

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 02/04/09

SPONSOR Keller LAST UPDATED HB

SHORT TITLE Contributions from State Contractors SB 258

ANALYST Wilson

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total	\$0.1	\$0.1	\$0.1		Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 99, HB 151, HB 252, HB 253, HB 272, HB 495, HB 535, HB 553, SB 49, SB 94, SB 116, SB 128, SB 139, SB 140, SB 163, SB 262, SB 263, SB 269, SB 296 & SB 346

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
 Corrections Department (CD)
 Department of Transportation (DOT)
 General Services Department (GSD)
 Secretary of State (SOS)

SUMMARY

Synopsis of Bill

Senate Bill 258 prohibits a principal of a state contractor or prospective state contractor from making a contribution to or soliciting a contribution on behalf of a candidate for state public office or a candidate's political committee. The prohibition begins when a bid is submitted to the state and lasts for two years following the expiration of any state agency contract. For bid submissions after July 1, 2011, if a prohibited contribution has been made in the two year period before the bidding process the prospective state contractor will be prevented from contracting with the state and any contract entered into is can be cancelled by the contracting agency.

SB 258 defines "principal of a state contractor or prospective state contractor" as a person who is a member of the board of directors of a current or prospective state contractor, or who is employed in a specified senior management position, or who has any ownership interest in the business except for a person who owns less than five percent of the shares of a publicly traded company. The definition also includes the spouse or child of a principal or a political committee established by a principal.

The bill also prohibits state public officers and candidates for state public office, or their agents, from soliciting contributions from a principal of a state contractor or prospective state contractor. A principal is, however, allowed to establish a campaign committee for the principal's own campaign, and to solicit contributions from persons not prohibited from making contributions. Political subdivisions and state employees acting in an official capacity are not considered to be state contractors or prospective state contractors.

FISCAL IMPLICATIONS

GSD states that in cases of a violation, the tracking of suspended companies will require a system that is available to all state agencies and instrumentalities such as the SHARE system. A flag or notation capability will be required but it is unclear who will provide the resources for implementation.

CD notes that renewing contracts with vendors could possibly increase the cost of providing the service, especially with contracts state agencies have with their landlords around the state.

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary will be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

SIGNIFICANT ISSUES

The AGO states that this bill seeks to address problems affecting political campaign contributions by contractors and potential contractors with the state. The bill may present, however, serious First Amendment speech issues that may make it vulnerable to legal challenge. For example, can a contractor be required to waive First Amendment political speech and be prohibited from making campaign contributions as a condition of having a state contract?

Another conspicuous constitutional problem is the ban on contributions by spouses and dependent children. The bill may also impinge on the free speech of employees who have “managerial or discretionary responsibilities”; this definition could potentially encompass many employees.

The bill does not address the serious circumstance of money given to non electoral entities organized or controlled by elected officials or candidates for elected office such as charities or entities that are not involved with elections. The bill only regulates “contributions” which the Campaign Reporting Act defines as a thing of value “that is made or received for a political purpose”.

The AGO suggests a more effective approach to ending “Pay to Play” might be to pass legislation which limits campaign contributions. Limitations on contributions will have far less ramifications on First Amendment speech. Campaign limits will remove the temptation to award state contracts in exchange for large donations (\$100,000 contributions, for example). And finally, campaign limits will remove the improper appearance of such connections even if there is no proof of an illegal quid pro quo known as a pay to play arrangement.

GSD provided the following:

- In cases of a violation, the inability to extend or amend an existing contract or cancellation, if required may place an agency in an unexpected position where they are unable to procure needed products or services in a timely manner pending the unplanned conduct of a new procurement.
- It will be difficult identify who is the principal of a state contractor or prospective state contractor given the broad definition of the terms. This has proven problematic before with regard to other campaign reporting requirements.
- The bill does not specify who will investigate potential violations.

CD notes that state agencies may have to terminate contractors who have previously contributed to political campaigns. Leases are state contracts. If a landlord made a political contribution, the CD will be forced to terminate that lease. However, there are some areas in the state due to zoning laws and other factors where it will be very difficult if not impossible to locate and lease buildings for the CD's probation and parole offices. The result will be no office space for rent for probation and parole in some cities and rural areas.

Furthermore, the CD will have to terminate its contracts with contractors who provide specialized services but who made political contributions. In some instances, the most qualified or the only source known as the sole source contractor providing the specialized service such as drug testing, GPS monitoring and others could be eliminated from consideration, and the CD will have no other vendor to provide the needed service.

ADMINISTRATIVE IMPLICATIONS

State agencies will need to modify their contracts to include the required language, and must utilize administrative staff to take care to comply with the requirements of this bill.

The affected agencies should be able to handle the enforcement of the provisions in this bill as part of ongoing responsibilities

RELATIONSHIP

This bill is similar to HB 244, but SB 258 applies to the executive while HB 244 applies to the executive, judicial and legislative branches. HB 244 also prohibits the state from awarding contracts to anyone who has given a contribution within two years prior to the request for bids effective July 2011.

SB 285 relates to the following ethics bills:

- HB 99, Prohibit Former Legislators as Lobbyists
- HB 151, State Ethics Commission Act
- HB 252, Political Contributions to Candidates
- HB 253, Quarterly Filing of Certain Campaign Reports
- HB 272, Quarterly Campaign Report Filing
- HB 495, Political Candidate & Committee Donations

HB 535, Lobbyist Identification Badges
HB 553, Disclosure of Lobbyist Expenses
SB 49, Governmental Conduct Act For Public Officers
SB 94, Prohibit Former Legislators as Lobbyists
SB 116, Limit Contributions to Candidates & PACs
SB 128, Require Biannual Campaign Reports
SB 139, State Ethics Commission Act
SB 140, State Ethics Commission Act
SB 163, Prohibit Former Legislators as Lobbyists
SB 262, Political Contributions to Candidates
SB 263, Contractor Disclosure of Contributions
SB 269, State Bipartisan Ethics Commission Act
SB 296, State Contractor Contribution Disclosure
SB 346, Political Contributions to Candidates

TECHNICAL ISSUES

The AGO states that this bill should amend the Procurement Code instead of the Campaign Reporting Act since this existing statute already regulates “pay to play” activity. Another reason for amending the Procurement Code is that this bill requires that state contracts include language prohibiting these contributions.

DW/svb