

LFC Requester:

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AGENCY BILL ANALYSIS - 2025 REGULAR SESSION**WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO****[AgencyAnalysis.nmlegis.gov](https://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:** 03/11/2025*Check all that apply:***Bill Number:** HB 509Original ☒ Correction ☐Amendment ☐ Substitute ☐**Agency Name****and Code**

General Services

Number:

Department/35000

Sponsor: Randall Pettigrew**Short** Transparency in Gov't**Person Writing** Susan Inman**Title:** Contracting Act**Phone:** 505-795-5551 **Email** Susan.Inman@gsd.nm.gov**SECTION II: FISCAL IMPACT****APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
NA	NA	NA	NA

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
NA	NA	NA	NA	NA

(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	Unknown	Unknown	Unknown	Unknown	Recurring	General Fund

(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 changes and makes additions to the Sunshine Portal Transparency Act (the Act) NMSA 1978 §10-16D-1 through §10-16D-6; includes changing the name to the Transparency in Government Contracting Act, modifying statutory definitions, and adding additional compliance and enforcement requirements.

Requires certain procedures to be followed to provide the public with information about government contracts; includes enforcement mechanisms; provides for a Directory of Information within the Sunshine Portal. Contains definitions for “contract” and “government agency.” Applies to the Executive Branch, local governments, higher education, school districts and local school boards.

The effective date of this legislation is July 1, 2025.

FISCAL IMPLICATIONS

This legislation includes new systems not currently in place which will require additional staff and fiscal resources. The costs of updating agency systems to be able to provide information from the previous month or year for comparison purposes cannot be determined at this time.

SIGNIFICANT ISSUES

Pages 1-2 Section 2 – Definitions in this legislation eliminate certain terms in the Procurement Act that are necessary to applicability of the statute, such as, department, exempt employee, expenditure, or local education provider.

Pages 1-2 Section 2.A – The change to the definition of “contract” limits the scope of transparency to contracts in place pursuant to the Procurement Code or in competitive scenarios. This would exclude procurement which are exempt from the Procurement Code pursuant to such statutes as NMSA 1978 §13-1-98, §13-1-98.1, §13-1-98.2, etc. The proposed change narrows the current scope of the current definition in NMSA 1978 §10-16D-2.A which does not contain such limits.

Page 2, Section 2.B – The addition of “government agency” broadens the scope of the current Act to include local public bodies. If the intent of the new definition, “government agency,” is to increase the scope of the Act, other statutes in the Act could require inserting the new term in the appropriate places in the Act (e.g., replacing “state agency” with “government agency” where appropriate).

Page 2, Section 2.C –The definition for “make available” may conflict with the Inspection of Public Records Act (IPRA) statutes (NMSA 1978 §§14-2-1:12). IPRA already provides a means to request procurement information/documents from government bodies, in various formats.

Page 2, Section 2.D –The definition for “protected information” may conflict with the IPRA statutes (NMSA 1978 §§14-2-1:12).

Page 3, Section 3.A.1 – The time limit of one week proposed in this Section conflicts with the fifteen-day timeframe for producing records under IPRA (NMSA 1978 §14-2-8). Procurements/Solicitations and their related contracts are already subject to requests through IPRA. Additionally, procurements such as invitations to bids and requests for proposals are already available publicly, as public notice is required to be posted, pursuant to NMSA 1978 §13-1-104. The use of the term “solicitations” could imply that only contracts established through a competitive method of procurement are subject to this requirement, which could limit the scope of the Act. If the proposed change is intended to make procurement-related documents available on the Sunshine Portal within one week, it could potentially violate the Procurement Code (e.g., NMSA 1978 §13-1-116).

Page 3, Section 3.A.3 – A custodian of records is required under current IPRA standards already.

Page 3, Section 3.A.4 – This proposed change supports requirements under NMSA 1978 10-16D.3.D.14-193 However, other changes in the Act propose to modify “web site” to “website,” yet here “web page” is used. This creates consistency and clarity issues.

Page 4, Section 3.5 – The requirement to make sole sources and emergency contracts available on the Sunshine Portal is duplicative and could conflict with statutes in the Procurement Code (i.e. NMSA 1978 §13-1-126.1(A), §13-1-127(C), §13-1-128(A, B, C, & D)).

Page 4. Section 4 – This Section is unintentionally unfair to the Contractor and may not be in the best interest of the State. Since a government body could be the actor (the person violating the Act), the Contractor may play no part in the violation. Additionally, the goods or services which are the subject of the contract at issue could still need to be provided to the public or for the public benefit. Automatically deeming a contract invalid could cause the government body to perform an emergency procurement to cover the needed goods or services. If the initial procurement was via an invitation for bids or request for proposals, then an emergency procurement allows a government body to procure the requisite goods or services without engaging in a competitive procurement method. As NMSA 1978 §13-1-29(C) calls for the fair and equitable treatment of all persons involved in public procurement, the automatic presumption to invalidate a contract does not facilitate fair treatment of affected Contractors.

PERFORMANCE IMPLICATIONS

The Sunshine Portal is a free website providing public access to up-to-date state financial information to enhance governmental transparency and accountability. The website offers, at a minimum, access to state cash balances, monthly investment summaries, annual operating budgets and expenditures, contracts exceeding \$20,000 (including recipient, purpose, and expended amount), contract links, and resident certificate information.

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

The term “direct email notification” needs to be clarified.

OTHER SUBSTANTIVE ISSUES

The Sunshine Portal is a living site, promoting transparency by allowing executive agencies to input current contract information. This new effort appears to be duplicative of NM Statute 100-16D-3.

The effective date of this legislation is July 1. It is unlikely that system changes needed by the number of agencies required to provide data can be done by this time.

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS