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FISCAL IMPACT REPORT

ORIGINAL DATE 03/12/09
 LAST UPDATED 03/17/09

SPONSOR SRC _____ HB _____
 SHORT TITLE Contractor Disclosure of Contributions _____ SB CS/263 & 296/SRCS/aSFI#1/SFI#2 _____
 ANALYST Wilson _____

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$10.0-\$25.0	\$10.0-\$25.0	\$10.0-\$25.0	Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

Relates to HB 99, HB 151, HB 244, HB 252, HB 253, HB 272, HB 495, HB 535, HB 550, HB 553, HB 614, HB 646, HB 686, HB 808, HB 850, HB 878, HB 883, HB 891, SB 49, SB 94, SB 116, SB 128, SB 139, SB 140, SB 163, SB 247, SB 258, SB 262, SB 269, SB 346, SB 451, SB 521, SB 535, SB 555, SB 557 SB 606, SB 611, SB 613, SB 646, SB 652, SB 676, SB 678 & SB 693

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Administrative Office of the Courts (AOC)
- Attorney General’s Office (AGO)
- Corrections Department (CD)
- Department of Finance & Administration (DFA)
- Department of Transportation (DOT)
- Secretary of State (SOS)

SUMMARY

Synopsis of SFI#2 Amendment

The Senate Floor amendment #2 to the Senate Rules Committee substitute for Senate Bills 263 & 296 in the section on prospective state and local contractor registration and campaign contribution disclosure and prohibition requires the Department of Finance & Administration to issue all rules necessary to carry out the provisions of this section.

Synopsis of SFI#1 Amendment

The Senate Floor amendment #1 to the Senate Rules Committee substitute for Senate Bills 263

& 296 adds to the definition of “contribution” to also mean a donation to an organization that is controlled by or affiliated with a state public officer or local public officer and from which the state public officer or local public officer derives a direct benefit.

Synopsis of Original Bill

The Senate Rules Committee substitute for Senate Bill 263 and Senate Bill 296 repeals and replaces Section 13-1-191.1 of the Procurement Code which currently requires disclosure of contributions to public officials from prospective contractors; the Procurement Code also currently prohibits contributions and gifts from prospective contractors to public officials and employees while procurement is in process.

The substitute requires a prospective contractor, prior to entering into a state contract with a state agency or a local contract with a local public body, to register with the Department of Finance and Administration (DFA) and made available on the DFA web site.

The bill requires a prospective contractor to:

- Update any of the information required by of this bill prior to responding to a solicitation from a state agency or local public body;
- Indicate on the disclosure form the date, the amount and the nature of the contribution and the person receiving the contribution.
- Complete the disclosure statement on-line and DFA shall post the disclosure statements in a searchable format on its web site.

In addition, a prospective state contractor shall disclose all campaign contributions given by a principal of the prospective state contractor to a state public officer during the two years prior to the date the prospective state contractor responds to a solicitation by a state agency to enter into a state contract if the total contributions from a principal to a public officer exceed \$250 over the two-year period.

A principal of a state contractor shall not make a contribution to or solicit a contribution for the benefit of a state public officer during the pendency of the procurement process.

A prospective local contractor shall disclose all campaign contributions given by a principal of the prospective local contractor to a local public officer during the two years prior to the date the prospective local contractor responds to a solicitation by a local public body to enter into a contract with the local public body if the total contributions from a principal to a local public officer exceed \$250 over the two-year period.

A principal of a local contractor shall not make a contribution to or solicit a contribution for the benefit of a local public officer during the pendency of the procurement process.

Before awarding or entering into a state or local contract with a prospective contractor, the appropriate purchasing agent or contract evaluation committee shall review the information that the prospective contractor has submitted and shall certify that the prospective contractor has properly registered with the department of finance and administration and submitted the list of contributions required by this section.

A solicitation for or proposed award of a proposed contract may be canceled or a contract that is executed may be terminated if it is in the best interests of the state or local public body when a prospective state contractor or prospective local contractor or a state or local contractor fails to submit a fully completed disclosure statement or makes a prohibited contribution..

The current statutes currently prohibit contributions and gifts from prospective contractors to public officials and employees while procurement is in process. This bill replaces the prohibition with a disclosure requirement.

FISCAL IMPLICATIONS

Since this bill requires DFA not only to make available the electronic form for reporting as the current law already does, but also requires DFA to make this form available to be filled in on-line and then requires DFA to maintain these forms on its website for public view, there will be a fiscal impact.

DFA estimates that there are approximately 800 RFPs and 400 ITBs in any one year. If one assumes a low rate of even five responses to each of these solicitations, that will mean a total number of 6,000 disclosure forms which need to be housed on DFA's website.

The bill does not give any period in which these forms need to be displayed but the intent of this portion of the bill will seem to be informational for agencies making selections as well as the general public so that the holding period for such forms could well be a long time. All of this will have a financial impact in terms of server space, monitoring, personnel, etc.

DFA estimates that in order to comply with the provisions in this bill, information technology services will cost DFA anywhere between \$10,000 and \$25,000 per year.

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. 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 has provided the following:

In light of recent scandals over Pay to Play, this bill seeks to address problems affecting political campaign contributions by contractors and potential contractors with the state.

This bill may also overreach by mixing all state contractors into the same category. For example, should a contractor with one branch of government be required to disclose contributions to an elected official belonging to another separate and independent branch of government? Each branch is independent and does not influence the award of contracts by another branch.

The SOS notes while this bill does provide for enforcement by possibly terminating state contractors for failure to comply, there is no explicit statement regarding the entity that will decide consequences for failing to comply. Additionally, there is no enforcing agency provided.

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 will 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.

ADMINISTRATIVE IMPLICATIONS

DFA will need additional staff resources to handle the provisions in this bill

RELATIONSHIP

The SRC substitute relates to other ethics bills as follows:

- HB 99, Prohibit Former Legislators as Lobbyists
- HB 151, State Ethics Commission Act
- HB 244, Prohibit Contractor Contribution Solicitation
- 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 550, Local School Board Governmental Conduct
- HB 553, Disclosure of Lobbyist Expenses
- HB 614, State Ethics Commission Act
- HB 646, School Board Candidate Contribution Info
- HB 686, AG Prosecution of State Officer Crimes
- HB 808, Tax-Exempt Election Contributions & Reporting
- HB 891, Election Communication Contribution Reporting
- HB 850, Governmental Conduct Act for All Employees
- HB 878, State Contractor Registration & Info
- HB 883, Clean Government Contracting Act
- 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 247, Election Agent Registration Requirements
- SB 258, Contribution from State Contractors
- SB 262, Political Contributions to Candidates
- SB 269, State Bipartisan Ethics Commission Act
- SB 346, Political Contributions to Candidates
- SB 451, Contributions to PERA Board Candidates
- SB 521, Campaign Contributions in Certain Elections
- SB 535, Election Definition of Political Committee
- SB 555, Public Employee & Officer Conduct
- SB 557, State Ethics Commissions Act

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SB 606, Expand Definition of Lobbyist
SB 611, Investment Contractor Contributions
SB 613, Campaign Finance Changes
SB 646, Judicial Candidate Campaign Contributions
SB 652, Campaign Reporting Private Cause of Action
SB 676, School Board Candidate Contributions
SB 678, School Board Candidate Contributions
SB 693, Prohibit Certain Contributions to Candidates

DW/mc:svb