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

SPONSOR Varela **ORIGINAL DATE** 1/22/07 **LAST UPDATED** 3/15/07 **HB** 223/aHVEC/aSRC

SHORT TITLE Contributions to Retirement Board Candidates **SB**

ANALYST Aubel

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY07	**FY08**	**FY09**		
	NFI			

(Parenthesis ( ) Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Response Received From
Public Employee Retirement Association (PERA)
Attorney General's Office (AGO) (See AMENDMENTS section added from original FIR)

SUMMARY

Synopsis of SRC Amendment

The Senate Rules Committee amendments make one significant change to HB 223/aHVEC by adding "individuals" to the list of contributors subject the $6,000 limitation. PERA states it finds this revision acceptable.

Synopsis of HVEC Amendment

The amendment raises the value of the contribution from $2.0 thousand to $6.0 thousand "or otherwise provided by law." This change establishes a ceiling for PERA elections, while providing the flexibility to be consistent with other state statutes limiting state election contributions that may be enacted in the future.

HB 223 was not amended to include "individuals." It should be noted that prior AGO analysis suggested that the inclusion of "persons" may infringe upon the freedom of speech guaranteed under the United States Constitution.

Synopsis of Original Bill

House Bill 223 amends Section 10-11-130.1 of the Public Employees Retirement Act to add a restriction on campaign contributions made to candidates for the Public Employees Retirement Board. In addition to the existing restriction on campaign contributions (no candidate for the board may accept anything of value for more than $25 from those who have or seek contracts with the board or association), HB 223 would prohibit candidates for board membership from accepting a contribution with a value of more than $2.0 thousand from "any corporation, labor organization or other organization, association or entity."

SIGNIFICANT ISSUES

PERA noted that efforts at reforming campaign finance have been challenged in court as an unconstitutional infringement upon the rights to free speech and association guaranteed by the First Amendment of the United States Constitution. Nevertheless, for almost 30 years, the United States Supreme Court has upheld reasonable campaign contribution limits and has also re cognized a meaningful distinction between restrictions on campaign contributions and restrictions on campaign expenditures. The Supreme Court imposes significantly more severe restrictions in the review of measures that are aimed at limiting a candidate's expenditures than those measures aimed at restricting campaign contributions. See, e.g. Buckley v. Valeo, 424 U.S. 1 (1976). PERA therefore concluded that the limitation proposed by HB 223 would likely withstand legal challenge.

PERA based this conclusion on the following additional case law:

> *The Supreme Court has recently reaffirmed that the states have substantial leeway to act in limiting contributions. Nixon v. Shrink Missouri Government PAC, 528 U.S. 377 (2000). In Nixon, the Supreme Court reasoned that, if the question of the propriety of large campaign contributions remains unanswered, the "cynical assumption that large donors call the tune could jeopardize the willingness of voters to take part in democratic governance." Therefore, state lawmakers are permitted to place limits on campaign contributions. However, the Supreme Court has emphasized that such limits must be reasonable and narrowly tailored. Limits must not be set so low that they are "so radical in effect as to render political association ineffective, drive the sound of a candidate's voice below the level of notice, and render contributions pointless." Nixon.*
>
> *Under the federal Taft-Hartley Act enacted in 1947, corporations, unions and interstate banks are permanently banned from making contributions to federal candidates. Corporate and bank contributions had been banned since 1907. Such bans have survived court challenge.*

PERA stated that it already imposes a rather extreme limit of $25.00 on those persons or organizations that have or seek to have a contractual relationship with PERA or the board, including investment consultants. To date, there have been no legal challenges to the limit contained in Section 10-11-130.1.

PERA also claimed that HB 223 is sufficiently reasonable and properly tailored because it would prohibit candidates for PERA board membership from accepting a contribution with a value of more than $2.0 thousand from "any corporation, labor organization or other organization,

association or entity", which would not limit contributions from individuals. However, PERA stated that HB 223 does preclude an individual from acting as a conduit for a contribution in excess of the $2.0 thousand limit. PERA concluded, as follows:

> *The distinction between contributions made by corporations and labor organizations and those made by individuals is well recognized. Federal law entirely prohibits both corporations and labor organizations from making campaign contributions but permits contributions by individuals up to $1,000.00 per election to candidates. See, 2 USC Section 441 b and Section 441 a.*

On December 28, 2006, the PERA board voted to support legislation that would impose limits on the campaign contributions made by "a corporation, labor organization, or any other organization, association or entity." While the board expressed its interest in such a limit, it expressed no interest in placing limits on campaign contributions made by individuals.

TECHNICAL ISSUES

PERA did not note any technical issues.

OTHER SUBSTANTIVE ISSUES

PERA related that in the 2004 board election, a single entity contributed over $53.0 thousand to three candidates. By comparison, the six unsuccessful candidates raised a combined total of $2.4 thousand. PERA stated that HB 223 would help reduce such discrepancies between contributions received by board candidates, and that the courts have found reasonable campaign contribution limits to be a viable answer in these situations.

Ex-officio PERA Board members include the Secretary of State and the State Treasurer. This bill would not affect other campaign contributions to those board members, as it appears to apply only to those candidates elected by the PERA membership.

ALTERNATIVES

PERA indicated there were no alternatives.

AMMENDMENTS

According to the AGO, HB 223 does not specifically limit the acceptance of "contributions" to those contributions relating to a campaign for a position on the PERA Board and recommends the following amendment for clarification:

Page 3 lines 16 and 20: insert the word "campaign" before "contribution."

The AGO further pointed out that the bill does not specifically limit contributions from "persons", although it does use the term "entity." If the intention is to include individuals, the AGG recommended the following amendment:

Page 3 line 18: Insert the words "make or" be inserted before "act."

Another possible amendment if the intent of the bill is broadened to included individuals would be to add the word "individual" or "person" prior to "corporation" on line page 3, line 17. However, this would expand the original intent of the PERA Board, which specifically did not include "individuals."

The AGO also noted that HB 223 does not specify a penalty for "acting as a conduit" for contributions in excess of the $2 thousand, but does not provide recommended language to address this issue.

The AGO pointed out that the bill also appears to restrict the "value" of contributions to $2 thousand and under, implying that it is intended to cover contributions that would include items or services other than cash. Language to specify "cash" or "in-kind" contribution could be added for clarification.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Corporations, special interest groups and labor organizations will continue to be able to make unlimited campaign contributions to candidates for election to the Public Employees Retirement Board.

MA/csd