

LFC Requester:

Hernandez

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO

AgencyAnalysis.nmlegis.gov and email to billanalysis@dfa.nm.gov

(Analysis must be uploaded as a PDF)

SECTION I: GENERAL INFORMATION

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

Date Prepared: March 12, 2025

Check all that apply:

Bill Number: HB 509

Original Correction

Amendment Substitute

Agency Name

and Code

State Ethics Commission – 410

Number:

Sponsor: Rep. Pettigrew

Short Transparency in Gov't

Title: Contracting Act

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	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

BILL SUMMARY

Synopsis: House Bill 509 creates a new section in statute requiring that the state and its political subdivisions provide public access to information related to government contracts, including those made through the Procurement Code, NMSA 1978, §§ 13-1-27 to -199 (1984, as amended through 2023), and disbursements of state or federal grants. Additionally, the bill amends portions of NMSA 1978, Section 10-16D-3 to provide minor grammatical changes, and require that a directory of public contracts is listed on the Sunshine Portal.

A government entity's knowing and willful failure to make available information related to a particular public contract creates a presumption that the contract is invalid. Enforcement of these requirements may be done by the Attorney General, District Attorney in the relevant district, or an individual.

FISCAL IMPLICATIONS

HB 509 creates no new duties for the State Ethics Commission and while this bill would require minimal staff time in complying with publication of the Commission's contracts, it has no significant impact on its budget.

SIGNIFICANT ISSUES

One of the laws within the State Ethics Commission's remit is the Procurement Code. When the Commission investigates alleged violations of the Procurement Code details are sometimes hard to find, usually leading to staff sending the municipality an IPRA request for documents related to the procurement. This bill would make investigation into possible procurement code violations easier by having relevant documents publicly available.

Additionally, HB 509 does not appear to have an impact on the Commission's enforcement of the Procurement Code. NMSA 1978, Sections 13-1-196.1 (2019) and 10-16G-9(F) (2021) provides the Commission with its investigative and enforcement authority. Since HB 509 does not amend the Procurement Code, the enforcement of its provisions could be *in addition to* claims the Commission brings under the Procurement Code. For example, a vendor could contract with a municipality in violation of the Procurement Code. If the municipality fails to make that information available, then HB 509's enforcement mechanism would also apply. In this hypothetical, while the Commission seeks remedies based on the Procurement Code, the Attorney General, District Attorney, or relevant individual could seek a remedy based on HB 509 at the same time.

Of note, the bill does not include the disclosure of contracts for the lease or purchase of land by the state or its political subdivisions because "contract" is only for "the procurement of items of tangible personal property, services or construction pursuant to the Procurement Code" and the disbursement of federal, state, or other funds.

Finally, the language in Section 4, which provides that a knowing and willful violation of the terms

of the act renders a contract at issue as “presumed invalid,” may be problematic. New Mexico courts recognize that a contract is valid so long as there is an offer, acceptance, consideration, and mutual assent. *See Hartbarger v. Frank Paxton Co.*, 1993-NMSC-029, ¶ 7 (citing UJI 13-801). A valid contract exists so long as those elements are met. In contrast, contracts made in violation of a statute are either void or voidable, meaning that a court can decide whether the contract is enforceable. *See Farrar v. Hood*, 1952-NMSC-095, ¶ 28. The difference between invalidity and voidability is of legal significance—if a contract is invalid, one of the fundamental elements is missing, if it is void or voidable, there is some defect limiting enforceability. Given the apparent intent of HB 509—that government contracts not publicly available should not be enforced—it seems that the bill is not attempting to amend a fundamental aspect of contract formation with the government but rather seeks to declare a government contract voidable if the contracting entity does not follow the proscribed requirements.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS