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**HOUSE JOINT MEMORIAL 77**  
**45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002**  
**INTRODUCED BY**  
**Robert M. Burpo**

**A JOINT MEMORIAL**

**REQUESTING THE ATTORNEY GENERAL TO INFORM SCHOOL DISTRICTS, REGIONAL CENTER COOPERATIVES, POST-SECONDARY EDUCATIONAL INSTITUTIONS AND OTHER STATE AGENCIES, POLITICAL SUBDIVISIONS AND JOINT POWERS AGREEMENTS AGENCIES THAT THEY ARE REQUIRED TO COMPLY WITH THE PROVISIONS OF THE PROCUREMENT CODE AND REQUESTING THE ATTORNEY GENERAL TO RECOMMEND TO THE LEGISLATURE APPROPRIATE AND MEANINGFUL PENALTIES FOR VIOLATION OF THAT ACT.**

**WHEREAS, the purposes of the Procurement Code are to provide for the fair and equitable treatment of all persons who want to provide goods or services to publicly funded state and local public bodies and to ensure taxpayers that their hard-earned dollars are being spent through a procurement system that safeguards integrity, fairness and value; and**

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1           WHEREAS, legislators have received complaints that there  
2 are some school districts, regional center cooperatives and  
3 post-secondary educational institutions that are not complying  
4 with the provisions of the Procurement Code; and

5           WHEREAS, while some purchases are exempt from the  
6 provisions of the Procurement Code, it appears that the only  
7 public bodies that are exempt from the act are home-rule  
8 municipalities with their own procurement ordinances; and

9           WHEREAS, Section 13-1-99 NMSA 1978 excludes certain named  
10 public bodies from purchasing through the state purchasing  
11 agent, but does not exempt them from the provisions of the  
12 Procurement Code; and

13           WHEREAS, in *State ex rel. Educational Assessments*  
14 *Systems, Inc. v. Cooperative Educational Services of New*  
15 *Mexico, Inc.*, the court of appeals said that since member  
16 school districts are subject to the Procurement Code, a joint  
17 agency established by two or more school districts pursuant to  
18 a joint powers agreement must also comply with that act; and

19           WHEREAS, to ensure the fair and equitable treatment of  
20 vendors and contractors, the law limits the use of sole source  
21 contracts; and

22           WHEREAS, requests for proposals, bid specifications and  
23 contracts should be written with sufficient specificity to  
24 allow anyone who reads those documents to understand what the  
25 contractor must provide, what the public body expects and the

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1 price that will be paid to the contractor; and

2 WHEREAS, neither the Procurement Code nor the Public  
3 Facility Energy Efficiency and Water Conservation Act  
4 contemplates a public body being able to modify a contract for  
5 energy or water conservation measures to include the  
6 construction of an entirely new building; and

7 WHEREAS, citizens pay taxes, essentially voluntarily, to  
8 accomplish public purposes, and they have every right to  
9 expect that custodians of the public trust are not playing  
10 favorites in the awarding of contracts or piggybacking  
11 unrelated work on an existing contract because obeying the  
12 Procurement Code is "too much trouble";

13 NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE  
14 STATE OF NEW MEXICO that the attorney general be requested to  
15 inform school districts, regional center cooperatives, state  
16 educational institutions, other public post-secondary  
17 institutions, joint powers agreements agencies and other state  
18 and local public bodies that they are required to follow the  
19 provisions of the Procurement Code; and

20 BE IT FURTHER RESOLVED that the office of the attorney  
21 general be requested to consider appropriate and meaningful  
22 penalties for violations of the Procurement Code by state or  
23 local public bodies and report its recommendations to the  
24 first session of the forty-sixth legislature; and

25 BE IT FURTHER RESOLVED that a copy of this memorial be

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1 transmitted to the attorney general.

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