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FISCAL IMPACT REPORT

ORIGINAL DATE 02/05/10

SPONSOR Griego, E. LAST UPDATED _____ HB _____

SHORT TITLE Prohibit Certain Election Contributions SB 49

ANALYST Ortiz

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY10	FY11		
	No Appropriation		

(Parenthesis () Indicate Expenditure Decreases)

SB42, SB28, SB44, SB48, SB51 and SB68

SOURCES OF INFORMATION

LFC Files

Responses Received From

General Services Department (GSD)

Attorney General's Office (AGO)

Public Education Department (PED)

Department of Transportation (DOT)

SUMMARY

Synopsis of Bill

Senate Bill 49 amends the Campaign Reporting Act to prohibit campaign contributions, as well as solicitation of contributions, by (1) business entities, (2) lobbyists, and (3) a state contractor, or principal of a state contractor, who has a contract with any branch of state government or instrumentality of the state.

A "principal of a contractor" is defined broadly to include:

1. Member of the board of directors;
2. Someone with ownership interest, except a stockholder who owns less than 5% of a publicly traded company;
3. A president, treasurer, or executive or senior vice president of a contractor that is a business entity;
4. CEO of a state contractor;
5. An employee who has managerial or discretionary responsibilities;

- 6. The spouse or dependent children of all of the above; and
- 7. A political committee established by any of the above

SIGNIFICANT ISSUES

The AGO notes the following issues:

With regards to banning contributions by business entities, 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 these prohibitions on corporate contributions. FEC v. Beaumont, 539 US 146 (2003). The US Supreme Court’s decision in Citizens United v. FEC does not change this. The Court in Citizens United struck down bans on independent expenditures by corporations, while at the same time acknowledging the distinction between limits on contributions to candidates -- which may be tightly regulated to avoid corruption or the appearance of corruption -- and expenditures, which may not be limited. Slip op. at 43.

Opinions from federal court and state Supreme Courts that have almost uniformly upheld bans similar to the bans proposed in this bill. Alaska v. Alaska Civil Liberties Union, 978 P.2d 597 (AK 1999); 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). But so far, the US Supreme Court has only upheld bans on contributions by corporate entities.

RELATIONSHIP

Relates to ethics bills HB49, HB125, SB43, SB108 and SB154. Also, relates to election contribution bills HB118, SB110, SB28 and SB48.

BILL NUMBER	INTRODUCED BY	COMMENTS/SUMMARY OF BILL
SB 42	Sander Rue	Creates a public database containing information regarding just about everything state government does every day (budgets, expenditures, salaries, revenue, etc.) along with links to other websites (delinquent taxpayers, revoked licensees, delinquent child support payors, etc.)
SB 43	Linda Lopez & Bill O'Neill	Sets up an Ethics Commission to oversee violations of state law and ethical standards; sets up the Commission in an almost certain deadlock situation; provides no funding though it allows the Commission to hire personnel and contract for services.
SB 44	Tim Eichenberg	Enlarges Governmental Conduct Act to include local entity public officers and employees
SB 48	Timothy Keller	Adds and makes changes to the Campaign Reporting Act including clarifying definitions
SB 51	Eric Griego	Sets up a public financing methodology for all covered campaigns (all elected offices in state

		except PRC)
SB 68	Dede Feldman	Changes definitions in lobbying in the lobbying regulation act
SB 28	Dede Feldman	Changes Campaign Contribution Disclosure statutes; includes a database of contributors to be implemented and maintained by DFA.

OTHER SUBSTANTIVE ISSUES

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

The AGO raises the following questions:

1. Does the bill presents serious First Amendment speech issues when it comes to prohibitions on contributions by individuals, such as lobbyists, employees, spouses and dependent children? For example, the US Supreme Court has already struck down wholesale bans on contributions by minors. McConnell v. FEC, 124 S.Ct 619 (2003). Although this bill bans contributions by a narrow group of minors (minors associated with a state contractor), still, this ban may raise constitutional problems in light of McConnell.

2. Is an employee who has managerial or discretionary responsibilities in a non-profit organization 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?
3. Is it legally proper to mix all state contractors into the same category? For example, should a contractor with one agency of the Executive (i.e. the Governor’s Office) be prohibited from giving to a candidate belonging to another separate and independent state agency (i.e. the State Treasurer or Judiciary)? Each executive agency is independent and does not influence the award of contracts by another executive agency.
4. Should someone who lobbies the legislature be banned from contributing to the State Treasurer?

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