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FISCAL IMPACT REPORT

ORIGINAL DATE 2/1/09

SPONSOR Feldman LAST UPDATED _____ HB _____

SHORT TITLE State Contractor Contribution Disclosure SB 296

ANALYST Wilson

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total	Indeterminate See Below	Indeterminate See Below	Indeterminate See Below	Indeterminate See Below	Recurring	General

(Parenthesis () Indicate Revenue Decreases)

Relates to HB 99, HB 151, HB 252, HB 253, HB 272, SB 49, SB 94, SB 116, SB 128, SB 139, SB 140, SB 163, SB 262, SB 263, SB 269 & SB 346
 Conflicts with HB 244 & SB 258

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 and Administration (DFA)
 General Services Department (GSD)
 Department of Transportation (DOT)
 Secretary of State (SOS)

SUMMARY

Synopsis of Bill

Senate Bill 296 repeals the current procurement related campaign contribution reporting requirement currently at 13-1-191.1 NMSA 1978 and adds the following:

- Requires prospective state contractors to report all contributions made to a state public officer by a principal during the two years prior to submitting a response to a solicitation if the aggregate total of the contributions exceeds \$250 during the two year period.
- Applies the same requirement at the local level.
- Requires the disclosure of the date, amount, nature and recipient of the contribution(s) via

an on-line form established and maintained by the Department of Finance and Administration. The Department of Finance and Administration is required to maintain a database of the completed forms in a searchable, on-line database.

- Requires prospective state and local contractors not subject to reporting due to contributions not exceeding \$250 to submit a statement affirming that no principal made an applicable contributions exceeding \$250 over the two year period.
- Requires a principal that makes or solicits a contribution during the pendency of the procurement process or the life of a state or local contract, to complete an updated on-line disclosure form within thirty days of the contribution or solicitation.
- Allows that a solicitation or pending award may be cancelled or an executed contract may be ratified or terminated if in the agency's best interest to do so if the contractor fails to submit a fully completed disclosure form.
- Provides definitions for the unique terms. Of specific note are:
 - local contractor includes a person, business entity or non-profit organization.
 - public officer, state or local means an elected person or a person appointed to fill an elected office. At the state level, this applies to all three branches of government.
 - principal of a prospective state or local contractor means a member of the board of directors, an owner of five percent or more of the public shares, a person serving as an officer of the company.
 - a person who has managerial or discretionary responsibilities over a state contract, or the spouse or dependent child of any of the preceding, or a candidate committee or political committee established by or on behalf of any of the preceding or a person compensated to seek or lobby for government contracts on behalf of a prospective contractor.
 - pendency of the procurement process means the time from the release of the solicitation until a contract is awarded.
 - perspective state or local contractor means any person, business entity or non-profit organization that submits a bid or proposal until the contract is awarded.
 - state contract or local contract means an instrument having a value of \$20,000 or more or a collection of instruments having a value of \$50,000 or more during a fiscal year.

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.

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.

However, by replacing Section 13-1-191.1 of the Procurement Code, the bill eliminates an important tool for combating Pay to Play. The current prohibition on contributions and gifts from prospective contractors to public officials and employees while a procurement is in process

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. 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.

ADMINISTRATIVE IMPLICATIONS

DFA will have more oversight responsibilities as a result of the provisions in this bill.

Agency employees will have to carefully check the internet to review the contributions and disclosures made by prospective contractors during its procurement processes. They should be able to absorb this administrative burden.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB 296 and SB 263 are substantially similar bills, differing in the following ways:

SB 296 requires DFA to develop and make available on-line a disclosure statement form and to post the statement on the DFA website. SB 263 requires the SOS to develop, make available on-line and post the statement.

The SB 296 definition of “state contract” or “local contract” is defined as an agreement or contract having a value of \$50,000 or more, or a combination or series of agreements or contracts having a value of \$50,000 or more in a fiscal year. The SB 263 definition applies to an agreement or contract having a value of \$20,000 or more, or a combination or series of agreements or contracts have a value of \$50,000 or more in a fiscal year.

The SB 296 definition of “state public officer” includes a political committee established or controlled by or affiliated with a state public officer and any department secretary in the executive branch having an active candidate committee or political committee account.

SB 296 conflicts with HB 244, Prohibit Contractor Contribution Solicitation and SB 258, Contribution from State Contractors.

Senate Bill 296 relates to other ethics bills as follows:

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
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 269, State Bipartisan Ethics Commission Act
SB 346, Political Contributions to Candidates