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FISCAL IMPACT REPORT

ORIGINAL DATE 03/01/09

SPONSOR Griego, E. LAST UPDATED _____ HB _____

SHORT TITLE Prohibit Certain Contributions to Candidates SB 693

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		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 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 258, SB 262, SB 263, SB 269, SB 296, 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

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Attorney General's Office (AGO)
 Public Education Department (PED)
 Secretary of State (SOS)

SUMMARY

Synopsis of Bill

Senate Bill 693 enacts new sections of the Campaign Reporting Act, Section 1-19-25 et. seq. NMSA 1978, to prohibit business entities, lobbyists and state contractors or principals of state contractors from making specified contributions, including to a candidate for nomination or election to a state office or a campaign committee established by the candidate, or to a political committee. The bill prohibits public officers, candidates and political committees as described in each section from accepting or soliciting a contribution prohibited in that section.

SB 693 provides that a business entity is not precluded from making contributions or expenditures to promote the success or defeat of a ballot question. The bill also provides that the provisions governing lobbyist contributions shall not apply to the campaign of a lobbyist who is

a candidate for public office. SB 693 further provides that a principal of a state contractor is not restricted from establishing a campaign committee for the principal's own campaign or from soliciting contributions from persons not prohibited from making contributions.

SB 693 amends Section 1-19-26 NMSA 1978, providing definitions of terms used in the Campaign Reporting Act, to provide definitions of "business entity," "principal of a state contractor," "public officer," "state agency," "state contract" and "state contractor."

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would 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 provided the following:

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

The federal government has had a century long history of prohibiting campaign contributions by corporate entities, beginning with the administration of Theodore Roosevelt. And the US Supreme Court has upheld all prohibitions on corporate contributions.

However, there are legal arguments that the bill presents serious First Amendment speech issues when it comes to prohibitions on contributions by individuals, such as spouses and dependent children. The US Supreme Court has already struck down wholesale bans on contributions by minors. Although this bill bans contributions by a narrow group of minors, still, this ban may raise constitutional problems.

Likewise, can an employee who has managerial or discretionary responsibilities in a non-profit organization be required to waive First Amendment political speech and be prohibited from making campaign contributions—as well as be prohibited from soliciting contributions--as a condition of working for a non-profit that has a state contract?

In fairness to the bill, 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. And in fairness to the bill, the US Supreme Court has repeatedly stated that campaign contributions deserve less protection than campaign expenditures since expenditures are closer to core speech.

The bill may also overreach 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.

Of equal importance, the bill fails to address the serious circumstance involved in recent scandals since the bill does not control money given to (1) non electoral entities (i.e. charities, entities that are not involved with elections, etc.) and (2) entities either organized or controlled by or affiliated with a public officer. 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”. And the bill only regulates political committees “established” by a public officer.

New Mexico already has a narrow ban on soliciting donations for charities by employees who regulate business. Section 10-16B-3 of the Gift Act. This statute could be expanded.

A more effective approach to ending Pay to Play might be to pass legislation which limits campaign contributions. Limitations on contributions would have far less ramifications on First Amendment speech. And campaign limits would 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 quo arrangement.

An additional, and complementary, approach to ending Pay to Play might be to pass legislation which expands the Procurement Code’s disclosure requirements for contractors and prospective contractors.

Failure to address Pay to Play activity will reinforce this appearance of impropriety in the public’s mind, thereby undermining public trust in government.

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 affected agencies should be able to handle the enforcement of the provisions in this bill as part of ongoing responsibilities.

RELATIONSHIP

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

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 and SB 521, Campaign Contributions in Certain Elections place limitations on contributions

SB 263, Contractor Disclosure of Contributions, SB 296, State Contractor Contribution Disclosure and HB 878, State Contractor Registration & Info expand the Procurement Code’s disclosure requirements for contractors and prospective contractors.

HB 883, Clean Government Contracting Act regulates sole source contracts.

SB 693 also 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 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
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 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

TECHNICAL ISSUES

The AOC notes Sections 1 and 2 of SB 693 prohibit “a public officer, candidate or political committee” described in Subsection A of each section from soliciting or accepting a prohibited contribution. Section 3, however, only prohibits “a candidate or political committee” from such solicitation or acceptance.

DW/svb