# F I S C A L  I M P A C T  R E P O R T

**SPONSOR** HJC **ORIGINAL DATE** 02/15/10 **LAST UPDATED** 02//16/10 **HB** 118/HJCS/HVECS /aHFl#1

**SHORT TITLE** Lobbyist and Contractor Contribution Ban **SB**

**ANALYST** Ortiz

## APPROPRIATION (dollars in thousands)

| Appropriation | | Recurring or Non-Rec | Fund Affected |
|---|---|---|---|
| **FY10** | **FY11** | | |
| | None | | |

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB49, HB125, SB43, SB108,SB154, SB49, SB110, SB28 and SB48

**SOURCES OF INFORMATION**
LFC Files

**SUMMARY**

Synopsis of HFl#1 Amendment

The House Floor amendment to HJC/CS/HB118 removes a section related to bundling of contributions and removes reference to state or county-level political party committees from the bill. It also excludes public utilities from the definition of "state contractor."

Synopsis of Original Bill

The House Judiciary Committee substitute for House Voter and Elections Committee substitute for House Bill 118 prevents lobbyists, state contractors, prospective state contractors, and principal state contractor from making contributions to candidates for nomination or election to a state public office, a campaign committee of a candidate for state public office, or a state or county-level political committee. A lobbyist is not restricted from establishing a political committee for the lobbyists own campaign nor does it restrict a lobbyist's employer from making contributions to a candidate or expenditures for the benefit of a candidate. Similarly, a person prohibited from contributing to a candidate for state public office by the Campaign Reporting Act shall not bundle contributions from other donors and delivering them to candidates or political committees. The bill also adds and revises definitions to the Campaign Reporting Act.

## SIGNIFICANT ISSUES

From an analysis of an earlier version of this bill the Department of Finance and Administration listed the several significant issues.

- It is another attempt to stem the perception of pay-to-play in New Mexico's politics. As such, it bans all contributions by certain parties. In other such attempts at this type of legislation, there are better written prohibitions on state contractors for example. This bill would prohibit only those persons defined as state contractors from making contributions. State contractors are defined as persons or entities in a contractual relationship with the state. This would mean that the day after someone's contract stopped they could make a contribution. (In other words, promise such a contribution during the contractual period say, for a contract renewal or increase, and then make the contribution once they are no longer a "state contractor" under this bill's definitions.) There is also no ban on contributing during the pendency of the procurement process which, of course, would be the perfect time for a contractor, seeking a contract, to make such a contribution. The HVEC substitute adds in "prospective state contractors" thus limiting the potential for circumventing the prohibitions.

- It is important to keep in mind that similar laws in eight states (as well as Federal laws) currently exist with similar prohibitions and restrictions on campaign contributions, etc. These laws, especially where written to address pay-to-play scandals that have occurred in a state, and where they relate to political contributions to candidates for office specifically as opposed to general political advocacy, have been upheld by Federal court decisions. This bill appears to comport with such decisions.

## RELATIONSHIP

Relates to ethics bills HB49, HB125, SB43, SB108 and SB154. Also, relates to election contribution bills SB49, SB110, SB28 and SB48.

## OTHER SUBSTANTIVE ISSUES

**Citizens United v. Federal Election Commission** (No. 08-205), (Decided January 21, 2010) should be considered by legislative committees in order to fully analyze HB118 to ensure compliance.

According to a January 21, 2010 Wall Street Journal article,

> "A Supreme Court decision stripped away rules that limited the ability of corporations, unions and other organizations to fund and organize their own political campaigns for or against candidates. The court also struck down a part of the McCain-Feingold campaign-finance law that prevented any independent political group from running advertisements with 30 days of a primary election or 60 days before a general election. Together, the decisions make it easier for corporations, labor unions and other entities to mount political campaigns for and against candidates for Congress and the White House."

Another Wall Street Journal article on January 22, 2010 reports,

> "A divided Supreme Court struck down decades-old limits on corporate political expenditures, potentially reshaping the 2010 election landscape by permitting businesses and unions to spend freely on commercials for or against candidates.
>
> President Barack Obama attacked the ruling and said it gave "a green light to a new stampede of special-interest money in our politics," particularly "big oil, Wall Street banks, health-insurance companies and the other powerful interests" that "drown out the voices of everyday Americans." He pledged to work with lawmakers to craft a "forceful response."
>
> Senate Minority Leader Mitch McConnell, a Kentucky Republican who has long fought campaign-finance regulations, hailed the court for a "monumental decision" toward "restoring the First Amendment rights of [corporations and unions] by ruling that the Constitution protects their right to express themselves about political candidates and issues up until Election Day."

**POSSIBLE QUESTIONS**

What are the requirements for agencies, etc. of the executive, legislative and judicial branches of government to ensure that they do not contract with an entity that violates this bill's language? One would assume due diligence, at a minimum, would be required, but there is nothing in the bill to address this particular aspect of the issue.

EO/mew:svb:mt