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## FISCAL IMPACT REPORT

**SPONSOR** Feldman      **ORIGINAL DATE** 2/5/06  
**LAST UPDATED** 2/14/06      **HB** \_\_\_\_\_  
**SHORT TITLE** Contributions by Procurement Contractors      **SB** 344/aSRC/aSPAC/aSFl#1/aSFl#2/aHBIC  
**ANALYST** Medina

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY06	FY07		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to the Procurement Code

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

General Services Department (GSD)  
 Administrative Office of the District Attorneys (AODA)  
 Public Education Department (PED)  
 Corrections Department (NMCD)  
 Environment Department (NMED)

#### No Response Received From

Attorney General (AGO)

### SUMMARY

#### Synopsis of HBIC Amendments

The amendments adopted by the House Business and Industry Committee strike Senate Rules Committee Amendment 4 and Senate Floor Amendments 1 and 2. The HBIC amendments also add language stipulating that contributions given by the prospective contractor or a family member or a representative of the prospective contractor are covered by the provisions of the act. This reference is inserted in all the applicable section of the bill, thus requiring that all campaign contributions made by these individuals be reported.

The HBIC amendments provide that that an executed contract shall be void if:

1. A prospective contractor fails to submit a fully completed disclosure statement pursu-

- ant to the provisions of the bill;
2. a prospective contractor or family member of representative of the prospective contractor gives a campaign contribution.

The HBIC amendments define the following terms:

“family members” are spouse, father, mother, father-in-law, mother-in-law, daughter-in-law or son-in-law;

“pendency of the procurement process” means the time period commencing with the public notice of the for proposals and ending with the award of the contract of the cancellation of the request for proposals, and

“representative of the prospective contractor” means and officer or director of the corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

#### Synopsis of SFI Amendment #2

Senate Floor Amendment #2 to Senate Bill 344, as amended, refines the definition of a prospective contractor to include the employees, family members or agent of the prospective contractor.

#### Synopsis of SFI Amendment #1

Senate Floor Amendment #1 to Senate Bill 344, as amended, requires appointees to the State Board of Finance to disclose campaign contribution information. Appointees are required to disclose all campaign contributions made to a political candidate in the five years prior to the date on which his or her appointment is announced, all federal and state tax liens filed against the appointee in the ten years prior to the date on which his or her appointment is announced, and all lawsuits and judgments filed against the appointee during the ten years prior to the date on which the appointment is announced.

#### Synopsis of SPAC Amendment

Senate Public Affairs Committee Amendment to Senate Bill 344 as amended strikes the emergency clause.

#### Synopsis of SRC Amendment

Senate Rules Committee Amendment to Senate Bill 344 changes the prohibition that a campaign contribution or other thing of value be given by a potential contractor to an applicable public official to a prohibition of the same by a prospective contractor to an applicable public official. The amendment clarifies that this prohibition applies to the period during the pendency of the procurement process or to the period during the pendency of negotiations for a sole source or small purchase contract. The amendment also defines “pendency of the procurement process” as: the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals. Finally, the amendment strikes the emergency clause from the original bill.

### Synopsis of Original Bill

Senate Bill 344 amends the Procurement Code (Section 13-1-1 through 13-1-172 NMSA 1978) with new language requiring prospective contractors with the state or local public bodies to disclose all campaign contributions over two hundred fifty dollars (\$250.00) made to applicable state and local public officials during the two years prior to either submitting a competitive sealed proposal or, in the case of a sole source or small purchase contract, during the two years prior to entering into a contract with the state.

The bill further prohibits prospective contractors to make a campaign contribution or give any other thing of value to an applicable state or local official during the “pendency” of the procurement process, including during the negotiations of the procurement process. This bill carries and emergency clause.

### **SIGNIFICANT ISSUES**

While the bill does include a provision canceling or voiding contracts if a prospective contractor fails to submit a fully completed disclosure statement or make a campaign contribution or other thing of value to an applicable public official during the “pendency” of the procurement process, this bill does not prescribe penalty or enforcement provisions for violating the prohibition on making a campaign contribution of over two hundred fifty dollars (\$250.00) within a two year period prior to submitting a sealed proposal for a contract award.

A number of key terms are not clearly defined by the bill including: “campaign contribution”, “pendency of the procurement process”, “applicable public official”

### **CONFLICT**

Senate Bill 23, while it relates specifically to investment agencies and public officials in investment agencies, would make it a fourth degree felony for any “state agent” or candidate for state office to knowingly solicit or accept anything of value (excluding the cost of refreshments up to \$25 per day or refreshments at a public receptions or other public social function that are available to all guests equally) from an “investment agent” doing business with a state agent.

### **ALTERNATIVES**

Enforcement provisions requiring that a state contract with a contractor who violates the provisions of the bill be canceled or voided. Also, penalties for violation of the provisions of the bill should be prescribed.

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

Current campaign disclosure laws will continue to identify campaign contributions given by prospective contractors to elected officials.