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FISCAL IMPACT REPORT

SPONSOR Morales **ORIGINAL DATE** 02/08/12
LAST UPDATED _____ **HB** _____
SHORT TITLE Campaign Contributions Based on Calendar Year **SB** 310
ANALYST Wilson

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY12	FY13		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

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

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)

Secretary of State (SOS)

SUMMARY

Synopsis of Bill

Senate Bill 310 amends the Campaign Reporting Act to change the contribution limits from a cap per election cycle to a cap every year.

FISCAL IMPLICATIONS

There is no fiscal impact.

SIGNIFICANT ISSUES

The AGO provided the following:

There is a split of authority over the constitutionality of contribution limits based on a calendar year rather than an election cycle.

The Ninth Circuit struck down this identical provision as unconstitutional. The court struck down California's campaign contribution limits as unconstitutional because—like this bill—they were limited by year instead of by election cycle. The Ninth Circuit held that this discriminated against challengers because most challengers normally do not start raising money until either the year of the election, or the year before the election. Therefore, incumbents would have the advantage of raising the limit amounts every year, *Service Employees Int'l Union, etc. v. Fair Political Practices Com.*

In summary case law establishes that government must remain scrupulously neutral when it regulates activity protected by the First Amendment. The Court has not hesitated to strike down laws that are facially neutral but have a discriminatory impact on First Amendment rights.

However, the Eighth Circuit disagrees and permits annual limits on contributions in *Minn. Citizens Concerned for Life, Inc. v. Kelley*.

The Attorney General's office wrote the contribution limits statute and successfully lobbied the bill through the Legislature in 2009. During the HJC hearings, the contributions limit bill was amended to limit contributions per year instead of per election cycle. I testified in committee that this provision was unconstitutional under *Service Employees*. So the Committee removed this amendment from the bill.

An important note of caution, however, is that every ten years during an election in a redistricting year, challengers will normally be precluded from raising contributions early because they will not know the boundaries of the district they want to run in.

In addition, the AGO cautions that every ten years during an election in a redistricting year, challengers will normally be precluded from raising contributions early

ADMINISTRATIVE IMPLICATIONS

The SOS did not provide any administrative implications

RELATIONSHIP

SB 310 relates to:

- 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

OTHER SUBSTANTIVE ISSUES

The SOS further provided the following:

The language in the existing statute limits contributions by primary and general election cycle "for the applicable office".

That means for two year offices the primary election cycle runs from the day after the general election in an even numbered year until the day of the primary in the next even numbered year such as November 2012 to June 2014.

For four year offices, the primary election period runs from the day after the general election in an even numbered year until the day of the primary in the next plus one even numbered year such as November 2012 until June 2016.

For offices such as a commissioner on the Public Regulation Commission or a commissioner on the Public Education Commission when there are staggered terms and different districts have different primary election cycles. Similarly, the different offices have different general election cycles depending on when the term expires.

With regard to political committees, the language of the existing statute is ambiguous. The election cycle is presumed by the SOS to mean "any primary election cycle" for committees since the term "applicable office" cannot be applied to them. However, the inclusion of the words "applicable office" still creates confusion and ambiguity regarding political committees.

Questions have been presented to the SOS as to the meaning of "applicable office" with regard to political committees. Is a political committee restricted to a contribution of \$5000 total per election cycle, or is a political committee restricted to a contribution of \$5000 per election cycle for each applicable office to which it makes contributions?

In the first example, a political committee could receive \$5000, and if it contributed to all legislators, would be limited to contributing \$44.64 to each House or Senate member.

In the second example, a political committee could receive \$5000 for each office it supports, and contribute the maximum amount of \$2300 to each candidate it supports for each office. The SOS is not aware of any political committee that has collected contributions in that manner, but believes the existing statute could be challenged and interpreted in that way.

DW/svb