

LFC Requester:	Fischer
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AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

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(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: Feb. 28, 2025 *Check all that apply:*
Bill Number: SB 206/a Original Correction
 Amendment Substitute

Sponsor: Sens. Padilla, Lundstrom, Garratt **Agency Name and Code** State Ethics Commission (410)
Short Title: Procurement Changes **Number:** _____
Title: _____ **Person Writing** Jeremy Farris
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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		Indeterminate	Indeterminate			General

(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: The Senate Tax, Business and Transportation Committee (STBTC) amendments to SB 206 do the following:

1. Restores the dollar amount for state and local public works projects to the status quo of \$50,000;
2. Allows the state purchasing division more control over the certification requirements for chief procurement officers;
3. Restores the applicability of Sections 13-1-190 through 13-1-199, the Code's anti-corruption, conflict-of-interest, disclosure, and remedial provisions, to all purchases that Section 13-1-98 otherwise exempted from the Procurement Code;
4. Deletes the clarificatory clause that Section 13-1-98(V), which exempts "purchases of advertising in all media," does not include marketing purchases;
5. Restores the status quo that invitation to bids must be published ten days before the date set forth for the opening of bids;
6. Restores the trigger amount for which a prospective must submit cost or pricing data to the status quo of \$25,000.

FISCAL IMPLICATIONS

The State Ethics Commission has jurisdiction to investigate and adjudicate complaints alleging violations of the Procurement Code, to enforce the Procurement through civil actions, and to issue advisory opinions regarding the Campaign Reporting Act. These amendments could marginally increase the Commission's workload relating to the Code.

SIGNIFICANT ISSUES

First, SB 206/a amends Section 13-1-98 of the Procurement Code to make Sections 13-1-190 through 13-1-199 applicable to all purchases that Section 13-1-98 otherwise exempted in full from the Procurement Code. These ultimate sections of the Procurement Code guard against corruption and conflict of interest in public procurement, require disclosures of campaign contributions by prospective contractors, and authorize state enforcement agencies to take appropriate action to remedy violations. This amendment to SB 206 is very sound. The exemptions in Section 13-1-98 are meant to enable public entities to make purchasing decisions that avoid the burdens imposed by adhering to a competitive, sealed process—a process that might not be appropriate for every purchasing decision. *See, e.g.*, Section 13-1-98(T) (exempting purchases of works of art). In aggregate, these purchasing decisions amount to hundreds of millions of dollars every fiscal year. *See* Legislative Finance Committee Program Evaluation Unit, *Progress Reporting: Obtaining and Maximizing Value in State Procurement*, at pp. 2, 9 (Oct. 28, 2021) (reporting that in FY21 a total of \$683 million in state agency expenditures were made pursuant to a statutory exemption to the Procurement Code) (available https://www.nmlegis.gov/Entity/LFC/Documents/Program_Evaluation_Progress_Reports/Progress%20Report%20-

[%20Obtaining%20and%20Maximizing%20Value%20in%20State%20Procurement.pdf](#)). Even though a competitive sealed process is not, all things considered, appropriate for some government purchases, the Procurement Code’s anti-corruption, conflict-of-interest, and disclosure provisions should still impose minimum constraints on those purchases. For example, a state agency may not have to resort to a competitive process to purchase a work of art, yet Section 13-1-190(A) of the Procurement Code should still prohibit the state agency’s head from entering a contract with their spouse for the agency’s purchase of the spouse’s artwork. *Compare* § 13-1-98(T), *with* § 13-1-190(A). SB 206/a imposes that minimum constraint against self-dealing. Considering the massive volume of state agency and local public body purchases under Section 13-1-98 every year, this STBTC amendment to SB 206, if enacted, would likely constitute the most significant government ethics legislation in the First Session of the 57th Legislature.

Second, SB 206/a deletes a clarificatory clause in the original version of SB 206. Originally, SB 206 amended Section 13-1-98(V) to clarify that the exemption for “purchases of advertising in all media, including radio, television, print and electronic” does not include marketing purchases. The excision of this amendment to Section 13-1-98(V) is prudent, because the text of Section 13-1-98(V), which exempts purchases of advertising “*in all media*,” already makes clear that it does not extend to marketing and other advertising-adjacent professional services such as branding, design, research, and consulting. For a fulsome analysis of this legal argument, see Plaintiff State Ethics Commission’s Motion for Partial Summary Judgment on Count I, 7–10, *State Ethics Comm’n ex rel. Village of Angel Fire v. Lindsey, et al.*, D-809-CV-2024-00091 (8th Jud. Dist. Ct. Feb. 21, 2025).

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

SB 206/a amends the definition of “local public works project.” The definitions of “local public works project” and “state public works project” in Procurement Code currently are the same other than which public body is doing the project. The definition in Section 13-1-66.1 reads “a project of a local public body that uses architectural **or** engineering services requiring professional services costing fifty thousand dollars (\$50,000) or more or landscape architectural or surveying services costing ten thousand dollars (\$10,000) or more . . .” The amendment changes the first “or” to an “including” so the definition would instead read “a project of a local public body that uses architectural services, **including** engineering services requiring professional services costing fifty thousand dollars (\$50,000) or more **or** landscape architectural or surveying services costing ten thousand dollars (\$10,000) or more . . .” Which could exclude projects meeting that threshold which include engineering services but not architectural services.

It appears that perhaps STBTC intended instead to amend the definition to be consistent with the amendments to the definition of “state public works project” in SB 206 which changes the definition to a project “that uses architectural **or** engineering services requiring professional services costing fifty thousand dollars (\$50,000) or more, **including** landscape architectural or surveying services requiring professional services . . .” The definition of “state public works project” also deletes the \$10,000 threshold for projects using landscape architectural or surveying services while the definition of “local public works project” does not.

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The anti-corruption, conflict-of-interest, disclosure, and remedial provisions of the Procurement Code will continue not to apply to Section 13-1-98.

AMENDMENTS