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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/25/11

SPONSOR SJC LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Contractor Registration & Disclosure SB 31/SJCS

ANALYST Wilson

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY10	FY11	FY12	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		\$1.0-\$5.0	\$1.0-\$2.0	\$2.0-\$7.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

\*Senate Bill 31 is endorsed by the Courts, Corrections and Justice Committee.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General (AGO)  
 Corrections Department (CD)  
 Department of Transportation (DOT)  
 Department of Workforce Solutions (DWS)  
 General Services Department (GSD)  
 New Mexico Finance Authority  
 Public Education Department (PED)  
 Regulation & Licensing (RLD)

### SUMMARY

#### Synopsis of Bill

The Senate Judiciary Committee substitute for Senate Bill 31 requires all prospective state contractors and current state and local contractors to register with the GSD on a form developed by GSD and available on its website. This registration form must include general information such as names, principals of the business, current contracts with a state agency, etc. More importantly, the bill requires the prospective contractor to disclose all campaign contributions made by a principal to a state public officer of the state agency soliciting the contract during the two years prior to the date the prospective contractor responds to a state agency solicitation if the aggregate total contributions exceed \$250 over the two year period. The same disclosure is required for a prospective contractor for a local public body.

The disclosure must include the date, amount and nature of the contributions, and the person receiving the contribution. The disclosures will be made online with GSD, and GSD must post the disclosures on its web site. A principal of a prospective contractor shall not make a contribution or solicit a contribution for a public officer at the state agency soliciting the contract during the pendency of the procurement process. If the prospective contractor is awarded the contract, he must update all registration and disclosure information quarterly during the contract term. Further, the prospective contractor awarded the contractor must not make a contribution or solicit a contribution for the benefit of a public officer of the applicable state agency during the contract term.

The bill allows the principal of a prospective contractor and the principal of a contractor awarded a contract who inadvertently made a prohibited contribution to request and receive full reimbursement from the recipient, and if reimbursement is received within 30 days after the contribution was made, the prospective contractor becomes eligible to contract or retains its contract.

The bill requires the appropriate purchasing agent or contract evaluation committee to review the information submitted by the prospective contractor and to then certify that the prospective contractor has properly registered with GSD and submitted the required list of contributions.

A state agency may cancel a proposed award of a contract or terminate a contract if it is in the best interests of the state when a prospective contractor or contractor fails to submit a fully completed disclosure statement.

The substitute bill requires the New Mexico Finance Authority and the New Mexico Mortgage Finance Authority to adopt policies that have the same effect as the requirements of this bill..

The Department of Finance and Administration shall issue all rules necessary to carry out the provisions of this bill.

## **FISCAL IMPLICATIONS**

GSD will have to create and maintain a data base. The cost of this is minimal.

## **SIGNIFICANT ISSUES**

AGO provided the following:

This bill addresses problems affecting political campaign contributions by contractors and potential contractors with the state.

This bill improves the current Procurement Code by creating more transparency--the bill requires information to be accessible to the public and to be updated regularly. This bill also expands the current law by including cabinet secretaries in the definition

Because the Procurement Code includes over 30 separate exemptions, this bill creates a separate stand-alone statute that avoids these loopholes.

Currently each state agency has contractors submit a campaign contribution form for a contractors file. Contribution forms remain in the files ready for audit but are not reviewed by any oversight agencies.

DWS notes that disclosure becomes the responsibility of prospective contractors and existing contractors.

CD asks who determines if the termination of the contract is in the best interests of the state—the state agency? Some state public officers or others may attempt to keep the state agencies from terminating a contract with a contractor who made political contributions to them even if the agency believes it should terminate the contract. The bill does not prevent this sort of influence from legislators and other politicians. The bill also does not define or explain the term “in the best interests of the state.” Disputes or litigation may arise between the agency and the contractor over what this term means, and over whether or not the agency was acting in the best interests of the state when it cancelled or terminated a contract.

### **ADMINISTRATIVE IMPLICATIONS**

Personnel from the covered agencies will have to carefully check the GSD website to review the contributions and disclosures made by prospective contractors during its procurement processes. Agencies affected by this bill can handle the provisions of this bill with existing staff as part of ongoing responsibilities.

### **OTHER SUBSTANTIVE ISSUES**

PED notes that registration of contractors, depending upon the level of disclosures required by the GSD may actually deter some qualified contractors from registering. This measure adds more government bureaucracy to the procurement process.

### **ALTERNATIVES**

CD suggests the bill clearly define the term “in the best interests of the state” in such a way as to give state agencies broad authority and discretion to cancel or terminate the contracts when needed.

DW/bym:mew:svb