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FISCAL IMPACT REPORT

ORIGINAL DATE 3/3/09

SPONSOR Strickler LAST UPDATED _____ HB 886

SHORT TITLE Restrict Lobbying by State Agencies SB _____

ANALYST Wilson

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Indeterminate See Below	Indeterminate See Below		Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Aging & Long Term Services Department (ALTSD)
 Attorney General's Office (AGO)
 Department of Finance & Administration (DFA)
 General Services Department (GSD)
 Public Education Department (PED)
 Public Employee Retirement Agency (PERA)

SUMMARY

Synopsis of Bill

HB 886 bars a state agency from using appropriated money to attempt to influence passage of a bill, but permits a state officer or employee to use state resources to provide information or respond to a request.

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary will be proportional to the enforcement of this law and commenced prosecutions. 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.

DFA will have to reject all lobbyist contracts. Agencies will have to either use regular employees to visit the legislature, if that is allowed under the bill, or go without any type of contact with the legislature if even such lobbying as that is disallowed under this bill

A quick search of the Secretary of State website indicates that many state agencies and universities contract with lobbyists or register staff members as lobbyists. DFA states the practice is widespread.

SIGNIFICANT ISSUES

DFA notes the following:

The bill does not define state agency so it is unclear exactly what entities of the state will come under the auspices of the bill. For example, are universities and colleges under state authority to be considered state agencies for the purpose of this bill? courts? the judicial system in general? The bill should be clarified to expressly define those state entities included. 6-3-1 and 6-3-9 NMSA 1978 defines a state agency as any department, institution, board, bureau, commission, district or committee of government of the state of New Mexico and means every office or officer of any of the above. This would seem to include every executive, legislative and judicial branch entity, every higher education institution and the school districts and individual schools.

The term appropriated funds may be constitutional and means that the use of any money - - general fund, other state funds, federal funds or interagency transfers as appropriated in the general appropriation act each year will be restricted by this bill. Case law indicates that the legislature may not direct the spending of funds not appropriated by the legislature. Thus, in the case of the quasi-governmental agencies such as the Lottery Commission, and NMFA, as long as the agency did not use money appropriated in HB 2 for the purpose of lobbying, there will not be a conflict with the provisions of this bill. Similarly, if a higher education institution or school established a PAC and did not use appropriated funds for the purpose, there will be no conflict.

This bill will place state agencies on a different playing field than local governmental entities, and universities as long as the university did not use money derived from HB2 appropriations for the purpose of lobbying. The latter entities could lobby for funds, for example, while state agencies could not.

The bill does not preclude state agencies from lobbying, as such, only from doing so with appropriated money. Will this designation include salaries of regular employees of a state agency who visit the legislature to argue for the passage or defeat of a particular measure when their salaries are not being paid to them necessarily for purposes of lobbying, but

for their general employment? Or will this designation also cover money appropriated to pay these regular employees' salaries and, therefore, preclude such lobbying efforts completely? Is this the intent of the bill, or is it only to stop state agencies from using money appropriated to them to contract with lobbyists?

The AOC provided the following:

HB 886 uses the term appropriated money in the first sentence of the bill, followed by the term state resources in the second sentence. The intent appears to be to disallow any appropriated funds to reimburse or pay for meals, beverages, travel, or gifts to elected legislators, or to purchase printed or other materials intended to be used to influence the passage of a bill.

HB 886 does not refer to the existing Lobbyist Regulation Act, NMSA 1978, Sections 2-11-1 through 2-11-9. Specifically, Section 2-11-2(E) excepts from the definition of lobbyist an employee of the state or its political subdivisions, specifically designated by an elected or appointed officer of the state or its political subdivision, who appears before a legislative committee or in a rulemaking proceeding only to explain the effect of legislation or a rule on his agency or political subdivision, provided the elected or appointed officer of the state or its political subdivision keeps for public inspection, and files with the secretary of state, such designation. It should be made clear whether or not HB 886 intends to alter this provision in any way.

ALTSD states that most state agencies are created with specific duties and functions outlined in enabling legislation. These agencies are staffed with professional, qualified and expert staff hired to execute the responsibilities identified in their enabling legislation. State agency staff, are therefore best equipped to provide detailed information regarding the effects or impacts of proposed legislation.

ALTSD further states laws or requests for constitutional amendments created without full understanding of the impacts to public health, safety and welfare have the potential of far reaching unintended consequences. State agencies are obligated by enabling legislation to protect the public health, safety and welfare and therefore need to be allowed to provide this information so that educated and comprehensive decisions can be made.

PED stated the following:

It appears that the prohibition against state agencies using appropriated money to advocate a particular position on proposed legislation will include salaries paid as a result of an appropriation to an agency. If state officers and employees are unable to advocate for the passage or defeat of measures, this limitation may result in serious negative consequences for agencies and for the state as a whole. For example, a bill may propose legislation that will jeopardize federal funding otherwise available to the state, or may contravene settled judicial authority.

This bill has far-reaching and possibly unintended consequences. It will virtually prevent state employees from speaking to legislators or their support staff on sponsors' or other sponsors' bills, since it will be virtually impossible to distinguish between "using state resources to provide public information" and engaging in conduct that could be construed as attempting to influence the passage or defeating of a legislative measure.

If the purpose of the bill is simply to prevent state agencies from paying a lobbyist to support or defeat a legislative measure, it should be so stated.

PERA offered the following:

The constitution specifically recognizes that it is permissible for PERA to expend retirement trust funds for the expenses of operating the system.

The PERA Act and the New Mexico constitution make plain that the PERA Board has very broad authority to do all things necessary to administer the agency and retirement trust fund. The PERA Board acts as trustee for the PERA retirement trust fund and has the “sole and exclusive” fiduciary duty and responsibility for administration of the fund.

There are times when a legislature measure proposes an action that the PERA Board believes would be detrimental to the retirement trust fund or to PERA members or retirees. PERA has found it necessary to use retirement trust funds to lobby against proposed legislation that would have enhanced member benefits without articulating how those enhanced benefits would be paid for. For example, PERA has successfully requested the legislature to adopt memorials opposing any legislation enhancing benefits without providing a funding mechanism for those enhancements and has employed lobbyists to oppose certain bills which would have enhanced benefits without providing a funding mechanism for the enhancements. In the 2009 legislative session thus far, approximately 40 bills have been introduced that, if passed, would impact PERA, its benefit structure, its actuarial funding status and its long-term solvency. As provided by the PERA Act and the New Mexico constitution, it is the fiduciary duty of the PERA Board to advocate as powerfully as possible with respect to legislation that could have important impacts on the fund and on the administration of retirement benefits under the PERA Act.

ADMINISTRATIVE IMPLICATIONS

It appears that this bill will result in a saving to the general fund because of lobbying contracts that will be prohibited, but the agencies’ staffs will have to provide more technical support.

DW/mc