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FISCAL IMPACT REPORT

SPONSOR <u>Baca/Wirth</u>	LAST UPDATED <u>2/10/23</u> ORIGINAL DATE <u>2/8/23</u>
SHORT TITLE <u>Legislative Stationery Prohibitions</u>	BILL NUMBER <u>Senate Bill 364/aSFI#1/ec</u>
ANALYST <u>Gaussoin</u>	

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	No fiscal impact	No fiscal impact			

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Responses Received From
 State Ethics Commission (SEC)
 New Mexico Attorney General (NMAG)

SUMMARY

Synopsis of Senate Floor Amendment 1 to Senate Bill 364

The Senate floor amendment to Senate Bill 364 strikes a provision in the original bill that amended the Governmental Conduct Act to allow only a legislator who is representing a constituent in a matter before a state agency to make reference to their legislative capacity and use legislative stationery and other indications of the legislator’s position. The original bill would have required that a legislator be both representing a constituent and working for no compensation in order to represent themselves as a legislator and use stationery and other indicia of their office. In existing law, the legislator can be either representing a constituent or working for free. With the amended bill, the legislator does not need to be working for a constituent but must be working for free.

Synopsis of Original Bill

Senate Bill 364 (SB364) amends a provision in the Governmental Conduct Act (Section 10-16-9 NMSA 1978) to clarify a legislator can appear for, represent, or assist another person in a matter before a state agency; make reference to their legislative capacity; and use legislative stationery, legislative email, and other indications of the legislator’s position only when the legislator is working on behalf of a constituent without compensation. In addition, it clarifies that a legislator

who appears before, represents, or assists others before a state agency as a lawyer or in the conduct of another profession cannot refer to their position as a legislator, use legislative stationery or any indications of their position, or make direct or indirect threats related to legislative action.

This bill contains an emergency clause and would become effective immediately on signature by the governor.

FISCAL IMPLICATIONS

Senate Bill 364 contains no appropriation and has no fiscal implications for the Legislature or state agencies.

SIGNIFICANT ISSUES

SB364 as amended would make moot a December 2022 State Ethics Commission informal opinion that “the Governmental Conduct Act prohibits a legislator from using legislative letterhead within the scope of an appearance, representation, or assistance of another person in a matter before a state agency.” In a January 2023 letter to the State Ethics Commission, Senate leadership argued the commission’s opinion was inconsistent with their reading of the law and with an Interim Legislative Ethics Committee advisory opinion from 1996. On February 6, 2023, the commission declined to rescind the opinion and emphasized the opinion was nonbinding. Instead, the commission recommended amendments to the act. In its analysis of the original SB364, the commission said the bill “adopts many features” of the commission’s recommendation.

In its analysis of the original bill, the commission said SB364 would address an aspect of the act that is not in keeping with its intent: “Senate Bill 364’s amendment to Subsection 10-16-9(B) therefore aligns that Subsection with the Governmental Conduct Act’s largest purpose that a public official should not use governmental powers or governmental resources to obtain personal benefits.”

While, in its original analysis, the commission was supportive of the provision of the original bill that amended the existing act to require a legislator be both representing a constituent *and* working without compensation, the commission supports the amendment in the updated analysis and says, because a key role of a legislator is to represent constituents, including that requirement in the Governmental Conduct Act is “superfluous.”

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB364 is related to House Bill 5 and Senate Bill 9, which would reorganize the Governmental Conduct Act extensively, clarify numerous sections, and add a prohibition against the exchange of official acts for sexual favors, among others.

OTHER SUBSTANTIVE ISSUES

The office of Attorney General raises concerns about the use of some terms in the bill and offers a possible expansion on prohibited activity:

SB364 contains several terms that may create interpretation questions without further

clarification or definition. This includes what is or is not considered “assistance” with matters before a state agency, including informal assistance, advice, or other forms of assistance that may not seem substantive. Also, the exception for attorneys and “other professionals” making an appearance or assisting with a matter before a state agency is not clearly defined. It may be obvious if consultants, non-profit employees, or other advisors are exempt, but legislators who wish to advocate for specific policy areas appear to be subject to the prohibition if they cannot articulate a nexus between their profession and assistance provided.

SB364 creates a prohibition of direct or indirect threats related to legislative action. Consideration should be given to direct or indirect promises related to legislative action as well as threats or promises of legislative inaction.

HG/mg/ne/al/rl