

Amendment 54 Campaign Contributions from Certain Government Contractors

1 **Amendment 54 proposes amending the Colorado Constitution to:**

- 2 ♦ prohibit certain government contractors from contributing to a political
3 party or candidate for the contract's duration and two years thereafter;
- 4 ♦ prohibit contributors to ballot issue campaigns from entering into certain
5 government contracts relating to the ballot issue;
- 6 ♦ apply the prohibitions on campaign contributions and ballot issue
7 contracts to any contractor with a government contract or contracts that
8 does not use a public and competitive bidding process soliciting at least
9 three bids and with a total value greater than \$100,000 in a single year;
10 and
- 11 ♦ apply the prohibitions on campaign contributions and ballot issue
12 contracts to a labor organization holding a collective bargaining
13 agreement with a state or local government.

14 **Summary and Analysis**

15 Government entities purchase goods and services from private-sector vendors for
16 the operation of government. The awarding of state contracts for these goods and
17 services is regulated by state law. Local governments largely determine their own
18 practices.

19 ***How are state government contracts awarded?*** State law requires, with few
20 exceptions, that vendors for state contracts be selected through a competitive bidding
21 process. Separate rules govern small and emergency purchases. In some cases, a
22 state agency may determine that only one good or service can reasonably meet the
23 agency's need, and only one vendor can provide the particular good or service.
24 Examples of circumstances when competitive bidding is not used include cases:

- 25 ♦ where equipment, accessories, or replacement parts must be
26 compatible;
- 27 ♦ where a sole supplier's item is needed for trial use or testing; and
- 28 ♦ where public utility services are to be purchased.

1 **How does the measure affect government contractors and labor**
2 **organizations?** Amendment 54 prohibits campaign contributions by certain
3 government contractors. The prohibition applies to contractors with a total contract
4 value of greater than \$100,000 in a single year where fewer than three bids are
5 solicited. It also covers labor organizations that represent public employees in a
6 collective bargaining agreement.

7 Contracts covered by Amendment 54 are referred to in the measure as "sole
8 source contracts" and include those awarded by the state, cities, counties, school
9 districts, and other special districts. The measure requires the state to publish and
10 maintain a database of every covered government contract issued at every level of
11 government.

12 **How are Amendment 54's prohibitions applied?** Under the measure, covered
13 government contractors are prohibited from making a campaign contribution
14 themselves, or on behalf of a family member, to any political party or any state or local
15 candidate for the duration of the contract plus two additional years. A contractor
16 includes:

- 17 ♦ the contracting entity's officers, directors, or trustees;
- 18 ♦ any individual who controls at least 10 percent of the shares of or
19 interest in the entity; and
- 20 ♦ in the case of a collective bargaining agreement, a labor organization
21 and any political committees it creates to make campaign contributions.

22 The measure also prohibits a person who contributes to a ballot issue campaign from
23 entering into a covered government contract relating to the ballot issue.

24 **What penalties exist under Amendment 54?** Under Amendment 54, individuals
25 who accept contributions from covered government contractors for the benefit of a
26 political party or candidate must pay restitution to the contracting government. Elected
27 or appointed officials may be removed or disqualified from office for knowingly
28 violating Amendment 54. Further, a covered government contractor who intentionally
29 makes a contribution in violation of the measure is barred from holding a covered
30 government contract or public employment for three years. The governor may
31 suspend these penalties during a declared state of emergency.

32 **What is the scope of state contracts affected by Amendment 54?** Information
33 is not available on the number of state contracts that meet the criteria in Amendment
34 54. However, a sample of state contracts indicates that last year about 6 percent of
35 state contracts had a value greater than \$100,000 and were not put out for bid. These
36 contracts represented about 5 percent of the total value of state contracts over
37 \$100,000.

38 **What is the scope of local government contracts affected by Amendment**
39 **54?** Information is not available on the number and value of local contracts that meet
40 the criteria in Amendment 54. Some local governments, including the cities of Boulder
41 and Fort Collins, have enacted laws restricting campaign contributions by individuals

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1 holding any type of contract with the local government and would integrate
2 Amendment 54's provisions into existing practice. Local governments also enter into
3 collective bargaining agreements. For example, 45 school districts, representing
4 80 percent of teachers in the state, and four city police departments, representing
5 33 percent of the state's police officers, are covered under collective bargaining
6 agreements.

7 **Arguments For**

8 1) Amendment 54 promotes civic trust and government transparency. By
9 prohibiting campaign contributions, Amendment 54 ensures that business interests,
10 labor, and other covered government contractors do not influence policy decisions
11 through campaign contributions. In addition, by requiring state officials to publish
12 information on covered government contracts, the measure makes information on
13 vendors that receive such contracts easier to obtain by ordinary citizens. Registered
14 voters can hold both public officials and contractors to a high ethical standard and
15 seek remedies when violations occur.

16 2) Amendment 54 furthers the efficient use of taxpayer dollars by promoting
17 competitive bidding for government contracts. It makes contracts where fewer than
18 three bids are solicited less attractive by prohibiting political contributions from entities
19 that receive such contracts. Amendment 54 thus encourages taxpayer value in
20 contracting, and discourages instances where it may be easy to rely on entities with
21 existing contracts.

22 **Arguments Against**

23 1) The broad scope of the measure could have far-reaching consequences for
24 contractors, political candidates, and elected officials. For example, an individual
25 holding a covered contract with one local government could be penalized for making a
26 contribution to a candidate in a separate jurisdiction. To avoid violations and
27 penalties, candidates and political parties will have to monitor each contribution to
28 ensure that it is not made by a sole-source government contractor, or by the
29 contractor on behalf of a relative. Furthermore, Amendment 54 establishes penalties
30 that are severe relative to the offenses, including loss or disqualification from office for
31 elected or appointed officials.

32 2) Amendment 54 proposes an inflexible approach to government contracting.
33 Different regions and levels of government throughout the state have varying
34 contracting needs and access to providers of goods and services. Because rural
35 cities and counties typically have fewer contracting options than urban communities or
36 state government, the measure presents unique challenges for small communities and
37 their service providers. For example, if one organization in a small community is the
38 only available contractor for community services, the organization would have to
39 choose between accepting a contract and participating financially in the political
40 process.

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1 **Estimate of Fiscal Impact**

2 Amendment 54 requires the state to publish and maintain a summary of each
3 covered government contract issued by the state and all local government entities,
4 beginning December 31, 2008. The cost of hiring a contractor to develop the
5 database is \$234,000. In addition, annual state expenditures of \$85,000 for one
6 employee are required to manage the database of contracts of approximately
7 4,000 governmental entities. Thus, the total cost to the state will be \$277,000 and a
8 half-time employee in budget year 2009 and \$85,000 and one employee in budget
9 year 2010 and thereafter.