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FISCAL IMPACT REPORT

ORIGINAL DATE 02/08/13
 SPONSOR Ingle LAST UPDATED 03/05/13 HB _____
 SHORT TITLE 2 Year Cycle for Some Election Contributions SB 336/aHVEC
 ANALYST Cerny

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI			

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB 15, SB 16, SB 88, HB 232, HB 68

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General’s Office (AGO)
 Department of Finance and Administration (DFA)
 Secretary of State (SOS)

SUMMARY

Synopsis of HVEC Amendment

The House Voters and Elections amendment to Senate Bill 336 would substitute the word “period” in the bill with “cycle,” which means that the term “election cycle” would appear throughout the bill. “Election cycle” is defined in the Election Code in 1-1-3.1 as “the period beginning on the day after the last general election and ending on the day of the general election.”

The Amendment would also strike section G. which in the original bill defined “primary election period” and “general election period” to mean the period beginning on the day after each general election and ending on the day of the following primary election.

Therefore, all candidates for elective state office would be subject to contribution limitations based on the general election cycle.

Synopsis of Original Bill

Senate Bill 336 (SB 336) amends the Campaign Reporting Act to change the contribution limits from a specified cap *per election cycle* for each elective office, to a cap *every 2 years*.

SB 336 will allow candidates to receive the maximum amount of campaign contributions during any primary or general election cycle. Currently, candidates are restricted to the contribution limits during their own election cycle only.

SB 336 carries an emergency clause.

FISCAL IMPLICATIONS

SB 336 carries no fiscal impact.

SIGNIFICANT ISSUES

The effect of this bill is to double the amount of contributions that Senators and statewide elected officials can raise, who run for office every four years. Under this bill they will be able to raise the campaign limit amounts every two years instead of once every four years.

For instance, under SB 336, the primary election cycle for state senators would be the 2012 general election until the 2016 primary. For candidates with staggered offices, such as those for the Public Regulation Commission (where one set of candidates is in one election cycle and the other set is in a different election cycle), SB 336 would enable them to raise funds on a 2-year rather than a 4-year cycle.

SB 336 would have no impact on House Representatives who run for office every two years. It would also have no effect on Political Action Committees (PACS) as they currently can receive the contribution limits during any primary or general election cycle.

The Attorney General's Office (AGO) notes: "There is a split of authority over the constitutionality of contribution limits that are not based on an election cycle for that particular office. The Ninth Circuit struck down a similar—though not identical--provision as unconstitutional. The court struck down as unconstitutional California's campaign contribution limits because they were limited by year instead of by election cycle. The Ninth Circuit held that this discriminated against challengers because most challengers normally do not start raising money until either the year of the election, or the year before the election. Therefore, incumbents would have the advantage of raising the limit amounts every year. (Service Employees Int'l Union, etc. v. Fair Political Practices Comm. 955 F.2d 1312, 1320, 9th Cir. Cal. 1992). Under this bill, incumbents would have the advantage of raising the limit amounts twice."

However, the AGO also notes that "the Eighth Circuit disagreed with the Ninth Circuit's interpretation of the standard of review required by Buckley and instead determined that there must be evidence of invidious discrimination. Minn. Citizens Concerned for Life, Inc. v. Kelley, 427 F.3d 1106, 1113-14 (8th Cir. 2005). Accordingly, the Eighth Circuit found that there was no evidence of invidious discrimination against challengers. In addition, the court concluded that 'challengers may form campaign committees and raise money years in advance of an election.'"

Consequently, this issue remains unresolved by the courts. Should SB 336 be passed, it is potentially open to legal challenge.

The AGO states “Another important note of caution is that every ten years during an election in a redistricting year, challengers will normally be precluded from raising contributions early because they will not know the boundaries of the district they want to run in. This factor could also lead a court to strike down this bill as unconstitutional.”

ADMINISTRATIVE IMPLICATIONS

The Secretary of State would be able to generate a report from the Campaign Finance Information System on the day after each election to check for contributions that exceed the limit if all candidates are on the same election cycle.

CAC/svb