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## FISCAL IMPACT REPORT

**SPONSOR** Griego, E. **ORIGINAL DATE** 02/13/12 **LAST UPDATED** \_\_\_\_\_ **HB** \_\_\_\_\_  
**SHORT TITLE** Election Contributions & Fundraising **SB** 370  
**ANALYST** Wilson

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

	<b>FY12</b>	<b>FY13</b>	<b>FY14</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>		Unknown				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

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)

Attorney General's Office (AGO)

General Services Department (GSD)

Public Regulation Commission (PRC)

### SUMMARY

#### Synopsis of Bill

Senate Bill 370 amends the current Campaigning Reporting Act (Act). It adds new sections prohibiting business entities, lobbyists, and state contractors and their principals from making or bundling contributions, sponsoring or hosting a fundraising on behalf of a public officer, a candidate for nomination or election to a public office or a campaign committee established by the candidate.

In addition, a public officer or candidate cannot accept or solicit a contribution from business entities, lobbyists and/or state contractors and their principals.

Section 4 of SB 370 amends Section 1-19-26 NMSA 1978 by adding new definitions for business entity, principal of a state contractor, state agency, state contract and state contractor in the Act.

## 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 would 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.

## SIGNIFICANT ISSUES

The AOC explains that currently, Section 1-19-34.6 NMSA 1978 allows the attorney general or district attorney to institute a civil action in district court for any violation of the Act or to prevent a violation of that act that involves an unlawful solicitation or the making or acceptance of an unlawful contribution. Also, under Section 1-19-36 any person who knowingly and willfully violates any provision of Act is guilty of a misdemeanor and shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than one year or both, to be enforced by the Attorney general or the district attorney in the appropriate county.

The Act applies to the judiciary because primary, general or other statewide special elections and judicial retention elections are specifically included in the definition of election.

This bill includes the judicial branch in the definition of state agency.

The AGO provided the following:

The ban on corporate contributions is clearly constitutional under *FEC v. Beaumont* which held that the state can ban direct contributions to candidates from corporations. In fact, federal law has banned corporate contributions since 1907 and this prohibition is common among our sister states.

In addition, the courts have generally upheld the constitutionality of bans on specific sources of contributions known as source bans. Decisions by both lower federal courts and state supreme courts have likewise upheld source bans

However, this bill imposes a far more sweeping ban on all lobbyists, regardless of how narrow their lobbying activities are. For example, a legislative lobbyist would be banned under this bill from contributing to the state auditor or a county judge. The California Supreme Court struck down as unconstitutional a similar ban in *Fair Political Practices Commission v. Superior Court of Los Angeles County*. While either apparent or actual corruption might warrant some restriction of lobbyist associational freedom, it does not warrant total prohibition of all contributions by all lobbyists to all candidates.

The ban on contractors suffers from the same constitutional infirmity as the ban on lobbyists—the ban is overly broad. The ban is not branch specific; for example, a contractor is banned from donating to a legislator even though the contractor only has a contract with the State Auditor’s Office.

Lastly, 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 would be, the spouse of a board member of a nonprofit corporation that has a state contract would 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.

### **ADMINISTRATIVE IMPLICATIONS**

The agencies impacted by this bill will have to handle the requirements of the bill as part of on-going responsibilities

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

SB 370 relates to other election bills as follows:

- HB 74, Conservancy District Absentee Ballots
- HB 113, Voter ID Requirements
- HB 114, No Corporation Influence on Elections
- HB 207, Voter Identification Requirements
- HB 208 – Contractor Registration and Contributions
- 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
- SB 310, Campaign Contributions Based on Calendar Year

### **ALTERNATIVES**

The AGO notes that the ban on hosting fundraisers and bundling contributions involves closely protected First Amendment speech and could raise constitutional problems. The Second Circuit has struck down a similar ban on bundling and fundraising. A less restrictive alternative to address the problem of bundling would 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.

DW/amm