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FISCAL IMPACT REPORT

ORIGINAL DATE 03/04/11

SPONSOR Lopez LAST UPDATED _____ HB _____

SHORT TITLE Contractor Campaign Contribution Caps SB 401

ANALYST Aledo

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$12.0	\$1.0	\$13.0	\$1.0 - recurring	General

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB 31 and SB 181

SOURCES OF INFORMATION

LFC Files

Responses Received From

Secretary of State (SOS)
 General Services Department (GSD)
 New Mexico Corrections Department (NMCD)
 Attorney General's Office (AGO)
 Department of Health (DOH)

SUMMARY

Synopsis of Bill

Senate Bill 401 adds a new section of the Election Code. The section prohibits contractors or prospective contractors from making contributions in excess of fifty dollars (\$50) during the primary election or fifty dollars (\$50) during the general election to candidates seeking a state office in the same branch of government as the contract is held, or a candidate for local office in the same political subdivision as the contract is held.

The bill includes definitions for “contract”, “contractor”, “contribution”, “election cycle”, “general election”, “local government agency”, “pendency of the procurement process”, “primary election”, “principal of a contractor or prospective contractor”, “prospective contractor”, “solicitation” and “state agency”.

The bill specifies that if a political subdivision has set a more restrictive limit on contributions from contractors then the provisions in this section do not apply. SB 401 also allows a contractor

who inadvertently or mistakenly makes a prohibited contribution; the contractor may request make a full reimbursement within 30 days of the initial date of contribution. The recipient must make a full reimbursement. If reimbursement is received within 30 days of the date of the contribution, the contractor shall be able to receive a contract or will no longer be in violation. However, any contribution made during the pendency of the procurement process shall be presumed not to be made inadvertently.

A solicitation for or proposed award for a contract may be canceled or a contract that is executed may be terminated if the contractor exceeds the limit.

FISCAL IMPLICATIONS

The Secretary of State's Office stated that enhancements to Campaign Finance Information System (CFIS) would be necessary to track the disclosure contributions of contractors. The SOS added that at this time, it would be difficult to track and identify illegal contributions, particularly those tied to local governments, unless a complaint was filed. The enhancement to the CFIS is estimated to cost \$12,000 with annual maintenance fee of \$1,000.

SIGNIFICANT ISSUES

The Attorney General's Office noted that SB 401 follows the suggestion of the Second Circuit Court of Appeals in Green Party of Connecticut v. Garfield, which recommended \$50 contribution limits on government contractors—instead of a ban—in order to avoid *quid pro quo* corruption of the procurement process.

Additionally, NMCD added that SB 401 does not define or explain the phrase “in the best interests of the state.” Questions may arise as to who should determine if the termination of a contract is in the best interests of the state.

The Department of Health expressed concerns regarding the capacity of agencies to determine if the contractor or prospective contractor has exceeded campaign contribution limits. DOH recommends the creation of a central clearing house that could determine potential contractors' campaign contributions prior to approval for the state's vendor list. Or perhaps, a process could be developed that would validate campaign contributions when a proposal is received at State Purchasing.

PERFORMANCE IMPLICATIONS

The General Services Department asserts that SB 401 would require all contract monitors to ensure that each contractor provides documentation certifying that any contributions during an election year not exceed \$50.00. This may have some legal impact on the department's General Counsel certifying legal sufficiency on each contract.

OTHER SUBSTANTIVE ISSUES

The New Mexico Corrections Department noted that if NMCD did terminate some of its contracts pursuant to this law, it may incur minimal to moderate additional expenses in re-initiating a new procurement process for the goods or services in question. Further, if the goods or services are needed on an emergency basis, an emergency contract would need to be

implemented. That emergency contract will probably cost more or be more expensive NMCD than the contract would otherwise have been.

AMENDMENTS

NMCD recommends either defining the phrase “in the best interests of the state,” or clarifying who would make the determination of whether or not the termination of the contract is in the best interests of the state.

MCA/svb