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FISCAL IMPACT REPORT

SPONSOR SJC **ORIGINAL DATE** 2/14/07 **LAST UPDATED** 3/12/07 **HB** _____
SHORT TITLE Gift Act **SB** CS/931/aSJC/aSFI#1/aSFI#2
ANALYST Wilson

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Relates to a package of ethics bills

SOURCES OF INFORMATION

LFC Files

Responses Received From
Attorney General's Office (AGO)

SUMMARY

Synopsis of SFI#2 Amendment

Senate Floor amendment #2 to the Senate Judiciary Committee substitute for Senate Bill 931 removes food from the thing of value list in the definition of a gift.

Synopsis of SFI#1 Amendment

Senate Floor amendment #1 to the Senate Judiciary Committee substitute for Senate Bill 931 adds a new section that reads that nothing in the Gift Act shall be construed to prohibit a local government from enacting more restrictive requirements governing the donation or acceptance of gifts than those imposed by this act.

Synopsis of SJC Amendment

The Senate Judiciary amendment to the Senate Judiciary Committee substitute for Senate Bill 931 now applies to public employees and public officers instead of just state employees and state officers.

The amendment expands the definition of state officer or employee to mean any person who has been elected to, appointed to or hired by any public office of the state, instrumentality of the state, political subdivision of the state, local school board, public post-secondary educational institution or any commission or board created by any state agency, local public body or public post-secondary educational institution.

Synopsis of Original Bill

The Senate Judiciary Committee substitute for Senate Bill 931 creates the Gift Act. It makes it a petty misdemeanor for state officers, state employees and candidates for state office to accept certain types or amounts of gifts.

Family is defined as a spouse and dependent children.

Gift means any donation or transfer without commensurate consideration of money, property, service, loan, promise or any other thing of value, including food, lodging, transportation and tickets for entertainment or sporting events, but does not include:

- (1) any activity, including but not limited to the acceptance of a donation, transfer or contribution, or the making of expenditure or reimbursement, that is authorized by the Campaign Reporting Act or the Federal Election Campaign Act of 1971, as amended;
- (2) a gift given under circumstances that make it clear that the gift is motivated by a familial relationship rather than the recipient's position as a state officer or employee or candidate for state office;
- (3) compensation for services rendered or capital invested that is:
 - (a) normal and reasonable in amount
 - (b) commensurate with the value of the service rendered or the magnitude of the risk taken on the investment;
 - (c) in no way increased or enhanced by reason of the recipient's position as a state officer or employee or candidate for state office; and
 - (d) not otherwise prohibited by law;
- (4) payment for a sale or lease of tangible or intangible property that is commensurate with the value of the services rendered and is in no way increased or enhanced by reason of the recipient's position as a state officer or employee or candidate for state office;
- (5) a commercially reasonable loan made in the ordinary course of the lender's business on terms that are available to all similarly qualified borrowers;
- (6) reimbursement for out-of-pocket expenses actually incurred in the course of performing a service for the person making the reimbursement;
- (7) any gift accepted on behalf of and that becomes the property of the state or a political subdivision of the state;
- (8) anything for which fair market value is paid or reimbursed by the state officer or employee or candidate for state office;

(9) reasonable expenses for a bona fide educational program or other activities that are directly related to the state officer's or employee's official duties; provided that in case of the legislators, the program or activity is approved by the New Mexico legislative council; or

(10) an educational scholarship or other grant or award made in the ordinary course of the grantor's business and that is available to all similarly qualified applicants;

In this bill a restricted donor means a person who:

(1) is or is seeking to be a party to any one or any combination of sales, purchases, leases or contracts to, from or with the agency in which the donee holds office or is employed;

(2) will personally be, or is the agent of a person who will be, directly and substantially affected financially by the performance or nonperformance of the donee's official duty in a way that is greater than the effect on the public generally or on a substantial class of persons to which the person belongs as a member of a profession, occupation, industry or region;

(3) is personally, or is the agent of a person who is, the subject of or party to a matter that is pending before a regulatory agency and over which the donee has discretionary authority as part of the donee's official duties or employment within the regulatory agency; or

(4) is a lobbyist or the lobbyist's employer with respect to matters over which the donee may reasonably be expected to act; and

A state officer or employee or a candidate for state office, or that person's family, shall not knowingly accept from a restricted donor, and a restricted donor shall not knowingly donate to a state officer or employee or a candidate for state office, or that person's family, a gift of a market value greater than \$250.

A state officer or employee or a candidate for state office, or that person's family, shall not accept from a restricted donor, and a restricted donor shall not donate to a state officer or employee or candidate for state office, or that person's family, a gift of a market value greater than \$100 during a legislative session.

FISCAL IMPLICATIONS

There is no fiscal impact.

SIGNIFICANT ISSUES

The AGO raises the basic issue of whether New Mexico should, like a majority of other states, ban or limit the amount of certain types of gifts to public officials.

The bill will have to be construed in light of New Mexico's criminal bribery statute, NMSA Section 30-24-1 which prohibits any person giving or offering to give, directly or indirectly, anything of value to any public officer or public employee, with intent to induce or influence such public officer or public employee to execute any of their powers or to perform any public duty. Therefore, the motivation behind the gifts allowed by this bill will have to be examined in

light of that statute.

Furthermore, state law prohibits any state officer, employee, candidate or family members from knowingly asking for or accepting anything of value greater than that fixed or allowed by law for the execution or performance of any service or duty. NMSA Section 30-23-1. The motivation behind accepting the gifts authorized by this bill will have to be examined in light of that statute.

RELATIONSHIP

This bill relates to a package of ethics bills that include:

HB 553, Contributions to State Agents & Candidates
HB 818, Public Financing of Statewide Campaigns
HB 819 Gift Act
HB 820, Legislative Campaign Funds for Office Duties
HB 821, Campaign Reporting Requirements
HB 822, State Ethics Commission Act
HB 823, Prohibit Certain Acts by Public Officers
HB 1154, Lobbyist Filing Fees
HB 1295, Retaliation for Ethics Violation Reporting
HB 1053, Campaign Reporting Act Exception Statements
HB 1296, Investigation of Elected Officials by AG
SB 342, Candidate Withdrawal Requirements
SB 400, Contributions to State Agents & Candidates (dup HB 553)
SB 445, Extend Governmental Conduct Act
SB 588, Former Legislators as Lobbyists
SB 671, Candidate Withdrawal Requirements (dup SB 342)
SB 737, Disclosure by Procurement Contractors
SB 796, Legislative Campaign Funds for Office Duties (dup HB 820)
SB 799, Public Financing of Statewide Campaigns (dup HB 818)
SB 800, Campaign Reporting Requirements (dup HB 821)
SB 815, State Ethics Commission Act (dup HB 822)
SB 953, Lobbyist Filing Fees (dup HB 1154)
SB 1043, Whistleblower Protection Act
SB 1051, Inclusion in Governmental Conduct Act
SB 1107, Prohibit Certain Acts by Public Officers (dup HB 823)
SB 1137, Reporting of Lobbyist Compensation
SB 1177, Disclosure by Procurement Contractors

POSSIBLE QUESTIONS

The AGO asks if any violation of the Gift Act, regardless of the amount involved, should be limited only to the penalty of a petty misdemeanor? Should there be some gradation of penalties?

Who does one report to? How will the provisions of this bill be enforced?

DW/mt