (being Laws 1984,
14 Chapter 65, Section 71, as amended) is amended to read:

15 "13-1-98. EXEMPTIONS FROM THE PROCUREMENT CODE.--The
16 provisions of the Procurement Code shall not apply to:

17 A. procurement of items of tangible personal
18 property or services by a state agency or a local public
19 body from a state agency, a local public body or external
20 procurement unit except as otherwise provided in
21 Sections 13-1-135 through 13-1-137 NMSA 1978;

22 B. procurement of tangible personal property or
23 services for the governor's mansion and grounds;

24 C. printing and duplicating contracts involving
25 materials that are required to be filed in connection with

1 proceedings before administrative agencies or state or
2 federal courts;

3 D. purchases of publicly provided or publicly
4 regulated gas, electricity, water, sewer and refuse
5 collection services;

6 E. purchases of books, periodicals and training
7 materials in printed or electronic format from the publishers
8 or copyright holders thereof;

9 F. travel or shipping by common carrier or by
10 private conveyance or to meals and lodging;

11 G. purchase of livestock at auction rings or to
12 the procurement of animals to be used for research and
13 experimentation or exhibit;

14 H. contracts with businesses for public school
15 transportation services;

16 I. procurement of tangible personal property or
17 services, as defined by Sections 13-1-87 and 13-1-93 NMSA
18 1978, by the corrections industries division of the
19 corrections department pursuant to rules adopted by the
20 corrections industries commission, which shall be reviewed by
21 the purchasing division of the general services department
22 prior to adoption;

23 J. purchases not exceeding ten thousand dollars
24 (\$10,000) consisting of magazine subscriptions, web-based or
25 electronic subscriptions, conference registration fees and

1 other similar purchases where prepayments are required;

2 K. municipalities having adopted home rule
3 charters and having enacted their own purchasing ordinances;

4 L. the issuance, sale and delivery of public
5 securities pursuant to the applicable authorizing statute,
6 with the exception of bond attorneys and general financial
7 consultants;

8 M. contracts entered into by a local public body
9 with a private independent contractor for the operation, or
10 provision and operation, of a jail pursuant to
11 Sections 33-3-26 and 33-3-27 NMSA 1978;

12 N. contracts for maintenance of grounds and
13 facilities at highway rest stops and other employment
14 opportunities, excluding those intended for the direct care
15 and support of persons with handicaps, entered into by state
16 agencies with private, nonprofit, independent contractors who
17 provide services to persons with handicaps;

18 O. contracts and expenditures for services or
19 items of tangible personal property to be paid or compensated
20 by money or other property transferred to New Mexico law
21 enforcement agencies by the United States department of
22 justice drug enforcement administration;

23 P. contracts for retirement and other benefits
24 pursuant to Sections 22-11-47 through 22-11-52 NMSA 1978;

25 Q. contracts with professional entertainers;

1 R. contracts and expenditures for legal
2 subscription and research services and litigation expenses in
3 connection with proceedings before administrative agencies or
4 state or federal courts, including experts, mediators, court
5 reporters, process servers and witness fees, but not
6 including attorney contracts;

7 S. contracts for service relating to the design,
8 engineering, financing, construction and acquisition of
9 public improvements undertaken in improvement districts
10 pursuant to Subsection L of Section 3-33-14.1 NMSA 1978 and
11 in county improvement districts pursuant to Subsection L of
12 Section 4-55A-12.1 NMSA 1978;

13 T. works of art for museums or for display in
14 public buildings or places;

15 U. contracts entered into by a local public body
16 with a person, firm, organization, corporation or association
17 or a state educational institution named in Article 12,
18 Section 11 of the constitution of New Mexico for the
19 operation and maintenance of a hospital pursuant to
20 Chapter 3, Article 44 NMSA 1978, lease or operation of a
21 county hospital pursuant to the Hospital Funding Act or
22 operation and maintenance of a hospital pursuant to the
23 Special Hospital District Act;

24 V. purchases of advertising in all media,
25 including radio, television, print and electronic;

1 W. purchases of promotional goods intended for
2 resale by the tourism department;

3 X. procurement of printing services for materials
4 produced and intended for resale by the cultural affairs
5 department;

6 Y. procurement by or through the public education
7 department from the federal department of education relating
8 to parent training and information centers designed to
9 increase parent participation, projects and initiatives
10 designed to improve outcomes for students with disabilities
11 and other projects and initiatives relating to the
12 administration of improvement strategy programs pursuant to
13 the federal Individuals with Disabilities Education Act;
14 provided that the exemption applies only to procurement of
15 services not to exceed two hundred thousand dollars
16 (\$200,000);

17 Z. procurement of services from community
18 rehabilitation programs or qualified individuals pursuant to
19 the State Use Act;

20 AA. purchases of products or services for eligible
21 persons with disabilities pursuant to the federal
22 Rehabilitation Act of 1973;

23 BB. procurement, by either the department of
24 health or Grant county or both, of tangible personal
25 property, services or construction that are exempt from the

1 Procurement Code pursuant to Section 9-7-6.5 NMSA 1978;

2 CC. contracts for investment advisory services,
3 investment management services or other investment-related
4 services entered into by the educational retirement board,
5 the state investment officer or the retirement board created
6 pursuant to the Public Employees Retirement Act;

7 DD. the purchase for resale by the state fair
8 commission of feed and other items necessary for the upkeep
9 of livestock; and

10 EE. contracts entered into by the crime victims
11 reparation commission to distribute federal grants to assist
12 victims of crime, including grants from the federal Victims
13 of Crime Act of 1984 and the federal Violence Against Women
14 Act."

15 SECTION 7. Section 13-1-125 NMSA 1978 (being Laws 1984,
16 Chapter 65, Section 98, as amended) is amended to read:

17 "13-1-125. SMALL PURCHASES.--

18 A. A central purchasing office shall procure
19 services, construction or items of tangible personal property
20 having a value not exceeding sixty thousand dollars
21 (\$60,000), excluding applicable state and local gross
22 receipts taxes, in accordance with the applicable small
23 purchase rules adopted by the secretary, a local public body
24 or a central purchasing office that has the authority to
25 issue rules.

1 B. Notwithstanding the requirements of Subsection
2 A of this section, a central purchasing office may procure
3 professional services having a value not exceeding sixty
4 thousand dollars (\$60,000), excluding applicable state and
5 local gross receipts taxes, except for the services of
6 landscape architects or surveyors for state public works
7 projects or local public works projects, in accordance with
8 professional services procurement rules promulgated by the
9 department of finance and administration, the general
10 services department or a central purchasing office with the
11 authority to issue rules.

12 C. Notwithstanding the requirements of Subsection
13 A of this section, a state agency or a local public body may
14 procure services, construction or items of tangible personal
15 property having a value not exceeding twenty thousand dollars
16 (\$20,000), excluding applicable state and local gross
17 receipts taxes, by issuing a direct purchase order to a
18 contractor based upon the best obtainable price.

19 D. Procurement requirements shall not be
20 artificially divided so as to constitute a small purchase
21 under this section."

22 SECTION 8. EFFECTIVE DATE.--The effective date of the
23 provisions of this act is July 1, 2013. _____

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AN ACT

RELATING TO PUBLIC SCHOOLS; PROVIDING FLEXIBILITY FOR SCHOOL DISTRICTS TO MEET STATE FISCAL SOLVENCY REQUIREMENTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 22-1-10 NMSA 1978 (being Laws 2010, Chapter 68, Section 1, as amended) is amended to read:

"22-1-10. WAIVER OF REQUIREMENTS--TEMPORARY PROVISION.--The legislature finds that school districts need flexibility to meet state fiscal solvency requirements. For the 2013-2014 school year, the secretary may waive requirements of the Public School Code and rules promulgated in accordance with that code pertaining to individual class load, teaching load, length of school day, staffing patterns, subject areas and purchases of instructional materials. The department shall monitor such waivers, and the secretary shall report to the legislative education study committee and the legislative finance committee on any issues or actions of a school district that appear to adversely affect student learning."
