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## FISCAL IMPACT REPORT

SPONSOR Griego DATE TYPED 1/26/05 HB \_\_\_\_\_

SHORT TITLE Attorney General Review of Certain Contracts SB 207

ANALYST Wilson

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			See Narrative		

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney Generals Office (AG0)  
 Corrections Department (CD)  
 Information Technology Commission (ITC)

### SUMMARY

#### Synopsis of Bill

Senate Bill 207 amends the Procurement Code to impose new requirements on information technology contracts. It would also require Attorney General's Office (AGO) review and approval of most state agency contracts having a cost exceeding \$200 thousand.

The bill defines "information technology projects" to generally include the purchase and implementation of software systems. With regard to contracts for those projects having a cost exceeding \$200 thousand, the bill requires the contracting agency to withhold ten percent of the contract funds from payment until the agency and Chief Information Office (CIO) determine that the terms of the contract have been satisfied and any software purchased is performing to standards. Those contracts must also contain a six month warranty period. The warranty must include a certification that the technology meets industry standards at the time the project commenced.

The bill imposes an additional requirement of "independent verification and validation" reviews for information technology project contracts over \$1 million. The verification must be performed by an organization independent of the development organization. The reviews must be

performed at least on a quarterly basis and provided to the contracting agency the Department of Finance and Administration (DFA), the CIO, and certain legislative committees. The review must determine compliance with contract requirements.

The bill also requires Attorney General's Office review and approval of most state agency contracts having a cost exceeding \$200 thousand, including information technology project contracts. Emergency procurements and contracts exempt from the Procurement Code are not subject to this requirement. This review would include professional services agreements, services agreements, and construction contracts.

#### Significant Issues:

For several decades the AGO has independently reviewed state agency professional services contracts having a cost exceeding \$200 thousand pursuant to a rule enacted by the DFA. That rule was recently deleted by DFA. This bill would codify the prior review obligations of the AGO. It also expands the review obligations beyond professional services agreements and appears to require AGO review of services contracts and construction contracts too.

Presumably this bill is also intended to address issues which arise during large state agency information technology projects. Several of those past projects have faced issues of non-performance, non-compliance with contract specifications, and obsolescence. Those issues have led to increased costs and non-performing systems. It should be noted that the CIO has the authority under existing state law to review executive agency information technology projects and plans. NMSA Section 15-1C-7 1978 comp.

#### **FISCAL IMPLICATIONS**

The bill requires an independent verification and validation process for information technology software contracts exceeding \$1,000,000. The process must be performed by an organization independent of the development organization. This may increase the cost to the contracting agency as well as the reviewing agency.

On the other hand, the CD believes compliance with the provisions of this bill could actually improve the performance of the State's information technology projects or systems by requiring better quality systems from the contractors who develop or install them.

#### **ADMINISTRATIVE IMPLICATIONS**

The bill imposes new review and approval requirements on the AGO and the CIO. Additional staff time will be required and contract review and approval might be delayed based upon the quantity and complexity of contracts. The AGO staff will have to acquire knowledge required to review complex construction contracts.

#### **TECHNICAL ISSUES**

The AGO believes the bill is intended to limit the new review and verification requirements to contracts entered into by state agencies. This is not clearly stated. It is implied by reference to the "contracting state agency" in certain portions of the bill. This limitation should be clearly stated in the definition of "information technology project" in order to avoid the implication that local

government contracts are subject to the new requirements.

**DW/rs**