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FISCAL IMPACT REPORT

ORIGINAL DATE 2/4/15

SPONSOR Gentry LAST UPDATED _____ HB 214

SHORT TITLE Public Corruption Offenses SB _____

ANALYST Sánchez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI			

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the District Attorneys (AODA)
 Public Defender Department (PDD)
 Attorney General’s Office (AGO)
 New Mexico Sentencing Commission (NMSC)
 Secretary of State (SOS)

SUMMARY

Synopsis of Bill

HB 214 is anti-corruption legislation that amends various criminal statutes to increase the penalties for certain public corruption offenses.

HB 214 seeks to enhance the penalties for certain public corruption offenses, defines “kickback” and “public entity” and creates a new statute regarding the publication and dissemination of information relating to public corruption offenses and corrupt practices.

The bill creates a one-year sentence enhancement for embezzlement, NMSA 1978, Section 30-16-8, paying or receiving public money for services not rendered, NMSA 1978, Section 30-23-2, and making or permitting false public voucher, NMSA 1978, Section 30-23-3, committed by a person elected or appointed to a position with or employed by a public entity. It further creates a third-degree felony offense for anyone convicted of these offenses whereby they knowingly and willfully violate the prohibition against submitting a bid or entering into a contract for services, construction or items of tangible personal property with a public entity or act as a lobbyist.

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The bill creates a one-year sentence enhancement for unlawful interest in a public contract, NMSA 1978, Section 30-23-6, if the value received by the person is more than fifty dollars. It further creates a third-degree felony offense for anyone convicted of this offense whereby they knowingly and willfully violate the prohibition against submitting a bid or entering into a contract for services, construction or items of tangible personal property with a public entity or act as a lobbyist. The bill contains some language substitutions, rendering it gender neutral.

The bill creates a one-year sentence enhancement for bribery of a public officer or public employee, NMSA 1978, 30-24-1 and demanding or receiving a bribe by public officer or public employee, NMSA 1978, Section 30-24-2. It further creates a third-degree felony offense for anyone convicted of these offenses whereby they knowingly and willfully violate the prohibition against submitting a bid or entering into a contract for services, construction or items of tangible personal property with a public entity or act as a lobbyist. The bill contains some language substitutions, rendering it gender neutral.

The bill creates a one-year sentence enhancement for soliciting or receiving illegal kickback, NMSA 1978, Section 30-41-1 and offering or paying illegal kickback, NMSA 1978, Section 30-41-2. It further creates a third-degree felony offense for anyone convicted of these offenses whereby they knowingly and willfully violate the prohibition against submitting a bid or entering into a contract for services, construction or items of tangible personal property with a public entity or act as a lobbyist. The bill clarifies that the conduct at issue can be direct or indirect.

Kickback means a percentage of income given to a person in a position of influence as payment for having made the income possible. Public Entity is defined as the state or one of its agencies, departments, institutions or political subdivisions.

A new statute, Publication and Dissemination of Information Relating to Public Corruption Offenses and Other Corrupt Practices, would require all public entities to post in a conspicuous place all offenses deemed public corruption offenses as a means of providing notice.

The effective date of the bill is July 1, 2015.

FISCAL IMPLICATIONS

According to the AODA, the district attorneys will incur additional costs as the amendments in HB 214 will require additional findings to support the enhanced sentences. Moreover, HB 214 creates new crimes for persons convicted under those eight statutory changes that knowingly and willfully seek state contracts or act as lobbyists. The amount of the additional costs is unknown, and depends on the number of cases brought under this legislation.

New and additional crimes will also result in increased costs for law enforcement and the court system, and increased incarceration will result in increased costs for the corrections department.

PPD believes it is unlikely it will be appointed to represent persons charged with the crimes outlined in this bill.

SIGNIFICANT ISSUES

In its response, AODA points out that Section 9 of HB 214 requires state entities to post a list of “other corrupt practices,” but does not define that term.

The SOS points out that the bill provides a more clear definition of kickback.

ADMINISTRATIVE IMPLICATIONS

According to AODA, the district attorneys will need to evaluate cases brought under the 8 amended statutes to determine if the state should seek enhanced penalties, or if the new crimes apply. The litigants and courts will need to develop applicable jury instructions.

ABS/je