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FISCAL IMPACT REPORT

ORIGINAL DATE 1/27/09

SPONSOR Taylor LAST UPDATED _____ HB 244

SHORT TITLE Prohibit Contractor Contribution Solicitation SB _____

ANALYST Wilson

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total	\$0.1	\$0.1	\$0.1		Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB99, HB151, HB252, SB49, SB94, SB116, SB139, SB140 & SB163

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Attorney General's Office (AGO)

Department of Transportation (DOT)

State Treasurers Office (STO)

SUMMARY

Synopsis of Bill

House Bill 244 enacts a new section of the Campaign Reporting Act to prohibit contributions and the solicitation of contributions by the principals of state contractors and prospective state contractors to or from:

- (1) a candidate or candidate committee established by a candidate for nomination or election to a state public office; or
- (2) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates.

The bill provides the contribution and solicitation limitations shall remain in effect for two years following the expiration of a state contract. The bill further provides that, on or after July 1, 2011, if a principal of a prospective contractor has contributed in the two years immediately preceding the issuance of a request for bids or proposals, the state is prohibited from entering into a contract with that prospective state contractor.

HB 244 also provides that if a principal of a state contractor makes or solicits a prohibited contribution, the state may, with regard to a state contract executed on or after the effective date of the Act, void the existing contract, and no state agency or instrumentality of the state shall award that contractor a state contract for two years after the election for which the contribution is made or solicited.

The bill prohibits a state public officer, candidate for state public office or any agent of a state public officer or candidate from soliciting contributions on behalf of a candidate, a candidate committee or a political committee from a principal of a contractor or prospective contractor.

HB 244 does not restrict a principal of a contractor or prospective contractor from establishing a candidate committee for the principal's own campaign or from soliciting contributions from persons not prohibited under the Act from making contributions.

HB 244 also amends Section 1-19-26 NMSA 1978 to define principal of a state contractor or prospective state contractor, prospective state contractor, state agency, state agreement or contract with the state, having a value of \$20,000 or more, or a combination or series of agreements or contracts having a value of \$50,000 or more in a fiscal year.

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary will be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

SIGNIFICANT ISSUES

The AGO has provided the following:

This bill seeks to address problems affecting political campaign contributions by contractors and potential contractors with the state. The bill may present, however, serious First Amendment speech issues that may make it vulnerable to legal challenge. For example, can a contractor be required to waive First Amendment political speech and be prohibited from making campaign contributions as a condition of having a state contract?

Another conspicuous constitutional problem is the ban on contributions by spouses and dependent children. The bill may also impinge on the free speech of employees who have "managerial or discretionary responsibilities"; this definition could potentially encompass many employees.

The bill may overreach by mixing all state contractors into the same category. For example, should a contractor with one branch of government (i.e. the Judiciary) be prohibited from giving to a candidate belonging to another separate and independent branch of government (i.e. the Executive)? Each branch is independent and does not influence the award of contracts by another branch.

This bill does not address the serious circumstance of money given to non electoral entities (i.e. charities, entities that are not involved with elections, etc.) organized or controlled by elected officials or candidates for elected office. The bill only regulates “contributions” which the Campaign Reporting Act defines as a thing of value “that is made or received for a political purpose”.

A more effective approach to ending “Pay to Play” might be to pass legislation which limits campaign contributions. Limitations on contributions will have far less ramifications on First Amendment speech. Campaign limits will remove the temptation to award state contracts in exchange for large donations (\$100,000 contributions, for example), and the improper appearance of such connections even if there is no proof of an illegal quid pro quo arrangement.

Failure to address pay to play activity will reinforce this appearance of impropriety in the public’s mind, thereby undermining public trust in government.

ADMINISTRATIVE IMPLICATIONS

DOT notes the provisions of this bill will require that every state contract include the portions of the statute. Specifically, each contract will notify each contractor that no principal of a state contractor may make a contribution to or solicit contributions on behalf of a candidate or candidate committee or candidate’s political committee.

In addition, every contract will notify each contractor that if a state contractor makes or solicits a contribution prohibited by the Act, the contracting state agency may void the existing contract with that contractor, and no state agency shall award that state contractor a state contract or an extension or an amendment to a state contract for two years after the election for which the contribution is made or solicited.

RELATIONSHIP

HB relates to:

- HB 99, Prohibit Former Legislators as Lobbyists
- HB 151, State Ethics Commission Act
- HB 252, Political Contributions To Candidates
- SB 49, Governmental Conduct Act For Public Officers
- SB 94, Prohibit Former Legislators as Lobbyists
- SB 116, Limit Contributions to Candidates & PACs
- SB 139, State Ethics Commission Act
- SB 140, State Ethics Commission Act
- SB 163, Prohibit Former Legislators as Lobbyists

TECHNICAL ISSUES

The AGO has stated that this bill should amend the Procurement Code instead of the Campaign Reporting Act since this existing statute already regulates “pay to play” activity.

DW/mt