

LFC Requester:

Simon

**AGENCY BILL ANALYSIS - 2026 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO

[AgencyAnalysis.nmlegis.gov](http://AgencyAnalysis.nmlegis.gov) and email to [billanalysis@dfa.nm.gov](mailto: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: 2/2/2026

Check all that apply:

Bill Number: HB 229Original  Correction Amendment  Substitute Sponsor: Pettigrew, Mason, BlockShort Title: Transparency in Government ActTitle: Act

Agency Name

and Code

Office of Cybersecurity

Number: \_\_\_\_\_

Person Writing Analysis Todd BaranPhone: 505.231.3990 Email Todd.baran@cyber.nm.gov**SECTION II: FISCAL IMPACT****APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY26	FY27		
None	None	N/A	N/A

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY26	FY27	FY28		
None	None	None	N/A	N/A

(Parenthesis ( ) indicate revenue decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		160-310	365-525	525-835	Mixed	GF

(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: HB 229 would establish the Transparency in Government Contracting Act, which would generally require all public contracting (subject to privacy protections) to be disclosed on the Sunshine Portal.

#### Section 1 – Short Title

Establishes that Sections 1 through 4 of the Act may be cited as the “Transparency in Government Contracting Act.”

#### Section 2 – Definitions - Defines key terms used in the Act:

**Contract:** Agreements with government agencies for procurement of goods, services, construction, or disbursement of funds through grants or awards.

**Government Agency:** Includes state government departments, divisions, boards, commissions, and all political subdivisions (e.g., municipalities, school districts).

**Make Available:** Providing public access via a searchable online database or webpage, including email notifications upon request.

**Protected Information:** Trade secrets or confidential information legally exempt from disclosure.

#### Section 3 – Public Disclosure Requirements – Mandates that agencies:

Post solicitations (bids, RFPs, RFIs) online within one week of issuance.

Update transparency webpages at least monthly, including historical data for comparison.

Include custodian of records’ contact info on the transparency webpage.

Provide the Department of Information Technology with a working link to the transparency page and update it if changed.

Disclose emergency or sole-source contracts.

There is an exemption for otherwise protected information.

#### Section 4 – Enforcement and Invalid Actions

Contracts knowingly and willfully violating the Act are presumed invalid.

Enforcement can be initiated by the Attorney General, district attorneys, or individuals through district court.

Courts may enforce compliance via injunctions, mandamus, or other orders.

Section 5 – Amendments to Sunshine Portal Duties as follows:

Must remain free, user-friendly, searchable, and accessible.

Provides detailed financial transparency, including:

Cash balances, investment summaries, budgets, contracts over \$20,000 (with recipient, purpose, amounts, and links to documents).

Revenue sources, appropriations, budget adjustments, capital projects, employee directories, open meeting schedules, and links to statutes and regulations.

Adds requirement for a directory of URLs for agency transparency pages under the new Act. Agencies must update financial info at least monthly; the portal must also update monthly.

Section 6 – Effective Date -- The Act would be effective July 1, 2026.

## **FISCAL IMPLICATIONS**

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

Contracting is essential to the mission of the Office of Cybersecurity (OCS). Current budgeting and contracting processes inject delay that can disrupt service delivery and expose the state to cyber-attack. HB229 would increase the possibility of delay and add uncertainty by presenting a risk of contract nullification if new transparency mandates are not met. HB229 would also require rapid legal review of contract materials to ensure privacy protections are maintained. Because cybersecurity sensitive materials are also private by law, OCS would need a technical SME to review contract materials to ensure no cyber sensitive information is released.

To ensure timely and proper compliance with HB229, and avoid potential contract nullification, litigation or other disruption, OCS would need to stand up a transparency compliance program within the Office. That program would be staffed with a technical SME, legal counsel, and at least one support person who can work with the Department of Information Technology (DoIT) to ensure timely document uploads to the Sunshine Portal and that accurate URL links are maintained. Fiscal impacts noted in the chart above are for additional FTE. Impacts associated with standing up the transparency program are included in FY27. For FY28 and beyond, OCS will incur recurring FTE costs to maintain the transparency program.

## **SIGNIFICANT ISSUES**

Near-term staffing and technology costs. Standing up or upgrading a searchable online database/webpage, integrating with existing systems, and instituting monthly update cycles will require FTEs (procurement, records, legal, web), tools, and training.

Determining what is “protected information” before posting (trade secrets, sealed/confidential data) will demand legal review and vendor coordination to avoid over- or under-disclosure.

Even if OCS transparency delays stem from Sunshine Portal bottlenecks, stakeholders may still seek injunctive relief or mandamus, forcing expedited fixes, outside counsel, or re-procurement. Any of these will increase litigation costs, could delay delivery of contracted services and disrupt critical operations. Even if a litigated claim is proven to be without merit, the presumption of invalidity creates risk that a court will enjoin contract performance pending the outcome of litigation on the merits. In short, even if OCS is proven to comply with the Act, a litigator can force contract disruption simply by filing a lawsuit. The Act will give disgruntled contract bidders a powerful tool to redress perceived unfairness in a procurement process.

The presumption of invalidity could also trigger re-solicitation expenses, transition costs, and potential damages or emergency coverage contracts at premium rates.

The rapid turn-around times mandated by the Act also create information governance risk. A rushed privacy review may result in misclassification of protected information (over-disclosure), which can harm competitive positioning. Conversely, aggressive redacts rushed out of an abundance of caution may result in under-disclosure that spurs challenges and requests.

## **PERFORMANCE IMPLICATIONS**

Implementing the Act will require multiple adjustments to OCS current operations:

OCS will need to create a small cross-functional team (procurement, legal, records, IT/web) with clear KPIs to meet Act requirements. Because OCS is administratively attached to DoIT, many of the administrative functions will require intricate and time-sensitive collaboration between agencies. The dependence on a parent agency creates risk of non-compliance even if OCS “does everything right” on its end. In short, OCS contracts can be disrupted by circumstances beyond its direct control.

The best legal tool available to manage these external risks is a Service-level agreement (SLA) with DoIT. Negotiating and enforcing an SLA will be complicated and potentially unachievable because of divergent priorities and perspectives on roles and responsibilities between agencies. As the maintainer of the Sunshine Portal, the increased workload on DoIT could also frustrate collaboration and compliance. Even under the best of circumstances and with an SLA in place, dependence on a third-party creates foundational risk of non-compliance by OCS and consequent contract disruption. DoIT’s increased workload supporting all state agencies could overwhelm its capacity.

To maximize the chance of success if a procurement is challenged, OCS must meticulously document its good-faith compliance with the Act. This will require establishing manual and automated workflows to track timestamps, correspondence, and posting attempts to rebut any claim of “knowing and willful” noncompliance. OCS current staffing lacks capacity to establish and maintain these new workflows.

Because the Act is effective July 1, 2026, OCS did not have an opportunity to request sufficient budget to staff the compliance function. Compliance will require OCS to rely on FY26 and FY27 funding earmarked for other purposes to ensure compliance with the Act. The resource

reallocation will adversely impact service delivery associated with previously funded OCS functions.

## ADMINISTRATIVE IMPLICATIONS

### CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

There are instances when the requirements of HB229 conflict with, are inconsistent with, or are otherwise inharmonious with requirements of the NM Procurement Code, the Inspection of Public Records Act, the Sunshine Portal Transparency Act, and their associated administrative rules.

**Comparison Table HB229 and other Laws**

<b>HB229 Provision (section &amp; requirement)</b>	<b>Statutory IPRA, Procurement Code, Sunshine Portal provisions and associated NMAC Rules (section &amp; requirement)</b>	<b>Nature of Conflict / Tension &amp; Practical Impact</b>
§2(A) “Contract” definition includes applications for grants	Procurement Code scope is limited to procurement of tangible personal property, services, and construction by state agencies/local public bodies; grants are not part of procurement processes. NMSA §13-1-30 (application); 1.4.1.2 NMAC (scope).  IPRA, NMSA § 14-2-1(K) Exceptions to right to inspect public records: K. “Submissions in response to a competitive grant, land lease or scholarship and related scoring materials and evaluation reports until finalists are publicly named or the award is announced.”	Scope expansion. HB229 pulls grantmaking into a transparency regime aligned with procurement, which may blur statutory boundaries and force agencies to build parallel disclosure workflows for non-procurement awards. Agencies that manage grants under other frameworks would need new processes to avoid inconsistent treatment.  Competitive grant information has confidentiality under IPRA until the award has been made.
§3(A)(1) Requires agencies to post solicitations publicly within one week of soliciting.	NMAC prescribes public notice mechanics and minimum content for IFBs/RFPs - notice publication no less than 10 days prior to bid or proposal opening (1.4.1.17 NMAC “Public Notice – IFB”; 1.4.1.32 NMAC “Public Notice – RFP”). (1.4.1.31(D) NMAC). NMSA 13-1-104, 116. Notice of competitive proposals and bids publication no less than 10 days prior to proposal or bid opening.	Timeline mismatch. HB229’s posting mandate one week after solicitation will override or compress existing practice, especially for complex procurements where longer prep and notice periods are customary. Agencies may need to change internal calendars and templates to avoid an HB229 violation.
§3(A)(2) Agencies must update transparency web pages at least monthly and maintain webpage as primary source of public information.	The Sunshine Portal Transparency Act requires monthly updates and enumerates minimum transparency content at the state level (NMSA §10-16D-3), including agency’s contract information. It does not require each agency to maintain a separate page as the “primary source”; the Sunshine Portal itself serves that role.	Source of truth duplication. HB229 may duplicate or reprioritize disclosure, potentially making an agency webpage the “primary source,” while §10-16-D3 positions the Sunshine Portal as the statewide primary source. Requires coordination to avoid inconsistent data and broken links.
§3(A)(5) Agencies must make available information relating to emergency or sole source contracts.	Procurement Code/NMAC already require documentation, publication and public record for sole source and emergency procurements: §13-1-126 (sole source), §13-1-127 (emergency); §13-1-128 (sole	Overlap with enhanced posting. HB229’s broad “make available” could expand timing/detail expectations beyond statute/regulations (e.g., centralizing on agency page vs. SPA website). Agencies

	source and emergency, publication to website and sunshine portal); 1.4.1.57 NMAC (records); emergency scope limits 1.4.1.60 NMAC; recent statutory notice posting obligations under §13-1-127(C).	must reconcile where/what gets posted to avoid inconsistency with §13-1-127(C) web posting by SPA/central office.
§4(A) Enforcement— “knowingly and willfully” violating HB229 → contract is presumed invalid.	Procurement Code provides administrative protest and remedial structure: §13-1-172 (right to protest within 15 days), §13-1-174/175 (resolution authority & stay), §13-1-183 (judicial review). Invalidation is not the default remedy for transparency -only violations.	Remedies conflict. HB229 introduces a harsh invalidity presumption that can override or bypass the Code’s protest/administrative remedial scheme—creating contract uncertainty for vendors and agencies even when procurement steps complied but transparency steps did not.
§4(B)–(C) Enforcement by Attorney General or District Attorneys,	Procurement disputes are channeled through administrative protest to state purchasing agent/central purchasing office (then judicial review). See §13-1-172 and associated case law emphasizing quick administrative resolution.	Forum/timing tension. HB229 enables direct judicial actions that could interrupt or circumvent procurement protest processes, potentially increasing litigation and delays contrary to Procurement Code’s goal of swift resolution.

**Additional Notes & Citations**

- Posting/notice mechanics for IFBs/RFPs. NMAC provides detailed procedures on public notice and RFP composition (e.g., 1.4.1.31–1.4.1.34 NMAC), including the recommended 30-day proposal preparation window for RFPs (not a hard legal deadline). HB229’s one week posting requirement is independent of those notice and timeline expectations.
- Emergency procurements must be limited in scope and posted promptly by SPA/central office (§13-1-127(C); 1.4.1.60 NMAC). HB229’s “make available” language appears broader in where and how to publish (agency pages and DoIT directory), necessitating dual compliance.

If HB229 passes, the inharmonious provisions in the aforementioned laws are “repealed by implication,” which causes confusion, increases the probability of violation of one Act or the other, and is generally not favored. An alternative, less confusing and more favorable way the Legislature can affect change related to transparency in government contracting is to amend the existing Procurement Code.

**TECHNICAL ISSUES/OTHER SUBSTANTIVE ISSUES**

**ALTERNATIVES**

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Existing sunshine laws and requirements in the Procurement Code will continue to provide the transparency contemplated by the Act under established practices that are budgeted and staffed within OCS.

**AMENDMENTS**

\* This document was drafted with the assistance of the Co-Pilot artificial intelligence tool. The final content has been thoroughly reviewed, edited, and approved by Raja Sambandam, Chief Information Security Officer, and Todd Baran, General Counsel, to ensure content accuracy, legal compliance, and subjectivity.