

LFC Requester:

Simon

AGENCY BILL ANALYSIS - 2026 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:** Jan. 27, 2026*Check all that apply:***Bill Number:** SB 153Original ☒ Correction ☐Amendment ☐ Substitute ☐**Agency Name****and Code**

State Ethics Commission (410)

Number:**Sponsor:** Sen. Padilla**Short** Procurement Changes**Person Writing**

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Phone: 505 623 1074**Email** connor.woods@sec.nm.gov**SECTION II: FISCAL IMPACT****APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY26	FY27		

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or	Fund Affected
FY26	FY27	FY28		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(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 Procurement Code's default rule is that government procurement of goods and services should follow a competitive, sealed process. *See* § 13-1-102. But the Procurement Code is mainly a catalogue of exceptions to this default rule, providing when the procuring government agency has significant or complete discretion to decide how to select a contractor the government will do business with. *See generally* § 13-1-102 through -199. This is *favoritism under law*: the government's relatively unconstrained ability to select contractors without the use of any competitive selection process. While such discretion makes government procurement less cumbersome for government agencies, it increases the scope for favoritism in contracting by those government officials and employees who ultimately make procurement decisions in their respective agencies. Senate Bill 153 makes several adjustments to the Procurement Code to update language and change who is favored under its provisions.

Under the current provisions of the Procurement Code, to be certified as a resident business, and to receive preferential treatment under the Procurement Code, the business must pay property taxes or rent on real property in the state and pay at least one other tax administered by the state in each of the 3 years prior to certification. *See* NMSA 1978, § 13-1-22(B) (2022). Similarly, to be certified as resident contractor, the contractor must have paid property taxes or rent on real property in addition to one other tax for each of the 5 years prior to certification. Section 1 of SB 153 reduces the length of the tax paying requirements down to 1 year for both resident business and contractors.

The Procurement Code vests much of the decision-making authority into the agency or local government's Chief Procurement Officer ("CPO"). *See* NMSA 1978, § 13-1-95.2(E) (2013). SB 153 makes two small, but potentially significant changes regarding CPOs. First, it permits every agency and local government to provide the names of *two* employees certified as CPOs, in contrast to the current requirement that a state agency or local public body provide only the name of only one employee as the certified CPO (Section 7). Second, when the CPO makes a determination that a contract should be exempt from the requirements in the Procurement Code, the CPO is required to include the facts relied upon when making that determination. (Sections 7 and 8).

Section 13-1-98 of the Procurement Code exempts many purchases from the provisions of the Procurement Code. SB 153 amends two exemptions. First, under the Code's current provisions, agencies and local governments may purchase "magazine subscriptions, web-based or electronic subscriptions, conference registration fees or other similar purchases where prepayment is required" if under \$10,000. The bill increases that amount to \$100,000. Second, the bill clarifies that the exemption for "purchases of advertising in all media" does not include "purchases for marketing services that are broad strategic activities, including market research, branding, campaign planning or content development[.]"

SB 153 also makes several changes to current dollar thresholds. Section 9 increases the amount a state agency can spend on small purchases without going through the state purchasing agent from \$1,500 to \$10,000. But more relevant for most state agencies and

local governments, Section 13 of the bill increases the small purchase exception to the competitive sealed bid requirement from \$60,000 to \$100,000.

Section 14 creates a four-year cap on sole source contracts. Relatedly, Section 15 decreases the time the central purchasing office must publicly notice its intent to award a sole source contract from 30 days to 15 days.

Section 17 increases the period multi-term contracts may be entered into from 4 years to 8 years for contracts for items of tangible personal property, and most professional services. Similarly, Section 18 increases the multi-term contract period from 4 to 8 years for architectural or engineering services, and from 3 to 10 years for construction services. Section 18 also adds an exception to monetary constraints in instances where the governor declares a state of emergency, the procurement is directly related to responding to the emergency, and the state purchasing agent provides written approval.

The Procurement Code's prohibition of prepayment is modified slightly to create an exception for "child care assistance services" so long as the CPO certifies in writing that "due to customary business practices or specific facts demonstrating undue hardship. . . payment is necessary because services cannot be reasonably obtained without prepayment." Following subsections require contractual guardrails to ensure the protection of state monies. (Section 20).

SB 153 also creates several new definitions that largely follow existing agency practices for noticing invitations to solicit (Section 3) and requests for proposals (Section 4), and determining "best obtainable price" (Section 2).

Finally, the remaining sections of SB 153 amend several provisions to provide more consistent language usage through the Procurement Code and to align with the federal definition of "small business."

FISCAL IMPLICATIONS

There are no major fiscal implications for the State Ethics Commission. The Commission issues advisory opinions and advisory letters interpreting the Procurement Code and enforces the Code's provisions. While SB 153 might change the content of the Commission's work with respect to the Code, the bill is unlikely to affect the volume of that work.

SIGNIFICANT ISSUES

Changes to the Procurement Code's exemptions:

Section 13-1-98 covers a wide swath of goods and services that are completely exempt from the provisions of the Procurement Code. But these services (and the ones mentioned in SB 153) do not necessary undermine the Code's purposes "to maximize the purchasing value of public funds" or to "maintain[] a procurement system of quality and integrity." NMSA 1978, § 13-1-29(C) (1984). Rather the goods and services described in section 13-1-98 mostly constitute goods and services that presumptively have no legitimate alternative, and that sealed bids or proposals would not improve the price the government pays.

SB 153's increase of the purchase threshold to exempt "magazine subscriptions, web-based or

electronic subscriptions, conference registration fees or other similar purchases where prepayment is required” from \$10,000 to \$100,000 sits perfectly within the above considerations. If the procuring agency wants to purchase a specific magazine subscription, wishes to send its employees to a particular conference, or is interested in purchasing other web-based and electronic subscriptions such as those included as IT software/hardware licenses or accompanying service agreements (*see* State Ethics Comm’n Adv. Op. 2024-04 (July 26, 2024)), there is no real market alternative for that magazine or that conference.

Similarly, SB 153’s distinction between the “purchases of advertising in media” and purchases for “marketing services that are broad strategic activities, including marketing research, branding, campaign planning or contact development” also comport with the above considerations. Buying ad space has no real market alternative. The market for advertising space is relatively monopolistic and the prices nonnegotiable. For example, if the government wishes to take out an ad in a news paper in central New Mexico that reaches the greatest number of readers, the government has no choice other than to place the ad in the Albuquerque Journal at whatever rate the Journal sets. No amount of sealed bidding or proposals will make any difference. The same is not true for marketing services. Marketing services are completely substitutable between firms. And the marketing firms in New Mexico can compete against each other for a government contracts. As a result, requiring sealed proposals for those services will vindicate the Procurement Code’s purpose and maximize the value of the government’s dollar.

Additionally, SB 153’s amendment to clarify that the exemption for government “purchases of advertising in all media” does not include advertising-adjacent services (such as purchases of marketing and design services) is consistent with the Commission’s understanding of the existing exemption and a recent ruling by New Mexico’s Eighth Judicial District Court which concluded that Section 13-1-98(V)’s exemption for “purchases of advertising in all media” does *not* exempt advertising-adjacent services (such as design and marketing) that government agencies often procure in connection with ad-buys in media. *See State Ethics Comm’n v. Lindsey, et al.*, D-809-CV-2024-00091 Or. Granting Plf.’s Mot. for Partial Summ. J (June 23, 2025). By including this language in SB 153, it would obviate the need for this sort of litigation and clarify for CPOs and other government officials that “purchases of advertising” means precisely what the exemption states (actual advertisement purchases).

Changes related to CPOs:

The CPO is, perhaps, the most important individual when it comes to the government’s procurement of goods and services. Permitting agencies to submit the names of up to two employees certified as CPOs is helpful in two ways. First, if one CPO is unavailable for whatever reason (sick, on vacation, recently departed public employment, etc.) the procuring government is not stuck waiting until the CPO is back to procure goods or services that require determinations. Second, and more related to the Commission’s duties, having two CPOs would allow one to recuse themselves in case they have a conflict or financial interest in the contract. *See also* NMSA 1978, § 10-16-4(B) (2011) (“A public officer or employee shall be disqualified from engaging in any official act directly affecting the public officer’s or employee’s financial interest. . . .”).

As to the proposed changes in Section 8, requiring an exemption determination to include the facts relied upon in making that determination ensures that the state purchasing agent or the central purchasing office can articulate the facts supporting that decision. In addition to safeguarding that a decision is based on articulable facts, it also provides the public with

transparency and reassurance as to why a determination that none of the provisions of the Procurement Code (including its anticorruption, anti-kickback provisions) apply to a certain procurement actually falls under a lawful exemption. Having the CPO provide the facts underlying an exemption determination would also be helpful in enforcement actions related to the Procurement Code. When the Commission reviews a contract that is purportedly awarded pursuant to an exemption, determining how the CPO reached their decision can take substantial work. In one instance, the CPO who made an exemption determination left before the Commission's investigation. The Commission could not confirm what the CPO relied on when making that determination until taking the deposition of another person who discussed the exemption with the CPO. Having the CPO memorialize the facts supporting their determinations would cut down of hours of work, and (if the instance above becomes a trend) thousands of dollars in deposition costs.

Small purchase changes:

SB 153's increase of the small purchase exception threshold from \$60,000 to \$100,000 would not inherently undermine the ethical considerations in the Procurement Code. Unlike Section 13-1-98, which completely exempts categories of purchases from the entirety of the Procurement Code, the small purchase exception is only an exception to the requirement to go through a competitive process. *See* NMSA 1978, § 13-1-102 (2022). The anticorruption provisions present in Sections 13-1-190, -191.1, -192, -193, and -195 (as well as the entire Governmental Conduct Act) still apply to small purchases. If the government loses anything in maximizing its dollar value, it is likely more than made up for in the efficiency and flexibility gained by a larger threshold.

New definitions and clarifications:

Several sections throughout SB 153 adding new definitions and providing consistent language usage is sorely needed. The Procurement Code is a large set of statutes that has been amended in piece-meal for over nearly 50 years. To say the least, its provisions can be confusing, and CPOs can misinterpret its terms on how to comply with its provisions. Making the law simpler will likely lead to fewer avoidable mistakes in the procurement process

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB 153 shares similarities to SB 206 from the 2025 regular session.

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Primarily status quo.

For state agencies generally, the lack of uniformity and clarifying language in the Procurement Code may lead to avoidable mistakes and noncompliance.

For the Commission more specifically, enforcement actions based on the misapplication of an exemption will continue to result in the (sometimes) laborious task of determining *how* a CPO made an exemption determination.

AMENDMENTS