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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/16/09

SPONSOR Cervantes LAST UPDATED \_\_\_\_\_ HB 687

SHORT TITLE Identify Donors with State Business SB \_\_\_\_\_

ANALYST Archuleta

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY08	FY09	FY10	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>	Unknown	Unknown	Unknown			

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)

Attorney General's Office (AGO)

Secretary of State (SOS)

Energy, Minerals, and Natural Resources Department (EMNRD)

Public Education Department (PED)

### SUMMARY

#### Synopsis of Bill

House Bill 628 amends Section 6-5A NMSA 1978 to require disclosure of the identity and financial interest of a donor to an organization when the organization provides property or funds a governmental entity when the donor is doing, has done or seeks to do business with the agency that the organization supports, including a sale, purchase, lease or contract and the donor's identify shall be disclosed to the agency. The bill requires the donor to disclose in writing the donor's identity and financial interest and the agency to maintain a record of the written disclosures. The information regarding qualifying donors and donations is to be provided to the agency as part of the information accompanying an organization's required annual audit.

### FISCAL IMPLICATIONS

According to AOC, there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and court actions to enforce the provisions of the Inspection of Public Records Act. 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.

EMNRD indicates that the bill has the potential to reduce contributions to State Parks Division (SPD) by organizations with donors who object to the disclosure requirements of House Bill 687.

## **SIGNIFICANT ISSUES**

The Attorney General's Office notes the following:

In light of recent scandals over “Pay to Play”, this bill seeks to address problems affecting secret donations by contractors with governmental entities. The Procurement Code currently requires disclosure of political contributions by prospective contractors (someone who bids on a Request for Proposal). However, this bill addresses a major shortfall in current law whereby a contractor (and prospective contractor) with a governmental entity can secretly donate money to that governmental entity through its non-profit foundation.

These secret financial relationships undermine the quality and integrity of the procurement system and degrade the purchasing value of public funds by creating an atmosphere where contracts are awarded based on the influence of secret donations.

The State Parks Division (SPD) of the Energy, Minerals and Natural Resources Department, benefits from the support of a number of non-profit organizations. These organizations include local “park support” groups (also known as “friends” groups) and the New Mexico State Parks Foundation, a statewide organization. All non-profit organizations that could conceivably transfer funds directly to the SPD have written agreements with the SPD that comply with Section 6-5A-1 NMSA 1978.

According to SPD, non-profit organizations that transfer funds or property to a state agency are subject to Section 6-5A-1, but many non-profit organizations receive donations and then expend funds on behalf of SPD without directly transferring such funds to the agency. Because non-profit organization may not know exactly what donor funds might be transferred directly to the state agency, the organization would have to ask all donors to disclose up front any business relationship with the SPD (i.e. whether the donor “is doing, has done or seeks to do business with the agency that the organization supports”). Prudent consideration will require virtually all of the park support organizations to revise and reprint donor forms and change donation practices to collect additional information from donors, even if the organization ultimately never transfers any funds to the state agency. It is also not clear if the Act would apply to donor reporting for any “in-kind” donations; such donations could not be directly transferred to a state agency, but in-kind support does frequently benefit small non-profits and gets “co-mingled” with other donations. The organizations would therefore probably have to collect donor business relationship information from individuals and businesses that donate in-kind services as well as collecting business relationship information from individuals and businesses making cash contributions.

Some individuals and contractors that do business with the SPD do support the state parks or non-profit park support organizations in other ways. Since the SPD is required by law to self-generate as much of its own budget as reasonably possible, such non-profit support is extremely

important to the SPD. SPD supports the intent of HB 687 in terms of full disclosure of existing and potential business relationships, but is also concerned about adverse effects on donations. HB 687 requires additional reporting by non-profit organizations. It would require requesting additional information from potential donors that some may feel they should not have to disclose. The disclosure requirements of HB 687 could have a chilling effect and may discourage some individuals and businesses from donating to non-profits

## **PERFORMANCE IMPLICATIONS**

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas: cases disposed of as a percent of cases filed and percent change in case filings by case type.

## **TECHNICAL ISSUES**

The Administrative Office of the Courts notes the following:

- 1) There is no definition of “financial interest” in the Act.
- 2) Subsection D provides that nothing in Section 6-5A-1 NMSA 1978 subjects an organization to the provisions of the Open Meetings Act or makes its records, other than the required annual audit, public records within the purview of the Inspection of Public Records Act, *except* that the identity and financial interest of a donor to an organization is a public record if the donor meets the tests for mandatory disclosure as specified. Section 14-2-12 NMSA 1978, within the Inspection of Public Records Act, Section 14-2-4 NMSA 1978 et seq., provides for an action to enforce the Act to be brought by the AG or an appropriate DA or a person whose written request has been denied. Under this statute, a district court may issue a writ of mandamus or order an injunction or other appropriate remedy to enforce the provisions of the Act. The exhaustion of administrative remedies is not required. Section 14-2-12 requires the court to award damages, costs and reasonable attorney fees to a person whose written request, made pursuant to Section 14-2-8 NMSA 1978, has been denied and is successful in a court action to enforce the provisions of the Act.

## **OTHER SUBSTANTIVE ISSUES**

According to EMNRD, the “has done” and “seeks to do” language may create enforcement issues since they are not defined. HB 687 requires information disclosure if a donor “is doing, has done or seeks to do business with the agency,” this could create some confusion and frustration. Disclosing the first kind of relationship (“is doing”) is straightforward. Satisfying the second requirement (“has done”) has no time limit on it—e.g. does a donor have to disclose a relationship with a state agency that took place one year ago, ten years ago, etc.? Similarly, there is no time limitation on the third situation (“seeks to do business”). Some donors may have no idea whether they may seek to have a business relationship with a state agency at the time of their donation, yet could be in technical violation of the law if they make a donation then later seek to or enter into a business relationship with a state agency. Moreover, this could create an extremely difficult obligation on the non-profit organization to track the business relationships of all of its donors even after they donate or also risk being in violation of the law should any donor later seek to or enter into a business relationship with the state agency and fails to inform the non-profit.

The same issue could be addressed by requiring that those seeking state contracts make the disclosure as to their previous donations to organizations covered by Section 6-15A-1 NMSA, the benefit being no imposition on the good will of potential donors by mandating the disclosures required by House Bill 687.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Non-profit organizations would not be required to disclose their identity and financial interest to an organization when the organization provides property or funds a governmental entity when the donor is doing, has done or seeks to do business with the agency.

DA/mc