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## FISCAL IMPACT REPORT

SPONSOR Smith DATE TYPED 02/22/05 HB \_\_\_\_\_

SHORT TITLE Retirement Board Membership Contributions SB 251/aSPAC

ANALYST Geisler

### REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY05	FY06			
		NFI		

(Parenthesis ( ) Indicate Revenue Decreases)

### SOURCES OF INFORMATION

Public Employee Retirement Agency (PERA)

American Federation of State, County, and Municipal Employees (AFSCME)

### SUMMARY

#### Synopsis of SPAC Amendments

The Senate Public Affairs Committee amendments to SB 251:

- 1) Increase the contribution limit from \$200 (two hundred dollars) to \$2000 (two thousand dollars).
- 2) Expands the scope of the limit of campaign contributions to include organizations, association or entity. This is in addition to the limitation in the bill on donations by corporations, labor organizations, or other persons.

#### Synopsis of Original Bill

SB 251 amends Section 10-11-130.1 of the Public Employees Retirement Act to add an additional restriction on campaign contributions made to candidates for the Public Employees Retirement Board. In addition to the existing restriction on campaign contributions (no candidate for the Board may accept anything of value more than \$25.00 from those who have or seek contracts with the board or association), SB251 would prohibit candidates for board membership from accepting a contribution with a value of more than two hundred dollars (\$200) from “any corporation, labor organization or other person.”

Significant Issues

PERA provides the following input on major issues surrounding the bill:

Issue 1: Is the limitation proposed by SB251 likely to withstand legal challenge?

With certain revisions suggested in this analysis, yes. Efforts at reforming campaign finance have been challenged in court as an unconstitutional infringement upon the rights to free speech and association guaranteed by the First Amendment of the United States Constitution. Nevertheless, for almost 30 years, the United States Supreme Court has upheld reasonable campaign contribution limits. The Court also recognized a meaningful distinction between restrictions on campaign contributions and restrictions on campaign expenditures. The Supreme Court imposes significantly more severe restrictions in the review of measures that are aimed at limiting a candidate's expenditures than measures aimed at restricting campaign contributions. See, e.g. Buckley v. Valeo, 424 U.S. 1 (1976).

The Supreme Court has recently reaffirmed that the states have substantial leeway to act in limiting contributions. Nixon v. Shrink Missouri Government PAC, 528 U.S. 377 (2000). In Nixon, the Supreme Court reasoned that, if the question of the propriety of large campaign contributions remains unanswered, the "cynical assumption that large donors call the tune could jeopardize the willingness of voters to take part in democratic governance." Therefore, state lawmakers are permitted to place limits on campaign contributions. However, the Supreme Court has emphasized that such limits must be reasonable and narrowly tailored. Limits must not be set so low that they are "so radical in effect as to render political association ineffective, drive the sound of a candidate's voice below the level of notice, and render contributions pointless." Nixon.

Under the federal Taft-Hartley Act enacted in 1947, corporations, unions and interstate banks are permanently banned from making contributions to federal candidates. Corporate and bank contributions had been banned since 1907. Such bans have survived court challenge.

The PERA Act already imposes a rather extreme limit of twenty-five dollars (\$25.00) on those persons or organizations who have or seek to have a contractual relationship with PERA or the Board, including investment consultants. To date, there have been no legal challenges to the limit contained in Section 10-11-130.1.

Issue 2: Is the limitation proposed by SB251 sufficiently reasonable and properly tailored?

As it is presently framed, the limitation is constitutionally suspect. SB251 would prohibit candidates for PERA board membership from accepting a contribution with a value of more than two hundred dollars (\$200) from "any corporation, labor organization or **other person**." The inclusion of the phrase "or other person" is troublesome because it would limit contributions from individuals as well as those from corporations and labor organizations.

The distinction between contributions made by corporations and labor organizations and those made by individuals is well recognized. Federal law entirely prohibits both corporations and labor organizations from making campaign contributions but permits contributions by individuals up to \$1000.00 per election to candidates. See, 2 USC Section 441 b and Section 441 a.

On December 16, 2004, the Public Employees Retirement Board met and voted to support legis-

lation that would impose limits on the campaign contributions made by “a corporation, labor organization, or any other organization, association or entity.” While the Board expressed its interest in such a limit, it expressed no interest in placing limits on campaign contributions made by individuals.

While several states have limits on campaign contributions by individuals, most are over \$1000.00 with the average for gubernatorial candidates being over \$6000.00 and the average for legislative candidates being over \$2000.00 (National Conference of State Legislatures data). Most limits on campaign contributions by individuals apply only in statewide offices and elections. Id. PERA Board elections are not statewide to the extent that Board members are elected by separate constituencies (for example one member is elected by state employees statewide, one by retirees statewide, etc.). With the exception of the existing conflict of interest limitations such as the one in Section 10-11-130.1 B, New Mexico has no limits on the amount that individuals may contribute to candidates for election. Id. Please see proposed changes under alternatives.

## OTHER SUBSTANTIVE ISSUES

### 2004 PERA Election

Historically, candidates for PERA Board elections have not raised campaign contributions in the amounts seen in the most recent election. In the most recent election, a single campaign contributor (American Federation of State, County and Municipal Employees, 1625 L Street, Washington, DC “AFSCME”) contributed over \$53,000.00 (fifty-three thousand dollars) to three Board candidates. All the Board candidates who received these contributions were successful. There were six unsuccessful candidates in the same races. By comparison, the six unsuccessful candidates raised a combined total of \$2,400.00 (two thousand four hundred dollars.) Clearly, a single contributor exerted an out-sized influence on these races, raising the question of whether large donors are able to “call the tune” and “jeopardize the willingness of voters to take part in democratic governance” as phrased by the Nixon Court. The Courts have found reasonable campaign contribution limits to be a viable answer in these situations.

## ALTERNATIVES

PERA suggests that the new material added as NMSA Section 10-11-130.1 C be amended as follows:

- C. No person who is a candidate for retirement board membership by election by some or all of the members of the association pursuant to the Public Employees Retirement Act shall accept a contribution with a value of more than two hundred dollars (\$200.00) directly or indirectly from any corporation, labor organization, or any other organization or association. No person shall act as a conduit for a contribution in excess of the limit set forth in this section.

AFSCME provides:

1. Individual donors should have the same restrictions as corporations, labor unions, and other groups.
2. The \$200 dollar limit is too low, in particular for board positions that are elected statewide.

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

Corporations individuals, and labor organizations will continue to be able to make unlimited campaign contributions to candidates for election to the Public Employees Retirement Board.

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