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FISCAL IMPACT REPORT

SPONSOR Cervantes **ORIGINAL DATE** 02/09/12 **HB** 310
LAST UPDATED
SHORT TITLE Election Contributions by Contractors **SB** _____
ANALYST Wilson

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY12	FY13	FY14	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Minimal	Minimal		Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 74, HB 113, HB 114, HB 207, HB 208, HB 310, HJR 25, SB 11, SB 12, SB 103, SB 105, SB 116, SB 117, SB310 & SB 370

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Attorney General's Office (AGO)

Public Regulation Commission (PRC)

SUMMARY

Synopsis of Bill

House Bill 310 amends the current Campaign Reporting Act at Chapter 1, Article 19, Sections 25-36 (NMSA 1978), by adding new material prohibiting contributions to or fundraiser-hosting for candidates for a state public office which has administrative authority over a state agency soliciting a contract to which the principal of a prospective state contractor responds.

In addition, during the term of the contract, the principal of the state contractor shall not make or bundle contributions or host fundraisers for a candidate for state public office that has authority over the state agency having a contract with the state contractor.

The bill provides an exception for the principal who contributes to his or her own campaign for state public office.

Moreover, subsection D of Section 1 of the bill intends to supplement, and not limit, provisions of other statutes or agency rules that may further limit contributions from a principal of a state

contractor or prospective contractor.

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary will be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

Violations of the Campaign Reporting Act may currently produce a civil action in state district court, or a criminal action with a misdemeanor penalty consisting of a fine up to \$1,000 or imprisonment for up to one year, or both, to be enforced by the attorney general or the district attorney in the appropriate county.

SIGNIFICANT ISSUES:

The AGO provided the following:

In two landmark opinions the US Supreme Court has upheld the constitutionality of far sweeping bans on specific sources of contributions known as “source bans”. *FEC v. Beaumont*, upheld a ban on direct campaign contributions to candidates from corporate entities. *McConnell v. FEC*, 540 U.S. 93, 232 upheld bans on soft money contributions to political parties and nonprofit corporations. And decisions in both lower federal courts and state Supreme Courts have almost uniformly upheld bans similar to the bans proposed in this bill.

By far, *McConnell* has been the most far sweeping. In *McConnell* the US Supreme Court upheld the constitutionality of Title I of the 2002 Bipartisan Campaign Reform Act which banned (1) soft money contributions to political parties—including contributions from one party to another, (2) soft money contributions from political parties to independent expenditure committees like tax-exempt organizations that engage in electioneering activities, and (3) soft money contributions from federal candidates and officeholders to nonprofit corporations engaging in federal election activities.

Accordingly, the bill’s ban on contributions will pass constitutional challenge.

However, the ban on hosting fundraisers and bundling contributions involves more closely protected First Amendment speech and could possibly raise potential constitutional problems. The Second Circuit has struck down a similar ban on bundling and fundraising. *Green Party of Conn. v. Garfield* held that a less restrictive alternative to address the problem of bundling will be to ban only large-scale efforts to solicit contributions—for example, a ban on state contractors organizing fundraising events of a certain size. A less restrictive means to address the bundling problem would be simply to ban lobbyists from soliciting contributions from their clients and contractors from soliciting contributions from their employees and subcontractors.

Furthermore, the bill may present First Amendment speech problems when it comes to prohibitions on contributions by spouses and dependent children of the principals of a

contractor. As an example of how far-reaching this ban will be, the spouse of a board member of a nonprofit corporation that has a state contract will be prohibited from making a campaign contribution. While not directly on point, the US Supreme Court has struck down as unconstitutional, a wholesale ban on contributions by minors.

The AGO notes In light of recent Pay to Play scandals involving state contractors, failure to pass this bill will reinforce the appearance of impropriety in the public’s mind, thereby undermining public trust in government.

The SOS has oversight over the PRC under the Public Election Fund for PRC candidates who choose to use public funds for campaigning.

ADMINISTRATIVE IMPLICATIONS

The SOS stated that the required oversight for this bill will be minimal.

RELATIONSHIP

HB 310 relates to the following election bills:

- HB 74, Conservancy District Absentee Ballots
- HB 113, Voter ID Requirements
- HB 114, No Corporation Influence on Elections
- HB 207, Voter Identification Requirements
- HB 310, Election Contributions by Contractors
- HJR 25, No Election Money from Corporations, CA
- SB 11, Campaign Reporting & Definitions
- SB 12, Campaign Public Financing Changes
- SB 103, No Legislator Lobbying for One Year
- SB 105, Public Campaign Financing
- SB 116, Use of Legislative Campaign Funds
- SB 117, Elections Commission Act
- HB 208 – Contractor Registration and Contributions
- SB 310, Campaign Contributions Based on Calendar Year
- SB 370 – Election contributions and Fundraising

TECHNICAL ISSUES

The AGO points out the following:

Paragraph A of Section 1 of the bill conflicts with or overlaps current state law, namely § 13-1-191.1 of the Procurement Code banning campaign contributions by prospective contractors and § 10-16-13.3 of the Governmental Conduct Act banning receipt of anything of value from financial services contractors.

Paragraph D of Section 1 recognizes that there are other laws, and provides that this bill supplements these laws. While Paragraph D works with regards to § 10-16-13.3 of the Governmental Conduct Act, it creates confusion with reconciling the bill with § 13-1-191.1 of the Procurement Code because these provisions are so similar. Perhaps a better approach will be to simply amend § 13-1-191.1 of the Procurement Code.