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FISCAL IMPACT REPORT

SPONSOR Steinborn **ORIGINAL DATE** 02/01/10
LAST UPDATED _____ **HB** 161
SHORT TITLE Land Office Contractor Contributions **SM** _____
ANALYST Pava

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY10	FY11		
	NFI	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

SUMMARY

Bill Synopsis:

House Bill 161 seeks to prohibit individuals and other legal entities from donating to the campaign of a candidate for State Land Commissioner or any political committee related to said candidate. It restricts the entrance into a contract with a contributor until five (5) years following the date the contribution was made.

SB 110 is identical to HB 161, amends the Campaign Reporting Act to prohibit contributions to State Land Office candidates by contractors working for the State Land Office.

FISCAL IMPLICATIONS

No appropriation or fiscal impact is attached to this bill.

SOS notes: The fiscal implication of House Bill 161 is indeterminate because this bill does not define what agency will be charged with overseeing the provisions of this legislation. Currently, the Office of the Secretary of State audits campaign reports based on the Campaign Reporting Act. However, there is no system present in the Office of the Secretary of State that tracks State Land Office contracts.

SIGNIFICANT ISSUES

This bill does not define what agency will be charged with overseeing the provisions of this legislation. There are currently no systems in place with the ability to cross-reference this type of information.

SLO notes: In addition “contracts with the State Land Office” is vague and could apply to every lessee. This would impact the lessees of over approximately 9,500 oil and gas leases, and over 3,500 grazing leases. These numbers of leases do not reflect the thousands of other legal contracts currently active in the State Land Office such as right of ways, right of entry, easements and permits. Given the small state population and the small percentage of that population which participates in our political system, this could have a very significant impact.

HB 161 places greater restrictions on contributions to persons running for Commissioner of Public Lands or for positions connected with the State Land Office or in control of the Commissioner than those placed on other, similar offices. It also places higher penalties than are imposed for similar violations.

AGO notes: Whether by banning contributions to State Land Office candidates by contractors with the State Land Office, the bill is narrowly tailored to avoid constitutional problems. The US Supreme Court has repeatedly upheld limits on contributions to candidates -- as in Citizens United v. FEC Slip op. at 43. Other courts have also upheld specific bans on state contractors. Blount v. S.E.C., 61 F.3d 938 (D.C. Cir. 1995); Green Party of Connecticut v. Garfield, 590 F.Supp.2d 288 (D. Conn. 2008).

PERFORMANCE IMPLICATIONS

SOS notes: The Ethic Division within the Secretary of State’s office consists of only two (2) employees. If an exhaustive review of Land Commissioner Campaign Reports is mandated, several additional staff members may need to be hired.

DUPLICATION & COMPANIONSHIP

This bill duplicates SB 110. In addition, SB 48 and 49 as well as HB 118 ban contributions from all contractors and prospective contractors.

TECHNICAL ISSUES

There are currently no systems in place with the ability to cross-reference this type of information to track contracts and donations.

OTHER SUBSTANTIVE ISSUES

SLO notes: This bill appears to be unconstitutional in that it targets a particular office within state government and places restrictions on that office not placed on similar offices. It also places penalties for violating this portion of the Campaign Reporting Act that substantially exceed penalties for similar violations.

House Bill 161 – Page 3

AGO notes: Section 1-13-191.1 of the Procurement Code bans contributions by prospective contractors during the pending period of the procurement process. And Section 10-16-13.3 of the Governmental Conduct Act bans contributions from “financial service contractors”.

ALTERNATIVES

SLO notes: Apply the same restriction on contributions for the Commissioner as for other, similar positions.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Failure to enact this legislation would allow decisions of the Commissioner of Public Lands to be influenced, or be perceived to be influenced, by campaign contributions. There would continue to be no prohibition in place to regulate the donation of campaign funds by contracting agencies to State Land Commissioner candidates.

There would be a greater burden placed on the commissioner and on those who seek to contribute to his campaign or those who seek to participate in political committees established by the Commissioner or under his control.

CP/mew