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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/22/09

SPONSOR Ingle LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Investment Contractor Contributions SB 611

ANALYST Wilson

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

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		Unknown See Below	Unknown See Below		Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure 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 686, HB 808, HB 850, HB 891, SB 49, SB 94, SB 116, SB 128, SB 139, SB 140, SB 163, SB 258, SB 262, SB 263, SB 269, SB 296, SB 346, SB 451, SB 521, SB 535, SB 555, SB 557 SB 606, SB 613, SB 646, SB 652, SB 676 & SB 693

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Attorney General's Office (AGO)  
 Department of Finance & Administration (DFA)  
 Public Employees Retirement Association (PERA)  
 Secretary of State (SOS)  
 State Auditor (SA)

### SUMMARY

#### Synopsis of Bill

Senate Bill 611 amends the Campaign Reporting Act to prohibit a principal of an investment services contractor, as well as prospective investment services contractors, from contributing to or soliciting contributions for statewide elected candidates and PRC candidates. The bill applies to contractors with the executive branch.

An investment services contractor is defined broadly to include all financial services. A prospective contractor is defined as someone who has a pending bid on a state contract.

A principal is defined as:

- Member of the board of directors,
- Someone with ownership interest, except a stockholder who owns less than 5% of a publicly traded company,
- An employee of the contractor,
- An agent who has managerial or discretionary responsibilities,
- The spouse or dependent children of all of the above and
- A political committee established by any of the above.

## **FISCAL IMPLICATIONS**

DFA states this bill will have no fiscal impact on state agencies and will not impair any agency's ability to contract with investment advisory services or the rate of return received on the various funds.

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 in light of recent scandals over pay to play, this bill seeks to address problems affecting political campaign contributions by financial services contractors and potential contractors with the State. A bill of this type presents First Amendment speech issues. 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 constitutional issue is the ban on contributions by spouses and dependent children. The US Supreme Court has already struck down wholesale bans on contributions by minors. Likewise, the bill may impinge on the free speech of employees.

There are federal district court opinions and opinions from other state Supreme Courts which have upheld similar bans; but so far, the US Supreme Court has only upheld bans on contributions by corporate entities. Plus, there are New Mexico statutes which place similar bans on contractors.

The bill may also raise the legal argument of being overly broad by mixing all state contractors into the same category. For example, should a contractor with one agency of the executive be prohibited from giving to a candidate belonging to another separate and independent state agency? Each executive agency is independent and does not influence the award of contracts by another executive agency.

The AGO further states that, the bill fails to address the serious circumstance involved in recent scandals since the bill does not control money given to non electoral entities such as charities or entities that are not involved with elections but are organized or controlled by elected officials or candidates for elected office. 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. New Mexico already has a narrow ban on soliciting donations for charities by employees who regulate business.

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. And campaign limits will remove the temptation to award state contracts in exchange for large donations and the improper appearance of such connections even if there is no proof of an illegal quid pro arrangement.

The AGO believes that the bill needs a provision prohibiting circumvention by using third parties as conduits, similar to the prohibition in the McCain-Feingold bill, 2 USC Section 441(a)(8).

### **ADMINISTRATIVE IMPLICATIONS**

The SOS provided the following:

The SOS oversees candidate and political action committee reports. However, the SOS does not have any authority over investments services contracts. The agency that is charged with the supervision of investments services contracts will most likely be the appropriate agency to oversee the provisions of this bill.

### **RELATIONSHIP**

HB 244, Prohibit Contractor Contribution Solicitation and SB 258, Contribution from State Contractors place bans on contributions on all contractors and prospective contractors.

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. And campaign limits will remove the temptation to award state contracts in exchange for large donations (\$100,000 contributions, for example), arrangement, as proposed by HB 252, HB 495, SB 116, SB 262, SB 346 and SB 521.

Other bills dealing with campaign limits are:

- HB 252, Political Contributions to Candidates
- HB 495, Political Candidate & Committee Donations
- SB 116, Limit Contributions to Candidates & PACs
- SB 262, Political Contributions to Candidates
- SB 346, Political Contributions to Candidates
- SB 521, Campaign Contributions in Certain Elections

SB 263, Contractor Disclosure of Contributions and SB 296, State Contractor Contribution Disclosure expand the Procurement Code’s disclosure requirements for contractors and prospective contractors,

SB 611 relates to other ethics bills as follows:

HB 99, Prohibit Former Legislators as Lobbyists  
HB 151, State Ethics Commission Act  
HB 253, Quarterly Filing of Certain Campaign Reports  
HB 272, Quarterly Campaign Report Filing  
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 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  
SB 49, Governmental Conduct Act For Public Officers  
SB 94, Prohibit Former Legislators as Lobbyists  
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 269, State Bipartisan Ethics Commission Act  
SB 451, Contributions to PERA Board Candidates  
SB 535, Election Definition of Political Committee  
SB 555, Public Employee & Officer Conduct  
SB 557, State Ethics Commissions Act  
SB 606, Expand Definition of Lobbyist  
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 693, Prohibit Certain Contributions to Candidates

## **TECHNICAL ISSUES**

The AGO believes this bill should amend either the Procurement Code or the Governmental Conduct act instead of the Campaign Reporting Act since these existing statutes already regulate pay to play activity.

DW/mt