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FISCAL IMPACT REPORT

ORIGINAL DATE 03/09/09
 LAST UPDATED 03/19/09 **HB** _____

SPONSOR SJC

SHORT TITLE Contributions to PERA Board Candidates **SB** CS/451/aSFI#1/aHLC

ANALYST Wilson

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$5.0	\$5.0		Recurring	PERA Fund & General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 99, HB 151, HB 244, HB 252, HB 253, HB 272, HB 495, HB 535, HB 553, HB 614, HB 686, HB 808, SB 49, SB 94, SB 116, SB 128, SB 139, SB 140, SB 163, SB 258, SB 262, SB 263, SB 269, SB 296, SB 346, SB 521, SB 535, SB 555, SB 557 SB 606 & SB 611

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)

The Public Employees Retirement Association (PERA)

SUMMARY

Synopsis of HLC Amendment

The Labor and Human Resources Committee amendment to the Senate Judiciary Committee substitute for SB 451, as amended removes the following language stating that a candidate for retirement board membership by election by some or all of the members of the association pursuant to the Public Employees Retirement Act shall not accept monetary contributions, in-kind services or anything else of value exceeding \$6,000 in the aggregate from one or more persons to the candidate's campaign, whether made directly to the candidate, to a political committee or to some other entity supporting the candidate's election, during the combined period of the candidate's campaign and should that candidate win the election, the term of office following that election until the next campaign for board membership.

Synopsis of SFI#1 Amendment

The Senate Floor amendment #1 for the SJC substitute for SB 451 does the following:

- Makes it mandatory that names and addresses of members or retired members must be produced or disclosed in electronic format.
- Clarifies that the names and addresses of members cannot be disclosed without the release or consent of the members or retired members to a candidate for election to the retirement board for election purposes upon request by the candidate.
- Expands the individuals who may not give anything of value from persons authorized to invest public funds to include an employee or agent of a person who is allowed to invest public funds.
- Adds that no organization, association or other entity having a membership that substantially includes persons are who authorized to invest public funds, has a current contract with the retirement board or association or is a potential bidder may not give anything of value as a contribution to specified candidates for the PERA board.

Synopsis of Original Bill

Senate Judiciary Committee Substitute for Senate Bill 451 amends the PERA act as follows:

Adds language allowing release of PERA members names and addresses, in electronic format, to candidates for board membership, and limits the use of the names and addresses to election purposes only.

- Prohibits candidates for retirement board membership from accepting anything of value from the persons or organizations who have or potentially could have a financial interest related to PERA business. Current law allows contributions up to \$25.
- Prohibits retirement board candidates from accepting anything of value of more than \$6,000 in the aggregate of monetary contributions, in kind services or anything else of value, from any one or more persons, whether made directly to the candidate, a political committee or an entity supporting the candidate's election. This limit applies during the period of:
 - The candidates campaign, and
 - During the candidates term of office until the next campaign for board membership should the candidate win the election.
- Adds additional requirements to make a post-election report accounting for all campaign expenditures, including the purposes of the expenditures.
- Adds a new section making it unlawful for a person, political committee or other entity to make, or for a PERA-Board candidate to accept, either directly or indirectly, a contribution that is reported as coming from one person or entity when the candidate or candidate's agent knows that the contribution is actually from another person or entity that directed the contribution not be publicly reported.

- Adds a new section making it unlawful for a PERA Board candidate or that candidate's agent to expend campaign contributions except for campaign expenditures, donations to the retirement board credited to the income fund, donations to the general fund or donations to a charitable organization qualifying for income tax deduction status under the Internal Revenue Code.
- Adds a new section making a knowing, willful violation a misdemeanor punishable by a maximum fine of \$1,000 or by imprisonment for a maximum of 1 year;

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. 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

This bill essentially extends similar requirements and penalties of the Campaign Practices and Reporting Act to the campaigns of PERA Board members who are elected by PERA members and thus not covered by the Campaign Practices and Reporting Act.

PERA provided the following:

The Public Employees Retirement Act primarily governs the administration of a retirement system for public employees in New Mexico. The PERA Act also contains sections outlining the authority of the Public Employees Retirement Board and sections restricting gifts to employees and Board members and restricting contributions to those campaigning to be elected to the PERA Board. The addition to the PERA Act of definitions for the terms "political committee" and "political purpose," undefined elsewhere in state election or governmental conduct laws, singles out retirement Board candidates and appears to be an attempt at political reform. The terms and their definitions are unclear. PERA anticipates confusion and error by candidates for PERA office and their supporters.

SB 451 is significantly more limiting than the current PERA Act. The current PERA Act imposes reporting requirements for all campaign contributions and \$25 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 limits contained in the current Section 10-11-130.1.

SB 451 eliminates contributions from contractors and paid consultants. Currently, contributions from these same persons and organizations are limited to \$25.

For the first time, contributions to PERA Board candidates by individual donors will be limited. Previously, contributions from contributors with no potential financial interest in PERA business were unlimited and subject only to the reporting requirements of the PERA Act.

ADMINISTRATIVE IMPLICATIONS

PERA anticipates that reporting confusion and challenges by candidates will escalate under SB 451. PERA submits that as a retirement association it is not the appropriate arbiter of allegations of political purpose.

The other affected agencies should be able to handle the enforcement of the provisions in this bill as part of ongoing responsibilities.

RELATIONSHIP

SB 451 relates to the following ethics bills:

- HB 99, Prohibit Former Legislators as Lobbyists
- HB 151, State Ethics Commission Act
- HB 244, Prohibit Contractor Contribution Solicitation
- HB 252, Political Contributions to Candidates
- HB 253, Quarterly Filing of Certain Campaign Reports
- HB 272, Quarterly Campaign Report Filing
- HB 495, Political Candidate & Committee Donations
- HB 535, Lobbyist Identification Badges
- HB 553, Disclosure of Lobbyist Expenses
- HB 614, State Ethics Commission Act
- HB 686, AG Prosecution of State Officer Crimes
- HB 808, Tax-Exempt Election Contributions & Reporting
- SB 49, Governmental Conduct Act For Public Officers
- SB 94, Prohibit Former Legislators as Lobbyists
- SB 116, Limit Contributions to Candidates & PACs
- SB 128, Require Biannual Campaign Reports
- SB 139, State Ethics Commission Act
- SB 140, State Ethics Commission Act
- SB 163, Prohibit Former Legislators as Lobbyists
- SB 258, Contribution from State Contractors
- SB 262, Political Contributions to Candidates
- SB 263, Contractor Disclosure of Contributions
- SB 269, State Bipartisan Ethics Commission Act
- SB 296, State Contractor Contribution Disclosure
- SB 346, Political Contributions to Candidates
- SB 451, Contributions to PERA Board Candidates
- SB 521, Campaign Contributions in Certain Elections
- SB 535, Election Definition of Political Committee
- SB 555, Public Employee & Officer Conduct
- SB 557, State Ethics Commissions Act
- SB 606, Expand Definition of Lobbyist
- SB 611, Investment Contractor Contributions