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FISCAL IMPACT REPORT

ORIGINAL DATE 02/28/13

SPONSOR Youngblood LAST UPDATED _____ HB 595

SHORT TITLE State Employee Financial Disclosure & Info SB _____

ANALYST Soderquist

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY13 | FY14 | FY15 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|------|------|------|----------------------|------------------------------|------------------|
| Total | NFI | NFI | NFI | NFI | | |

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

State Personnel Office (SPO)

Attorney General's Office (AGO)

Secretary of State (SOS)

Department of Finance and Administration (DFA)

SUMMARY

Synopsis of Bill

House Bill 595 (HB 595) amends Section 10-16A-2 NMSA 1978, the Financial Disclosure Act. Section 1 of the proposed legislation broadens the definition of "financial interest" to include a member of an individual's household having a financial interest in a business or for which employment negotiations have begun to make them an employee. Further, the section establishes a definition of governor exempt employee as "an employee of a state agency who is in a policy making or supervisory position or an appointing authority who was appointed by the governor". Section 2 amends Section 10-16A-3 NMSA 1978 to require a governor exempt employee, and all members of the person's household who are eighteen years of age or older to file with the Secretary of State (SOS) a financial disclosure statement within thirty days of hire and during the month of January of every year that the employee remains a governor exempt employee.

HB 595 also changes the monetary reporting requirements by providing tiers for sources of gross income, business interests and each state agency that was sold goods or services: of more than five thousand dollars (\$5,000) but less than ten thousand dollars (\$10,000); of ten thousand dollars (\$10,000) or more but less than twenty thousand dollars (\$20,000); and of twenty thousand dollars (\$20,000) or more.

HB 595 broadens the general reporting requirements by requiring a general description and the name of the donor of all gifts with a single or combined value of more than five hundred dollars (\$500); provided that "gifts" excludes items and money received: (1) by will or intestate succession or from an inter vivos trust; (2) from a testamentary trust established by a spouse or ancestor; (3) from a household member; (4) from a person related by consanguinity within the second degree; and (5) as a political contribution when reported on a campaign report.

Finally, HB 595 allows a reporting individual to have the option of withholding from public view on a web site of the state the home address, home phone number and personal email address of any person covered in the reporting person's disclosure statement. A state agency shall not post for public view on its web site the information that a reporting person lawfully chooses to withhold from public view.

FISCAL IMPLICATIONS

The responses received indicate no significant fiscal impact, with the exception of small changes in financial disclosure statement forms at the SOS.

SIGNIFICANT ISSUES

According to the responses from the Department of Finance and Administration (DFA) and the SOS, Section 10-16A-3(G) NMSA 1978 allows the SOS to redact public home addresses, home phone numbers, and personal email addresses included in the financial disclosure statements. An individual who wishes to review the unredacted copy of a financial disclosure form must submit a request under the Inspection of Public Records Act (IPRA). Although HB 595 provides privacy protections related to website disclosure, the DFA and the SOS state that HB 595 does not continue the identity security protections provided under current law. Thus, while the proposed legislation will potentially increase governmental transparency, the response from the SOS states it would prefer to retain some flexibility to ensure that personal information is not inadvertently revealed to the public.

The inclusion of household members in financial disclosure statements increases opportunities to reveal previously undisclosed conflicts of interest. Further, the new tier-based reporting requirements more fully define the financial interests an employee covered by the proposed legislation may have. Under current law, the disclosure is only made for sources of income in excess of \$5,000. HB 595 requires a more detailed breakdown of over \$5,000, \$10,000, and \$20,000.

Exempt employees who are not serving at the pleasure of the governor or not appointed by an authority appointed by the governor would not be covered by the proposed legislation.

ADMINISTRATIVE IMPLICATIONS

The response from the SOS states that the proposed legislation would require changes in existing financial disclosure statement forms.

TECHNICAL ISSUES

The response from the DFA asserts that HB 595's definition of "governor exempt employee" is limited to policymaking and supervisory positions, and as such excludes positions that are

excepted from the Personnel Act and service created under that act for other reasons. Further, the definition would arguably include classified employees in policymaking or supervisory positions during their probationary periods, when they serve at the pleasure of appointing authorities appointed by the governor. Alternative language is proposed below.

ALTERNATIVES

The response from the Attorney General's Office (AGO) contends the disclosure limitation of gross income to over five thousand dollars is adequate to trigger the mandatory financial disclosure requirement and sufficient for the purposes of the proposed legislation. The new language of "over five thousand but less than ten thousand dollars (\$10,000); of ten thousand dollars (\$10,000) or more but less than twenty thousand dollars (\$20,000); and of twenty thousand dollars (\$20,000) or more..." is surplus language that is not necessary or required here where the amount itself is not important once the five thousand dollar threshold is met.

AMENDMENTS

The response from the DFA states that on page 2, line 9 in the proposed legislation, replace "is in a policymaking or supervisory position" with "is excepted from the Personnel Act and service created under that act pursuant to Section 10-9-4 NMSA 1978, who is employed in a policymaking or supervisory position". This amendment would allow HB 595 to avoid application to classified employees in a policymaking or supervisory position during their probationary period.

Further, the DFA states that Section 10-16A-3(F) NMSA 1978 should be amended to expressly allow the SOS to redact from the financial disclosure statements the home addresses, home phone numbers, and personal email address of individuals covered by the statements. This change is necessary to protect the individuals identity security and physical welfare. Sufficient information would still be available on financial disclosure statements to allow officials to ascertain potential conflicts of interest.

RS/svb