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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/08/12

SPONSOR Taylor and Feldman LAST UPDATED \_\_\_\_\_ HB 208

SHORT TITLE Contractor Registration & Contributions SB \_\_\_\_\_

ANALYST Hanika-Ortiz

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

	FY12	FY13	FY14	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		\$4.0 - \$16.0			Recurring	Various

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of Information Technology (DoIT)  
 Human Services Department (HSD)  
 New Mexico Finance Authority (NMFA)

#### No Response From

New Mexico Mortgage Finance Authority (NMMFA)  
 General Services Department (GSD)

### SUMMARY

#### Synopsis of Bill

House Bill 208 (HB 208) repeals Section 13-1-191.1 NMSA 1978 of the State’s Procurement Code (campaign contribution disclosure and prohibition) and creates a new section titled “prospective state and local contractor registration – contribution disclosure and prohibition” and places new disclosure and registration requirements on prospective contractors and agencies with agreements or transactions having a value of \$50,000 or more in a fiscal year.

Section 1 of the bill:

- requires prospective contractors register with GSD;
- requires disclosure of contributions over \$250 in the preceding two years;
- requires state agencies to provide a list to prospective contractors that includes the name of each officer;
- requires GSD to post prospective contractor disclosure statements on its website;
- prohibits contributions by prospective contractors while a procurement is open;

- allows for a prospective contractor making a contribution while the procurement is open, to request full reimbursement from the recipient, thus, restoring their eligibility;
- provides for cancellation of contracts for failure to submit a disclosure or making a prohibited contribution;
- requires the NMFA and NMMFA to adopt similar policies; and
- requires DFA to issue rules to carry out the new requirements in the bill.

Section 2 of the bill amends the competitive sealed proposal and requests for proposal process to include the new campaign disclosure instructions.

## **FISCAL IMPLICATIONS**

There will be minimal administrative costs (assume \$4.0) related to GSD posting disclosure statements on its website. The State's Sunshine Portal may be a better location for these documents since it is updated frequently.

There will also be administrative costs related to the NMFA and the NMMFA adopting policies that have the same effect as the requirements in the bill. The Department of Finance and Administration will also need to issue rules to carry out the new requirements and ensure enforcement.

## **SIGNIFICANT ISSUES**

The bill provides for contribution disclosure and prohibitions for agreements or transactions valued at \$50,000 or more.

The bill includes within the definition of "contribution" "...a gift, subscription, loan...money or other thing of value...including an in-kind contribution that is made or received for a political purpose, including payment of a debt incurred in an election campaign; a donation to an organization...; or a donation to an organization that supports an agency...."

The bill does not include a contractor's family member or employee within its definition of "principal of a prospective contractor" and it excludes within the definition a "...person who owns less than five percent of the shares of a contractor or prospective contractor that is a publicly traded corporation".

## **ADMINISTRATIVE IMPLICATIONS**

NMFA has policies and procedures governing the authority's procurement of services. If this legislation is passed, the NMFA states it will amend its policies and procedures to be consistent with the intent of the legislation without having to be specifically named in the bill.

## **TECHICAL ISSUES**

The bill attempts to subject NMFA and NMMFA to the Procurement Code. Section 6-21-4(J) of the New Mexico Finance Authority Act states: "...the authority shall not be subject to the supervision or control of any other board, bureau, department or agency of the state except as specifically provided in the New Mexico Finance Authority Act."

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

The Procurement Code currently requires prospective contractors or a family member or representative of the prospective contractor to disclose campaign contributions over \$250 to the public officer of the state agency soliciting the contract in the preceding two years; state agencies to provide a list to prospective contractors that includes the names of its public body officials; prohibits contributions by prospective contractors while a procurement is pending; and provides for cancellation of contracts if a prospective contractor fails to submit a disclosure or makes a prohibited contribution.

**QUESTIONS?**

Will the procurement of small purchases be excluded from the new requirements?

**AMENDMENTS**

NMFA further states that while it cannot speak for NMMFA (created by similar legislation); it proposes the following amendment to HB 208:

- strike Section L, Lines 3-5, page 9 in its entirety; and
- renumber the remaining sections accordingly.

AHO/svb