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FISCAL IMPACT REPORT

ORIGINAL DATE 2/27/17
 SPONSOR HJC LAST UPDATED 3/15/17 HB 73/HJCS/aSRC
 SHORT TITLE Public Officials as Lobbyists SB _____
 ANALYST Esquibel

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY17	FY18		
N/A	N/A	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General’s Office (AGO)

Secretary of State’s Office (SOS)

SUMMARY

Synopsis of SRC Amendments

The Senate Rules Committee amendments to the House Judiciary Committee Substitute for House Bill 73 (HB73/HJCS/aSRC) propose adding definitions of “lobby” and “official” to the bill, with an official including a person holding a statewide office provided for in the state Constitution, a Public Regulation Commissioner, a state legislator or a cabinet secretary. The SRC amendments stipulate no person may compensate an official for lobbying and an official shall not accept funds for lobbying for a period of one year after the official has ceased working with the state. The bill’s provisions would not apply to compensation received by a former official if the former official received such compensation for at least two years immediately preceding the official’s cessation of service with the state.

Synopsis of Bill

The House Judiciary Committee Substitute for House Bill 73 (HB73/HJCS) proposes to create a new section of the Lobbyist Reporting Act (LRA) restricting for two years certain former public officials from becoming compensated lobbyists. The restrictions are placed on former state public officers, former public regulation commissioners, former legislators and former cabinet secretaries for two years after their service in these capacities. Additionally, HB73/HJCS

proposes a person shall not directly or indirectly compensate a former official to lobby the state entity for which the official served or worked for a period of two years after the official ceased working for that entity. Also, HB73/HJCS proposes an official shall not have a contract to lobby, for compensation, the state entity with which the official serves or works. A violation of these proposed provisions constitutes a misdemeanor.

The bill notes public officials holding an office or position on or before July 1, 2017, are excluded from the provisions of the bill until the official is reelected to the same office, is appointed or elected to another office, is reappointed to the official's current position, or is appointed to another position covered by Lobbyist Reporting Act.

The effective date of the provisions of the bill is July 1, 2017.

FISCAL IMPLICATIONS

The bill does not include an appropriation.

The Attorney General's Office (AGO) reports because AGO provides legal representation to the Secretary of State's Office (SOS), adoption of this bill may result in the need for more AGO resources being dedicated to provide assistance to the SOS. However, the SOS indicates it does not expect any significant administrative impact related to this legislation.

SIGNIFICANT ISSUES

The Attorney General's Office reports NMSA 1978, Section 2-11-2, in the Lobbyist Regulation Act (LRA), defines a lobbyist as "any individual who is compensated for the specific purpose of lobbying; is designated by an interest group or organization to represent it on a substantial or regular basis for the purpose of lobbying; or in the course of his employment is engaged in lobbying on a substantial or regular basis." It also specifically excludes "any elected or appointed officer of the state or its political subdivisions." The LRA in the same section defines lobbying as the attempt to influence "a decision related to any matter to be considered or being considered by the legislative branch of state government or any legislative committee or any legislative matter requiring action by the governor or awaiting action by the governor."

Section 10-16-8 of New Mexico's Governmental Conduct Act currently places a similar but much narrower moratorium on state public officials [excluding legislators] and employees--they are prohibited for one year only from representing anyone for pay "before the government agency" at which they formerly worked. However, there is nothing in current law that prohibits a lobbyist employer from hiring and compensating such persons in the year after they leave government service so long as they do not appear before their prior agencies. This bill would extend the current law by prohibiting employers of lobbyists from hiring for pay the aforementioned officials for two years from appearing before their former agencies.

The bill places a two-year lobbying moratorium waiting period on legislators.

HB73/HJCS does not restrict the former elected or appointed officials from lobbying without compensation on issues they are interested in. It does not appear to infringe upon an individual's First Amendment rights to free speech and freedom of association.

The Secretary of State's Office notes the proposed legislation allows for former public officials to register and act as a lobbyist as long as they are not compensated for it.

TECHNICAL ISSUES

The bill proposes a definition for “lobby;” however, the current Lobbyist Reporting Act already includes a definition for “lobbying.”

The bill adds a “state public officer” as a defined official. It is not clear who falls under the term “state public officer,” but presumably this could be anybody who worked for the State of New Mexico.

RAE/al/jle