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FISCAL IMPACT REPORT

ORIGINAL DATE 01/30/10

SPONSOR Chasey LAST UPDATED _____ HB 172

SHORT TITLE Lobbyist and Contractor Contribution Ban SB _____

ANALYST Ortiz

APPROPRIATION (dollars in thousands)

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

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB28, HB118, SB48, and SB49

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Attorney General's Office (AGO)
 Secretary of State (SOS)

SUMMARY

Synopsis of Bill

House Bill 172 enacts new sections to the Campaign Reporting Act, Section 1-19-25 et. seq. NMSA 1978. Under the bill, business entities, lobbyists who are subject to the Lobbyist Regulation Act, state contractors or a principal of a state contractor are prohibited from making a contribution to or soliciting a contribution on behalf of or for the benefit of a candidate for nomination or election to a state public office or a political committee established by the candidate, or to a political committee under certain specified circumstances. Sections 1 and 2 prohibit a state public officer, candidate or political committee as described from accepting or soliciting a contribution prohibited in that section. Section 3 prohibits a candidate or political committee from such activity. Section 4 provides that "a person prohibited from contributing to or for the benefit of a candidate for state public office by the Campaign Reporting Act shall not facilitate the collection of contributions from legal contributors that the person is prohibited from making on the person's own behalf."

A business entity, a lobbyist, a state contractor or principal of a state contractor may make contributions or expenditures to promote the success or defeat of a ballot question. A lobbyist may establish a political committee for the lobbyist's own campaign or solicit contributions from persons not prohibited from making contributions in that section. A principal of a contractor may establish a political committee for the principal's own campaign or solicit contributions from persons not prohibited from making contributions in that section.

The bill adds definitions for “business entity,” “principal of a state contractor,” “public office,” “public officer,” “state agency,” “state contract,” “state contractor,” “state public office,” and “state public officer.”

SIGNIFICANT ISSUES

The Attorney General's Office presents 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 recent 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 direct contributions to candidates -- which may be tightly regulated to avoid corruption or the appearance of corruption -- and independent expenditures made by the corporations themselves, which the Supreme Court held may not now be constitutionally limited. Slip op. at 43.
- Should an employee who has managerial or discretionary responsibilities in a non-profit organization 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 a non-profit that has a state contract?
- Opinions from federal court and state Supreme Courts 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). So far, the US Supreme Court has only upheld bans on contributions to candidates by corporate entities.
- Should this bill be amended to require disclosures of funding sources by any entity that engages in political advocacy, as proposed in HB 118? That could become a more important issue in light of the recent U S Supreme Court decision in the Citizens United case.
- Is the mixing of all state contractors into the same category legally proper and good policy? For example, should a contractor with one agency of the Executive (e.g., the Governor's Office) be prohibited from giving to a candidate belonging to another separate and independent state agency (e.g., the State Treasurer)? Each executive agency is independent and does not influence the award of contracts by another executive agency.
- Likewise, the ban includes contractors with the Judicial branch, and yet these contractors are not banned from contributing to judicial candidates; they are only banned from contributing to Executive branch candidates and legislators.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB28 – State Contractor Contribution Disclosures: An applicable “state contract” is defined as an agreement (or combination or series of contracts) having a value of \$50,000 or more in a fiscal year, as opposed to the \$20,000 limit contained in this bill.

SB48 – Contributions by State Contractors: SB48 would amend NMSA 1978, § 1-19-26 to be applicable to state contracts having a value of \$50,000 or more, as opposed to the \$20,000 limit contained in this bill; similar to this bill, SB48 would prohibit contributions and the solicitation of contributions by the principals of state contractors and prospective state contractors.

SB49 - Prohibit Certain Election Contributions: SB49 is almost identical to HB172 with the 2 major differences being that HB172 prohibits bundling, and HB172 extends the reach of the law to include legislators and the PRC

SB51 – Public Campaign Act: adds new sections to the Election Code that define “qualifying contributions” and “allowable contributions”; provides guidelines and restrictions for contributions to certified candidates.

HB118 is similar to HB172 except it does not ban contributions from seekers of targeted subsidies, and HB172 does not require disclosures of funding from any entity that engages in political advocacy, an omission that may be more important in light of the recent US Supreme Court decision in the Citizens United case.

OTHER SUBSTANTIVE ISSUES

An issue of concern may be whether the bill presents First Amendment speech issues when it comes to prohibitions on contributions by certain individuals, such as 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 as to that particular group in light of McConnell.

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

ALTERNATIVES

Another approach, suggests the AGO, is to pass legislation that expands the Procurement Code’s disclosure requirements for contractors and prospective contractors, as proposed by SB 28. Full disclosure requirements would likely have far less ramifications on First Amendment speech, especially in light of the recent US Supreme Court opinion in Citizens United v. FEC upholding campaign disclosure requirements.