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FISCAL IMPACT REPORT

SPONSOR Feldman **ORIGINAL DATE** 02/06/10
LAST UPDATED 02/17/10 **HB** _____

SHORT TITLE State Contractor Contribution Disclosure **SB** 28/aSRC/aSFI#1

ANALYST Ortiz

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY10	FY11		
	No Appropriation		

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB42, SB43, SB44, SB48, SB51 and SB68

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Finance and Administration (DFA)
 Office of the State Auditor (OSA)
 Administrative Office of the Courts (AOC)
 Department of Transportation (DOT)
 State Investment Council (SIC)
 Energy Minerals and Natural Resources (EMNRD)
 Employee Retirement Board (ERB)

SUMMARY

Synopsis of SFI#1 Amendment

The Senate Floor amendment clarifies that non-profit are also subject to Senate Bill 28.

Synopsis of SRC Amendment

The Senate Rules Committee amendment to Senate Bill 28 replaces references to DFA with General Services Department and amends Section 13-1-112 - Competitive Sealed Proposals – to include instructions for disclosure of contributions given by prospective contractors to public officials.

Synopsis of Original Bill

Senate Bill 28 requires prospective contractors to register with DFA; requiring disclosure of and prohibiting certain contributions by prospective state and local contractors; providing for online access of disclosure statements and registration information; repealing and enacting sections of NMSA 1978.

FISCAL IMPLICATIONS

DFA points out that there are large fiscal implications to this legislation but no appropriation for DFA to set up and maintain a searchable, public-access database. The agency also questions if the expense provides value.

SIGNIFICANT ISSUES

SB 28 appears to lack any sort of civil or criminal penalty for a failure to comply by the contractor or the contracting agency, other than cancellation of the contract. While it certainly offers greater transparency to the contract awarding process, there is no punishment for any contractor who knowingly falsifies his or her reporting of the required data.

Other significant issues reported by DFA include those that already exist in the current law. Many solicitations do not entail a public official to whom contributions may have been made (i.e., agency contracts where the head of the agency, an appointed person, would never receive a contribution, or those situations where an appointed board makes the decision on a contractor, persons who do not receive contributions, and yet such contracts can be heavily influenced by those persons making the appointments; in fact, most of the situations that have been so loudly reported in the press have been of just this nature). One imagines DFA's rule might take such situations into account but there is a danger then that the rule would overwrite the law itself.

Another issue that exists under the current law and is not addressed in this version is the matter of who is a "principal" of the contractor. This raises a multitude of questions, especially from large companies spread throughout the country. They often argue that they are unable to even know if some person in one of their offices made a donation which they then fail to report. Questions on this issue crop up all the time. Companies have been known to opt out of responding to offers and bids due to being incapable of honestly and fully documenting this matter.

Another issue, related to this, is the penalty for failure to properly or fully document a company's contributions. The contract becomes voidable, which appears to be a fairly light penalty. However, in view of the previous issue (large companies feeling incapable of fully reporting on the matter), this penalty is, perhaps, not so out of line with the situation at hand as it would at first appear.

PERFORMANCE IMPLICATIONS

SB28 provides clarification regarding the prior requirement of contribution disclosures by contractors and prospective contractors and establishes procedures for ensuring consistent implementation across state agencies.

ADMINISTRATIVE IMPLICATIONS

SIC and DFA report increased duties and responsibilities.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

BILL NUMBER	INTRODUCED BY	COMMENTS/SUMMARY OF BILL
SB 42	Sander Rue	Creates a public database containing information regarding just about everything state government does every day (budgets, expenditures, salaries, revenue, etc.) along with links to other websites (delinquent taxpayers, revoked licensees, delinquent child support payors, etc.)
SB 43	Linda Lopez & Bill O'Neill	Sets up an Ethics Commission to oversee violations of state law and ethical standards; sets up the Commission in an almost certain deadlock situation; provides no funding though it allows the Commission to hire personnel and contract for services.
SB 44	Tim Eichenberg	Enlarges Governmental Conduct Act to include local entity public officers and employees
SB 48	Timothy Keller	Adds and makes changes to the Campaign Reporting Act including clarifying definitions
SB 51	Eric Griego	Sets up a public financing methodology for all covered campaigns (all elected offices in state except PRC)
SB 68	Dede Feldman	Changes definitions in lobbying in the lobbying regulation act

TECHNICAL ISSUES

Section J indicates that a contract “may be cancelled...or terminated if it is in the best interests of the state or local public body...” It does not indicate who or what entity will decide whether it is in the best interest of the agency involved, or offer any type of appeals process for an “honest mistake”.

POSSIBLE QUESTIONS

DFA poses the following questions:

1. Is an on-line forum for this matter needed or necessary?
2. What value does it add to the current system?
3. Why is it necessary for DFA to oversee this matter?
4. Is there any evidence that the current system is not capturing all the information on contributions?
5. One would suppose the only added value would be revelation of contributions in a public forum and the concomitant supposition that such public view of the matter would curtail the worst of abuses. However, what evidence exists that this would be the case beyond supposition?

6. Given the amount of extra resources, funds, and time this would entail, is it worth the change?

EO/mew:svb:mew