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## FISCAL IMPACT REPORT

ORIGINAL DATE 03/04/11

SPONSOR Griego, E. LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Contributions from State Contractors SB 181

ANALYST Wilson

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

|              | FY11 | FY12    | FY13    | 3 Year<br>Total Cost | Recurring<br>or Non-Rec | Fund<br>Affected |
|--------------|------|---------|---------|----------------------|-------------------------|------------------|
| <b>Total</b> |      | \$100.0 | \$100.0 |                      | Recurring               | General<br>Fund  |

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB 67, HB 155, HB 195, HB 408, HB 491, HB 506, SB 164, SB 172, SB 182, SB 293, SB 420, SB 432 & SB 547

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General Office (AGO)

Secretary of State (SOS)

### SUMMARY

#### Synopsis of Bill

Senate Bill 181 amends the Campaign Reporting Act. It prohibits business entities, lobbyists and state contractors from making contributions to or soliciting contributions for candidates for nomination or election to public office, campaign committees established by the candidate, and political committees established or affiliated with public officers. It also bars the principals of business entities and state contractors from making contributions.

### FISCAL IMPLICATIONS

The SOS states that they will need no less than two additional FTEs with associated benefits and work stations at an estimated cost of \$100,000.

### SIGNIFICANT ISSUES

The office of SOS will need to implement a system of tracking the prohibited contributors. In addition, because the principals of the entities would be difficult to identify, oversight would be

largely dependent upon notification and complaints submitted with respect to this provision. The AGO provided the following:

This bill presents the policy issue of whether complete bans on any political contributions by business entities, lobbyists, and government contractors is necessary or appropriate to protect the integrity of the political campaign system and government decision-making while balancing First Amendment rights to participate in the political process.

As a legal matter, opinions from federal court and state Supreme Courts have almost uniformly upheld bans similar to the bans proposed in this bill. So far, the US Supreme Court has only upheld bans on direct contributions to candidates by corporate entities.

The US Supreme Court in *Citizens United v. Fec* struck down bans on independent political campaign related expenditures by corporations, while at the same time acknowledging that direct corporate contributions to candidates may be tightly regulated to avoid corruption or the appearance of corruption.

However, the bill presents serious First Amendment speech issues when it comes to prohibitions on contributions by individuals such as spouses and dependent children. The US Supreme Court has already struck down wholesale bans on contributions by minors. Although this bill bans contributions by a narrow group of minors, still, this ban may raise constitutional problems.

Likewise, can an employee who has managerial or discretionary responsibilities be 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 an entity which could be a non-profit that has a state contract?

The bill may also overreach by mixing all state contractors into the same category. For example, should a contractor with one agency of the executive be prohibited from giving to a candidate belonging to another separate and independent state agency? There are many agencies headed by separately elected state officials such as the Attorney General or the State Treasurer. Each executive agency is independent and does not influence the award of contracts by another executive agency.

The same is true with the ban on lobbyists. For example, should a lobbyist of the legislature be prohibited from giving a contribution to the State Auditor?

Finally, the bill bans lobbyists from making campaign contributions, but allows their employers to continue making contributions.

## **ADMINISTRATIVE IMPLICATIONS**

The Ethics Division within the SOS does not employ a sufficient number of personnel to oversee, investigate, and resolve issues relevant to this measure. In addition, there is currently no way to accurately track current state contractors and the principals of these entities. The solicitation of contributions would be difficult to regulate without a report or complaint.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

SB181 relates to the following ethics and elections bills:

HB 67, Prohibit Public Official Lobbying for 1 Year  
HB 154, No Election Expenditures from Corporations  
HB 155, Disclosure of Funds for Election Advocacy  
HB 195, State Ethics Commission Act  
HB 408, State Ethics Commission Act  
HB 491, Electioneering of Communications Contributions  
SB 164, State Ethics Commission Act  
SB 172, State Ethics Commission Act  
SB 182, Limit Contributions in Certain Elections  
SB 293, State Ethics Commission Act  
SB 420, State Ethics Commission Act  
SB 432, Governmental Conduct & Contracts  
SB 547, Election Code Definitions

## **TECHNICAL ISSUES**

The SOS notes that if this bill is Section 2-11-8.1(b) (c) could be deleted from the Lobbyist Regulation Act. A prohibited period would be rendered unnecessary.

## **ALTERNATIVES**

The AGO made the following suggestions:

Given that the Legislature passed limits on campaign contributions which just went into effect after the 2010 general election, are bans on contributions necessary, or as needed and effective as they might have been without any contribution limits? Would better disclosure requirements be just as effective and avoid the potentially difficult policy questions raised by complete contribution bans?

As to contractors, would a more effective approach be to pass legislation which expands the Procurement Code's disclosure requirements for contractors and prospective contractors? Full disclosure requirements would appear to have far less ramifications on First Amendment speech, especially given that the US Supreme Court expressly upheld campaign disclosure requirements in its recent decision in the Citizens United v. FEC case.

DW/svb