

<b>LFC Requester:</b>	<b>Caroline Malone</b>
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**AGENCY BILL ANALYSIS  
2015 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

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*{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}*

**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

Check all that apply: Date February 26, 2015  
**Original**        **Amendment**        **Bill No:** SB208s  
**Correction**        **Substitute**   

**Sponsor:** Sen. William H. Payne    **Agency Code:** Attorney General's Office  
**Short Title:** Relating to Fraud Against Taxpayers    **Person Writing:** Sally Galanter, AAG  
**Title:** Taxpayers    **Phone:** 505-222-9087    **Email:** sgalanter@nmag.gov

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		

(Parenthesis ( ) Indicate Expenditure Decreases)

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

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

<b>Total</b>						
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(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
 Duplicates/Relates to Appropriation in the General Appropriation Act:

**SECTION III: NARRATIVE**

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Letter. This is a staff analysis in response to an agency’s, committee’s, or legislator’s request.

**BILL SUMMARY**

Synopsis:

Senate Bill 208 as amended by the Senate Public Affairs Committee proposes to clarify that the Fraud against Taxpayers Act, NMSA 1978, Sections 44-9-2 through 44-9-12, applies to political subdivisions of the state as well as the state. The bill adds throughout the Act references to political subdivisions, which by definition includes charter schools. The changes to the Act provide “political subdivisions” independent authority to pursue and settle Fraud Against Taxpayers actions on their own without the knowledge or input of the Attorney General. There are also a few changes in the bill that would simply make grammatical and technical corrections to the Act.

Section 1(A) of the bill would amend the definition of “claim” in NMSA 1978, Section 44-9-2(A), to include “or a political subdivision” along with the state. Section 1(E) of the bill would introduce new language defining “political subdivision” as a “political subdivision of the state or a charter school.”

Sections 2-10 of the bill would include “political subdivision” in language in the statute that currently refers solely to the “state” to include “political subdivisions” within the application of the Act.

Section 3 of the bill also provides a political subdivision with the same authority as the attorney general in pursuing violations of the Fraud Against Taxpayers Act. Subsection 3(B) includes the additional wording, “If the attorney general has delegated authority to a state agency, all references to the attorney general in the Fraud Against Taxpayers Act shall apply to the delegee.” This additional language provides that when the attorney general delegates authority to a state agency, that agency has similar authority as the attorney general would in pursuing the action.

Sections 6(F)-(G) of the bill adds new language to include that proceeds and penalties collected by “school districts or charter schools” shall be handled in the same manner as proceeds/penalties collected by the state, while proceeds and penalties collected by counties or municipalities shall be “deposited in accordance with the direction of the governing body of the county or municipality.” It would appear by these additions in subsection F and G that “political subdivision” may be limited to school districts, charter schools, counties and municipalities.

**FISCAL IMPLICATIONS**

Providing political subdivisions the ability to pursue an action for violations of the Fraud Against Taxpayers Act independent of the Attorney General might permit additional recovery of funds that were fraudulently diverted. Additionally, if the Attorney General decides not to pursue

action pursuant to the Act but a political subdivision does do so, that would conserve the Attorney General's Office's human and monetary resources for other responsibilities. Currently, however, Section 44-9-7 (E) (3) allows for remaining proceeds to be divided one-half to the Attorney General for use in pursuing claims under the Act. The proposed bill would provide that same allocation if the proceeds are collected by the state, school districts or charter schools, but eliminates any allocation to the Attorney General if the proceeds are collected by counties or municipalities.

**SIGNIFICANT ISSUES:**

The Fraud against Taxpayers Act prohibits knowingly presenting a false claim for payment or providing false records to obtain payment and/or making false statements to obtain payment from the state. The Act allows a private individual or the government to bring a qui tam action on behalf of the government and to sue another for alleged fraud under the Act. The Act makes clear that the state as well as any of its political subdivisions is included in the term "employer" and would be equally responsible for violations of the Act.

The Act's (and the bill's) definition of a "political subdivision of the state" leaves the matter, as to an accurate definition, to judicial interpretation. The question that should be answered is how broad or how limited the legislature would construe its definition. The definition of "political subdivision" could be limited to "school districts, charter schools, counties and municipalities" as might be suggested in Section 6(F)-(G) of the bill, or as broad as could be implied from other statutes and case law defining the term. "Political subdivision" is a legally significant term that the legislature may choose to define more precisely.

**PERFORMANCE IMPLICATION**

None for this office.

**ADMINISTRATIVE IMPLICATIONS**

None for this office.

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

N/A

**TECHNICAL ISSUES**

None.

**OTHER SUBSTANTIVE ISSUES**

None.

**ALTERNATIVES**

N/A

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status Quo.

**AMENDMENTS**

See above.