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FISCAL IMPACT REPORT

SPONSOR SJC **ORIGINAL DATE** 2/26/15
LAST UPDATED _____ **HB** _____
SHORT TITLE Fraud Against Taxpayers Definitions **SB** 208/SJCS
ANALYST Malone

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the State Auditor (OSA)

New Mexico Municipal League (NMML)

Public Education Department (PED) (on original bill)

Department of Finance and Administration (DFA) (on original bill)

SUMMARY

Synopsis of SJC Substitute

The Senate Judiciary Committee substitute for Senate Bill 208 amends the Fraud Against Taxpayers Act, NMSA 1978 Section 44-9-2 to add “political subdivisions” to the act. The bill defines “political subdivision” as a political subdivision of the state or a charter school.

The bill also includes “charter school” under the definition of “employer.”

Sections 44-9-3 through 44-9-10 and Section 44-9-12 are all amended to incorporate political subdivisions appropriately for the purpose of false claims and permit political subdivisions to investigate or bring suit, at the discretion of the attorney general, in the instance of a false claim.

FISCAL IMPLICATIONS

Previously proposed amendments to the Fraud Against Taxpayers Act (SB 153 and SB 551 in 2013, HB 314 in 2011) have been analyzed as having no known fiscal impact on the State, although amending the Act could increase recovery of funds lost otherwise through fraud.

SIGNIFICANT ISSUES

The Fraud Against Taxpayers Act essentially provides for criminal penalties for people who make false or fraudulent claims for payment, or who conspire to defraud the state or any political subdivision. The person found guilty under this statute is also liable for 3 times the damages sustained by the political subdivision and a civil penalty of between \$5,000 and \$10,000. The law also allows the political subdivision to intervene in false claims cases involving its funds.

TECHNICAL ISSUES

OSA expresses concern about how the bill expressly adds charter schools to the definition of “political subdivision.” The agency is concerned that the addition could result in less accountability under Section 44-9-4, which authorizes the Attorney General to delegate to the political subdivision the authority to investigate or bring a civil action to enforce the Act. Because of the express addition of “charter schools” to the definition of “political subdivision,” this provision may allow the Attorney General to delegate investigative and enforcement authority to the charter school itself, but not to its chartering authority. There is concern that if this is the case, there are fewer monetary and human resources in charter schools than in their chartering authority. OSA raises the same concern about the definition of “political subdivision” in the *qui tam* provisions of the bill.

AMENDMENTS

OSA suggests revising the bill’s proposed changes to Section 44-9-2(E) to state: “political subdivision” means a political subdivision of the state, and each charter school is part of the agency or political subdivision of the state that holds chartering authority over such charter school.”

CEM/bb/je