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FISCAL IMPACT REPORT

ORIGINAL DATE 1/31/2007
 LAST UPDATED 2/15/2007 HB 553/aHCPAC

SPONSOR Larranaga

SHORT TITLE Contributions to State Agents & Candidates SB _____

ANALYST Ortiz

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
 Public Education Department (PED)
 Administrative Office of the Courts (AOC)
 Corrections Department

No Responses Received From

Secretary of State (SOS)

SUMMARY

Synopsis of CPAC Amendment

Consumer and Public Affairs Committee amendment to House Bill 553 is a technical change as recommended below. Specifically, it makes the recommended changes suggested by the AGO in subparagraphs (2) and (3). Page 2, line 10, delete "received" and insert "solicited." And, page 2, line 11 insert "solicited" before contribution.

Synopsis of Original Bill

House Bill 553 enacts a new statute prohibiting a public officer or employee, or their agent, from soliciting a contribution from a person as a condition for doing business with the state or its political subdivisions. Any person so solicited shall make a report to the attorney general within thirty (30) days of the contribution.

HB 553 defines “doing business with” the state or its political subdivisions, “person,” and “public officer or employee” of the state or its political subdivisions.

HB 553 makes a violation of its provisions (1) a misdemeanor if the contribution is \$100.00 or less, (2) a fourth degree felony if the contribution is more than \$100.00.

FISCAL IMPLICATIONS

To the extent HB 553 imposes enforcement authority and responsibilities on the attorney general, the AGO may need for additional staff and resources to enforce the provisions of HB 553.

SIGNIFICANT ISSUES

The Attorney General’s Office notes the following issues.

HB 553 does not define “contribution” and should do so in order to clearly describe the proscribed activities. Should this bill instead be an amendment to the Campaign Reporting Act?

While HB 553 relates to the state and its political subdivisions, “political subdivision of the state” is not defined. Should it be to provide clarity to the bill’s intended reach?

This bill apparently creates a mandatory reporting duty on the whistleblower and sanctions on the whistleblower for failure to act. Would it be better public policy to provide the whistleblower with immunity from retaliation for reporting, rather than subjecting a potential whistleblower to criminal prosecution for a failure to report?

Administrative Office of the Courts identified the following issues.

The scope of this bill is far reaching. Any person who is eligible for per diem or mileage comes under the provisions of this bill. That would include many volunteers who serve on governmental committees, commissions, advisory boards, and the like.

The bill makes failure to report a solicitation as part of doing business illegal. Is appropriate to make failure to report illegal when reporting it could result in retaliation and/or loss of the business?

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 553 relates to SB 400 which amends and enacts new provisions to the Governmental Conduct Act, NMSA 1978, §§ 10-16-1 et seq. relating to interactions and the exchange of things of monetary value between state officials (“state agents”) and persons providing the state with financial services involving public money (“investment agents”).

TECHNICAL ISSUES

The AGO points out that in paragraph B, when a person must report a contribution solicitation, is somewhat confusing because the terms “contribution solicited” and “contribution” are used interchangeably. Solicitation of the contribution is the illegal act. It does not matter whether the contribution actually occurred. And on page 2, line 5 insert “solicitation” after contribution.

Also, the AGO suggests that subparagraphs (2) and (3) be revised. Page 2, line 10, delete “received” and insert “solicited.” And, page 2, line 11 insert “solicited” before contribution.

OTHER SUBSTANTIVE ISSUES

HB 553 requires that violations of this new statute be reported to the attorney general, and provides criminal penalties for violation of this new statute, but does not specifically authorize the attorney general with primary enforcement authority to implement the new act.

EO/mt:csd