

**FORTY-NINTH LEGISLATURE
SECOND SESSION, 2010**

February 17, 2010

Mr. Speaker:

Your **JUDICIARY COMMITTEE**, to whom has been referred
SENATE BILL 28, as amended

has had it under consideration and reports same with recommendation that it **DO PASS**, amended as follows:

1. Strike Senate Floor Amendment number 1.
2. Strike Senate Rules Committee Amendment 3.
3. On page 1, line 14, strike both occurrences of "AND LOCAL".
4. On page 1, line 16, strike "REPEALING" and insert in lieu thereof "AMENDING".
5. On page 1, line 20, strike "AND LOCAL".
6. On page 1, line 24, strike "with" and insert in lieu thereof "entered into through a request for proposals or invitation for bids issued by".
7. On page 1, line 24, strike "or a local public body".
8. On page 2, line 24, strike "local public officer or".
9. On page 2, line 24, strike "either" and insert in lieu thereof "a state public officer".
10. On page 3, line 1, strike "or local public body".
11. On page 3, strike lines 5 through 18 in their entirety.
12. Renumber the succeeding paragraphs accordingly.
13. On page 3, lines 21 and 22, strike "or local public body".
14. On page 4, strike lines 1 through 8 in their entirety and insert in lieu thereof the following subparagraphs to read:

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"(a) a person who is a member of the board of directors of, or has an ownership interest in, a contractor or prospective contractor, except for a person who owns less than five percent of the shares of a contractor or prospective contractor that is a publicly traded corporation;

(b) a person who is the chief executive officer of a contractor or prospective contractor;

(c) an agent, including a lobbyist subject to the Lobbyist Regulation Act, seeking a contract for a contractor or prospective contractor; or

(d) a political committee established by or on behalf of a person described in this paragraph;"

15. On page 4, line 11, strike "or a local public body".

16. On page 4, line 13, strike "or a local public body".

17. On page 4, line 18, before the semicolon, insert "or a health care professional providing services under a medicaid provider agreement".

18. On page 5, line 9, before the semicolon, insert "or a health care professional providing services under a medicaid provider agreement".

19. On page 5, line 12, after "executive", insert ", judicial".

20. On page 5, line 18, strike "or a local public body".

21. On page 6, line 4, strike "or local public body".

22. On page 6, line 7, strike "A" and insert in lieu thereof "B".

23. On page 6, lines 8 and 9, strike "or local public body".

24. On page 6, line 12, after "officer", insert "of the state agency soliciting the contract".

25. On page 6, strike lines 18 through 25 in their entirety.

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26. Reletter the succeeding subsections accordingly.

27. On page 7, line 10, after "officer", insert "of the state agency soliciting the contract".

28. On page 7, line 10, strike "A" and strike lines 11 through 14 in their entirety.

29. On page 7, line 16, strike "or local public body".

30. On page 7, between lines 21 and 22, insert the following subsections to read:

"H. A principal of a state contractor shall not make a contribution to or solicit a contribution for the benefit of a state public officer of the state agency that has entered into a contract with the contractor during the term of the contract.

I. If a principal of a state contractor inadvertently makes a contribution that would otherwise bar the contractor from receiving a contract or makes a contribution prohibited by Subsection H of this section, the principal may request full reimbursement from the recipient, and, if reimbursement is received within thirty days after the date on which the contribution was made, the state contractor shall be eligible to receive a contract or shall no longer be in violation, as appropriate. Any contribution made during the pendency of the procurement process shall be presumed not to be made inadvertently."

31. Reletter the succeeding subsections accordingly.

32. On page 8, lines 6 and 7, strike "or local public body" and insert in lieu thereof "agency".

33. On page 8, line 7, strike "or local".

34. On page 8, line 10, strike "Subsection G" and insert in lieu thereof "Subsection F or H".

35. On page 8, strike lines 14 and 15 in their entirety and insert a new section to read:

"Section 3. Section 13-1-191.1 NMSA 1978 (being Laws 2006, Chapter 81, Section 1, as amended) is amended to read:

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"13-1-191.1. CAMPAIGN CONTRIBUTION DISCLOSURE AND PROHIBITION.--

A. This section applies to prospective contractors with ~~[the state or]~~ a local public body.

B. A prospective contractor subject to this section shall disclose all campaign contributions given by the prospective contractor or a family member or representative of the prospective contractor to an applicable public official of ~~[the state or]~~ a local public body during the two years prior to the date on which a proposal is submitted or, in the case of a sole source or small purchase contract, the two years prior to the date on which the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor or a family member or representative of the prospective contractor to the public official exceeds two hundred fifty dollars (\$250) over the two-year period.

C. The disclosure shall indicate the date, the amount, the nature and the purpose of the contribution. The disclosure statement shall be on a form developed and made available electronically by the department of finance and administration to all ~~[state agencies and]~~ local public bodies. The ~~[state agency or]~~ local public body that procures the services or items of tangible personal property shall indicate on the form the name or names of every applicable public official, if any, for which disclosure is required by a prospective contractor for each competitive sealed proposal, sole source or small purchase contract. The form shall be filed with the ~~[state agency or]~~ local public body as part of the competitive sealed proposal or, in the case of a sole source or small purchase contract, on the date on which the contractor signs the contract.

D. A prospective contractor submitting a disclosure statement pursuant to this section who has not contributed to an applicable public official, whose family members have not contributed to an applicable public official or whose representatives have not contributed to an applicable public official shall make a statement that no contribution was made.

E. A prospective contractor or a family member or representative of the prospective contractor shall not give a campaign contribution or other thing of value to an applicable

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public official or the applicable public official's employees during the pendency of the procurement process or during the pendency of negotiations for a sole source or small purchase contract.

F. A solicitation or proposed award for a proposed contract may be canceled pursuant to Section 13-1-181 NMSA 1978 or a contract that is executed may be ratified or terminated pursuant to Section 13-1-182 NMSA 1978 if:

(1) a prospective contractor fails to submit a fully completed disclosure statement pursuant to this section; or

(2) a prospective contractor or family member or representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process.

G. As used in this section:

(1) "applicable public official" means a person elected to an office, or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal;

(2) "family member" means a spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law of:

(a) a prospective contractor, if the prospective contractor is a natural person; or

(b) an owner of a prospective contractor;

(3) "pendency of the procurement process" means 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;

(4) "prospective contractor" means a person or business that is subject to the competitive sealed proposal process

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set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person or business qualifies for a sole source or small purchase contract; and

(5) "representative of the prospective contractor" means an officer or director of a 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."".

Respectfully submitted,

Al Park, Chairman

Adopted _____
(Chief Clerk)

Not Adopted _____
(Chief Clerk)

Date _____

The roll call vote was 10 For 2 Against

Yes: 10

No: Alcon, Chasey

Excused: Martinez, K., Stewart

Absent: None

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