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## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>Hamblen/McQueen</u>	<b>LAST UPDATED</b> _____
	<b>ORIGINAL DATE</b> <u>02/08/23</u>
<b>SHORT TITLE</b> <u>Forest Division Procurement Exemption</u>	<b>BILL NUMBER</b> <u>Senate Bill 206</u>
	<b>ANALYST</b> <u>Sanchez</u>

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

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal		Recurring	EMNRD Healthy Forests Program Operating Budget
<b>Total</b>	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal			

Parentheses ( ) indicate expenditure decreases.  
 \*Amounts reflect most recent analysis of this legislation.

### Sources of Information

LFC Files

#### Responses Received From

Energy, Minerals and Natural Resources Department (EMNRD)  
 Attorney General’s Office (N MAG)

## SUMMARY

### Synopsis of Senate Bill 206

Senate Bill 206 proposes to amend Section 13-1-98 NMSA 1978 (the state Procurement Code) to create an exemption for certain contracts with nongovernmental organizations (NGOs) entered into by the Healthy Forests Program, otherwise known as the State Forestry Division (SFD) of the Energy, Minerals and Natural Resources Department.

The bill proposes amendments that would exempt SFD from provisions of the Procurement Code under certain contracts with NGOs that receive federal funding through competitive grant application processes conducted by the U.S. Department of the Interior (DOI) or the U.S. Department of Agriculture (USDA).

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

## FISCAL IMPLICATIONS

Analysis from the State Forestry Division contends the bill would provide indirect cost savings by, “eliminating the need for staff to issue a Request for Proposals (RFP) or Invitation to Bid (ITB) that is duplicative with the federal competitive process.” The State Forestry Division states that this bill would allow for the timely disbursement of funds to NGOs selected by DOI and USDA that currently must, under federal guidelines, follow state procurement codes.

## SIGNIFICANT ISSUES

According to analysis from the Attorney General’s Office (NMAG), Section 13-1-30 (application of the code) would already apply. NMAG’s analysis states that Section 13-1-30 (b), NMSA 1978, already exempts NGOs from the state procurement code:

When a procurement involves the expenditure of federal funds, the procurement shall be conducted in accordance with mandatory applicable federal law and regulations. When mandatory applicable federal law or regulations are inconsistent with the provisions of the Procurement Code, compliance with federal law or regulations shall be compliance with the Procurement Code.

However, current federal guidelines require NGOs to go through a competitive bid process prior to selection by federal agencies. These guidelines mean the same NGOs must go through a similar bid process at the state level because of the state Procurement Code.

According to the analysis from the State Forestry Division:

Federal grant programs that specify NGOs as eligible applicants include the Community Wildfire Defense Grant Program that received \$1 billion in the Bipartisan Infrastructure Law of 2021 and the Landscape Scale Restoration Program that received \$450 million in the Inflation Reduction Act of 2022. New Mexico NGOs did not apply for these funds because they knew they would have to compete twice – once at the federal level and again under the state procurement code. Removal of this barrier to NGO participation has the potential to bring millions of additional dollars to New Mexico for critical work to reduce wildfire risks and protect communities and watersheds.

The conflicting analysis from NMAG and EMNRD leaves questions as to the ultimate necessity of the bill. However, if, in practice, the current statute prevents NGOs from applying for federal funds because of the duplicative processes, then SFD’s contention that passage may result in time and cost savings should be considered. As SFD is the primary point of contact for NGOs conducting forestry work under USDA and DOI grants for wildfire prevention and forest restoration, EMNRD’s analysis seems to represent the view of the entities most likely to benefit from the statutory changes proposed in this bill.

SS/mg/hg/mg