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SENATE BILL 401

**50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

INTRODUCED BY

Linda M. Lopez

AN ACT

RELATING TO ELECTIONS; LIMITING THE AMOUNT OF CAMPAIGN  
CONTRIBUTIONS CONTRACTORS AND PROSPECTIVE CONTRACTORS MAY  
CONTRIBUTE IN AN ELECTION CAMPAIGN; PROVIDING FOR PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of the Election Code is enacted  
to read:

"[NEW MATERIAL] CAMPAIGN CONTRIBUTIONS--LIMITS ON  
CONTRACTORS.--

A. As used in this section:

(1) "contract" means an agreement or  
transaction with a state or local government agency having a  
value of fifty thousand dollars (\$50,000) or more, or a  
combination or series of such agreements or transactions having  
a value of fifty thousand dollars (\$50,000) or more, in an

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1 election cycle for:

2 (a) the rendition of services, including  
3 professional services;

4 (b) the furnishing of any material,  
5 supplies or equipment;

6 (c) the construction, alteration or  
7 repair of any public building or public work;

8 (d) the acquisition, sale or lease of  
9 any land or building;

10 (e) a licensing arrangement;

11 (f) a loan or loan guarantee; or

12 (g) the purchase of financial securities  
13 or instruments;

14 (2) "contractor" means a person that enters  
15 into a contract with a state or local government agency.

16 "Contractor" does not include a state agency or a political  
17 subdivision of the state or an employee of a state agency or  
18 political subdivision of the state, whether full- or part-time,  
19 in that person's capacity as an employee of the state or  
20 political subdivision of the state or a health care  
21 professional providing services under a medicaid provider  
22 agreement;

23 (3) "contribution" means a gift, subscription,  
24 loan, advance or deposit of money or other thing of value,  
25 including the estimated value of an in-kind contribution, that

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1 is made or received to promote the election or defeat of a  
2 candidate in an election, including payment of a debt incurred  
3 in an election campaign;

4 (4) "election cycle" means the period  
5 beginning on the day after an election for an office and ending  
6 on the day of the next election for that office;

7 (5) "general election" means the period  
8 beginning the day after the primary election for an office and  
9 ending on election day for that office;

10 (6) "local government agency" means an agency  
11 of a political subdivision of the state;

12 (7) "pendency of the procurement process"  
13 means the time period commencing on the day of the initial  
14 solicitation for a contract and ending with the award of the  
15 contract or the cancellation of the solicitation;

16 (8) "primary election" means the period  
17 beginning the day after the general election is held for an  
18 office and ending on the day the primary election is held for  
19 that office;

20 (9) "principal of a contractor" or "principal  
21 of a prospective contractor" means, in addition to the  
22 contractor or prospective contractor itself:

23 (a) a person who is a member of the  
24 board of directors of, or has an ownership interest in, a  
25 contractor, except for a person who owns less than five percent

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1 of the shares of a contractor that is a publicly traded  
2 corporation;

3 (b) a person who is employed as  
4 president, treasurer, executive vice president or senior vice  
5 president of a contractor that is a business entity;

6 (c) a person who is the chief executive  
7 officer of a contractor;

8 (d) the spouse or a dependent child of a  
9 person described in Subparagraphs (a) through (c) of this  
10 paragraph;

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

14 (f) a political committee established by  
15 or on behalf of a person described in this paragraph;

16 (10) "prospective contractor" means a person  
17 that submits a bid in response to a bid solicitation by a state  
18 or local government agency, a proposal in response to a request  
19 for proposals or a response to any other solicitation by a  
20 state or local government agency until the contract has been  
21 entered into. "Prospective contractor" does not include a  
22 state agency or a political subdivision of the state or an  
23 employee of a state agency or political subdivision of the  
24 state, whether full- or part-time, in that person's capacity as  
25 an employee of the state or political subdivision of the state

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1 or a health care professional providing services under a  
2 medicaid provider agreement;

3 (11) "solicitation" means a request to enter  
4 into a contract for services, personal property, real property  
5 or any other thing of value; and

6 (12) "state agency" means an office,  
7 department, board, council, commission, institution or other  
8 agency in the executive, judicial or legislative branch of  
9 state government, including an institution of the state.

10 B. A principal of a contractor that has, or  
11 prospective contractor that is seeking, a contract with a state  
12 agency shall not contribute to a candidate for a state office  
13 in the branch of government in which that state agency is  
14 located, including the candidate's campaign committee, an  
15 amount that will cause that principal's total contributions to  
16 the candidate to exceed fifty dollars (\$50.00) during the  
17 primary election or fifty dollars (\$50.00) during the general  
18 election.

19 C. Except as provided in Subsections D and E of  
20 this section, a principal of a contractor that has, or  
21 prospective contractor that is seeking, a contract with a local  
22 government agency shall not contribute to a candidate for an  
23 elective office of the political subdivision of which the local  
24 government agency is a part, including the candidate's campaign  
25 committee, an amount that will cause that person's total

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1 contributions to the candidate to exceed fifty dollars (\$50.00)  
2 during the primary election or fifty dollars (\$50.00) during  
3 the general election.

4 D. If a political subdivision of the state does not  
5 hold a primary election for nominations to an elective office  
6 of the political subdivision, a principal of a contractor that  
7 has, or prospective contractor that is seeking, a contract with  
8 a local government agency of that political subdivision shall  
9 not contribute to a candidate for that elective office of that  
10 political subdivision, including the candidate's campaign  
11 committee, an amount that will cause that principal's total  
12 contributions to the candidate to exceed fifty dollars (\$50.00)  
13 during the election cycle for that office.

14 E. The provisions of this section shall not apply  
15 to elections in a political subdivision that has imposed a  
16 contribution limit on contractors equal to or less than the  
17 amount imposed by this section.

18 F. If a principal of a prospective contractor or  
19 principal of a contractor inadvertently makes a contribution in  
20 excess of the limits imposed by this section, the principal may  
21 request, and the recipient shall make, a full reimbursement of  
22 the contribution, and, if reimbursement is received within  
23 thirty days after the date on which the contribution was made,  
24 the contractor shall be eligible to receive a contract or shall  
25 no longer be in violation, as appropriate. Any contribution

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1 made during the pendency of the procurement process shall be  
2 presumed not to be made inadvertently.

3 G. A solicitation for or proposed award of a  
4 contract may be canceled, or a contract that is executed may be  
5 terminated, if it is in the best interests of the state or  
6 political subdivision of the state when a prospective  
7 contractor or a contractor makes a contribution in excess of  
8 the limits imposed by this section and does not request  
9 reimbursement within thirty days of making the contribution."