

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

	ORIGINAL DATE 1/23/06		LAST UPDATED 1/25/06		HB _____
SPONSOR	Ingle _____	CONTRIBUTIONS TO INVESTORS OF PUBLIC			
SHORT TITLE	FUNDS _____	SB	23 _____		
ANALYST					Schardin

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY06	FY07		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB326.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Secretary of State (SOS)
 State Treasurer's Office (STO)
 Public Employees Retirement Association (PERA)
 State Land Office (SLO)
 State Investment Council (SIC)
 Office of the State Auditor (OSA)
 Department of Finance and Administration (DFA)

No Response Received From

Attorney General (AG)
 Educational Retirement Board (ERB)

SUMMARY

Synopsis of Bill

Senate Bill 23 would make it a fourth degree felony for any "state agent" or candidate for state office to knowingly solicit or accept anything of value (excluding the cost of refreshments up to \$25 per day or refreshments at a public receptions or other public social function that are available to all guests equally) from an "investment agent" doing business with a state agent.

Senate Bill 23 – Page 2

The crime will apply to both state agents who accept such contributions and investment agents who give such contributions.

The bill would also stipulate that if an investment agent has contributed anything of value to a successful candidate for a state office that invests public funds or issues bonds, the investment agent shall not conduct business with the state or its political subdivisions that involves investment of public funds or issuance of bonds for two years following the candidate's election.

Further, it will be a fourth degree felony for a state agent to solicit any investment agent to appoint a person to employment or hire a person on a contract in any capacity.

The bill creates several penalties in addition to making these crimes a fourth degree felony. The bill would penalize state agents and investment agents who break the provisions of this bill with a fine of up to \$10 thousand and/or imprisonment of up to 18 months. Further, if an investment agent is convicted of the provisions of this bill, the state and its political subdivisions will be prohibited from contracting with that investment agent for a period of five years after conviction. Finally, a person convicted of these crimes will be disqualified from employment by the state or its political subdivisions indefinitely.

An "investment agent" is defined as a person who receives compensation for financial services involving public money, who provides advice on the investment of public money, or such a person's officers, employees or agents.

A "state agent" is defined as a person who meets any of the following criteria: 1) elected state government officials (governor, lieutenant governor, state treasurer, state auditor, secretary of state, attorney general, commissioner of public lands, or a state legislator); 2) state officials who have authority over public fund investment or bond issuance or have the authority to appoint public officers who invest public funds or issue bonds; 3) agents of a state office that invests public funds or issues bonds.

SIGNIFICANT ISSUES

The bill's definition of "state agent" means it will apply to state elected officials and state officials involved in the investment of public funds and bond issuance. Some but not all executive agency heads will be affected. Areas not included in Senate Bill 23 that should arguably face the same restrictions include judicial bodies, the public regulation commission, the regulation and licensing department, the gaming control board, and the state racing commission, and the economic development department. While these and other state agencies are not involved in the investment of public funds, they do have the power to influence financial outcomes in the state.

PERFORMANCE IMPLICATIONS

SIC notes that the provisions of Senate Bill 23 will significantly deplete the pool of qualified investment professionals with which state investing agencies may conduct business.

ADMINISTRATIVE IMPLICATIONS

STO reports that passage of SB23 will necessitate a review of campaign reports of current and newly-elected officials to identify contributions by individuals and companies that meet the bill's

definition of “investment agent.” Further, the STO will need to modify its code of conduct to establish limits on what can be accepted from an “investment agent.”

PERA reports that it is already subject to stronger restrictions than those found in Senate Bill 23. The PERA Act precludes PERA board members, PERA employees or candidates for the PERA board from accepting anything of value from any person with a current contract with PERA or any person who is a potential bidder, offer or contractor for the provision of services or personal property to PERA. The PERA act defines “anything of value” as anything except food and beverages provided in a place of public accommodation, consumed at the time of receipt, not exceeding \$50 for a single give, not exceeding an aggregate value of \$150 per calendar year. PERA board members are also required to disclose anything of value received in their official capacity from any source except per diem.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Senate Bill 23 relates to House Bill 326, which is Governor Richardson’s anti-corruption bill.

TECHNICAL ISSUES

STO notes that Section H, which disqualifies anyone convicted of a crime under this act from state employment, may conflict with the constitutional impeachment process. If a sitting elected official were convicted of an offense under this act, that official would be disqualified from state employment. However, impeachment is the constitutional way to remove an elected official from office.

The definition of “investment agent” includes some state agents because it does not specify that investment agents do not include state officials.

DFA suggests that the definition of “state agent” could be improved by linking it to the definition of public officers established by the Per Diem and Mileage Act, which includes every elected or appointed officer of a governmental entity, including the judicial branch, the legislative branch, and all board and commission members.

The terms “refreshments,” “public reception,” and “legally entitled to receive” are not defined.

The bill does not provide for any system to identify violations or give notice to state agencies that certain investment agents are not eligible for employment or contracts. None of the state’s investment agencies have the staff or expertise to cross-reference campaign contribution reports to check for donations from any employee of an investment agent.

Depending on the effective date of the bill, it will have implications for investment agents with which state agents are currently conducts business. The bill does not specify how to handle existing contracts.

SLO suggests that the word “knowingly” should be added to Sections C, D and E to prevent inadvertent violations of these provisions. This will also be more consistent with sections A and F, which do contain the word “knowingly.” However, DFA notes that it will be difficult to prove whether someone accepted something “knowingly” or unknowingly.

OSA recommends adding the public regulation commissioner to the list of state agents listed on page 2, lines 12 to 15 because the PRC handles large amounts of cash and investments.

OSA states that while this bill proposes good changes, it does not ensure that violations will be prosecuted. OSA recommends adding a requirement to Senate Bill 23 to require the AGO to prosecute violations of these provisions.

DFA also noted the following technical issues:

- Section 1, A., (2) add "or who may in the future receive compensation for financial services involving public money" to cover prospective contractors of the state.
- Section 1, A., (4) is missing the word "or" after paragraph a.
- Section 1, H. add "and is disqualified from seeking election to any elected office."
- Throughout Senate Bill 23 delete the limiting phrase "the revenue of which is used for public projects in the state."

OTHER SUBSTANTIVE ISSUES

SIC notes that Senate Bill 23 will have a significant impact on the pool of available broker/dealers for all the state's investing agencies. They give the following scenario to illustrate how this bill might impact their investment freedom:

A secretary for Financial Services Company X in Albuquerque contributes \$10 to a state legislator's reelection campaign. Company X, a huge multi-national corporation based out of Chicago, is on the approved bond trading list for the SIC. The SIC doesn't even do business with Company X's Albuquerque branch, but rather the Chicago office, however, under the definition of the bill, because the secretary is technically an employee of Company X, it would no longer be able to "conduct business with the state or its political subdivisions that involves the investment of public funds or the issuance of bonds for any state agent for two years following the election of that candidate" (Section D).

SIC also that the definition of "investment agent" in Senate Bill 23 would not include third-party marketers, who act in an introductory capacity between investment agents and state agents but do not provide financial services involving public money.

The bill allows an investment agent who violates the provision of this bill to contract with the state again five years after conviction. However, a person convicted is ineligible for employment with the state or its political subdivisions indefinitely.

ALTERNATIVES

Each state agency that submitted analysis on Senate bill 23 expressed significant concerns about the functionality of the provisions. The SIC recommends a Joint Memorial to send this issue to the State Permanent Fund Task Force for further discussion and consideration.

SS/nt