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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/15/13  
 SPONSOR Rue LAST UPDATED 03/14/13 HB \_\_\_\_\_  
 SHORT TITLE Government Procurement Requirements SB 443/aSfI#1/aSfI#2  
 ANALYST Hanika-Ortiz

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

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		\$25.0 - \$100.0			Most Nonrecurring	Various

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Public School Facilities Authority (PSFA)  
 General Services Department (GSD)  
 Attorney General’s Office (AGO)  
 New Mexico Department of Transportation (NMDOT)  
 Children, Youth & Families Department (CYFD)  
 Public Defender Department (PDD)  
 New Mexico Corrections Department (NMCD)

### SUMMARY

#### Synopsis of SFI Amendment #2

The Senate Floor Amendment #2 to Senate Bill 443 includes training materials in *printed form* in addition to electronic formats, to the list of exemptions pursuant to Section 13-1-98 NMSA 1978.

#### Synopsis of SFI Amendment #1

The Senate Floor Amendment #1 to Senate Bill 443 eliminates the proposed language in Section 13-1-199 NMSA 1978 that increased the penalties for willful violations of the Procurement Code.

#### Synopsis of Original Bill

Senate Bill 443 (SB 443) amends the Procurement Code (Code) and establishes certification and training requirements for chief procurement officers; exempts the purchase of online subscription

services and training materials; increases the cap for certain small purchases and professional services; and provides additional penalties and terminates positions held by public officers or employees convicted of Code violations.

## **FISCAL IMPLICATIONS**

SB 443 would increase the thresholds for some exempted purchases and for qualifying small purchases. Currently NMSA 1978, Section 13-1-125 limits the use of the small purchase statute to purchases of services, construction and tangible personal property not to exceed a value of \$20,000 and to professional services of \$50,000.

There will be an initial cost for the General Services Department (GSD) to develop training materials that standardize the certification and re-certification of chief procurement officers.

The bill strengthens the penalty for willful violations to deter unlawful activities. The potential for increases in prosecution costs for the judiciary will most likely be balanced by the deterrent effect of increasing the penalty for procurement transactions above \$60,000.

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes.

## **SIGNIFICANT ISSUES**

More specifically, the bill amends or adds to the Procurement Code as follows:

Section 1 adds a new section to the Code and defines a *chief procurement officer* within a state agency or a local public body as one responsible for the procurement of items of tangible personal property, services or construction.

Section 2 amends Section 13-1-37 and makes only stylistic changes.

Section 3 adds a new section to the Code and requires the state purchasing agent to 1) receive annually from state agencies and local public bodies the name of their chief procurement officer and location of their central purchasing office 2) maintain and publish on the GSD website a list of chief procurement officers and respective agencies, and 3) establish a certification program on or before January 1, 2015 for chief procurement officers that would include recertification every two years. The section further provides that on or after July 1, 2015, only certified chief procurement officers may approve procurements pursuant to the Code, except that persons using procurement cards may continue to issue purchase orders and authorize small purchases.

Section 4 amends Section 13-1-95 and allows the state purchasing agent to procure a price agreement for a state agency or local public body that does not have a chief procurement officer.

Section 5 amends Section 13-1-97 and requires local public bodies to identify their central purchasing office and chief procurement officers to the state purchasing agent.

Section 6 amends Section 13-1-98 and adds training materials in electronic format, legal subscription and research services, and raises the threshold from \$5,000 to \$10,000 for magazine subscriptions, conference registration fees and similar purchases where prepayments are required.

Section 7 amends Section 13-1-125 and raises the threshold for services, construction or tangible personal property from \$20,000 to \$60,000; professional services from \$50,000 to \$60,000; and direct purchase orders from \$10,000 to \$20,000, excluding state and local taxes.

Section 8 amends Section 13-1-199 and adds language to differentiate a misdemeanor with a value of \$60,000 or less, and a fourth degree felony with a value greater than \$60,000.

### **PERFORMANCE IMPLICATIONS**

SB 443 provides a new section on training and certification of chief procurement officers to provide consistency in the handling of procurements among state agencies and local entities.

Providing the identity of an agency or local public body's chief procurement officer may allow the public and contractors to reach the proper point of contact more quickly.

The raised threshold levels may allow purchases from smaller contractors that would otherwise not have participated in competitive procurements due to the cost to prepare a proposal or bid.

### **ADMINISTRATIVE IMPLICATIONS**

By including electronic versions of items currently exempt, agencies will be able to directly purchase these items just like the tangible form. In addition, the proposed changes raise the threshold amount for an exempted direct purchase of subscriptions, conference registrations and other purchases requiring prepayment from \$5,000 to \$10,000, thus increasing efficiencies.

SB 443 raise the threshold for small purchases for services, construction and tangible items to \$60,000, increases the threshold for professional services to \$60,000 and increases the threshold for a direct purchase order to \$20,000. By increasing the thresholds, the process for procuring small purchases and professional services saves administrative processing expenses.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

SB 182 amends the Procurement Code and adds procedures for sole source and emergency procurements, restricts who may make emergency procurements, expands who may protest a sole source procurement award, and increases penalties for willful violations of \$50,000 or more.

### **TECHNICAL ISSUES**

The Attorney General's Office (AGO) notes that Section 8(B) may be subject to legal challenge on grounds that an elected official has the right to serve under Article XX and Article VII of the NM Constitution unless they commit a felony (not just a misdemeanor).

### **OTHER SUBSTANTIVE ISSUES**

The state purchasing agent would report suspected violations of the Code to the AGO.

The bill strengthens penalties for violation of the Code, which is currently a misdemeanor. Under the bill, the penalty assessed against a person who willfully violates the Code on a purchase of \$60,000 or less is a misdemeanor; and on a purchase greater than \$60,000 a fourth degree felony. In addition, the amendment terminates positions held by public officers or state employees criminally convicted of violating the Code.

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

That state will not have a standardized approach when procuring goods and services from the public.

AHO/blm:svb