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FISCAL IMPACT REPORT

ORIGINAL DATE 01/22/11

SPONSOR Boitano LAST UPDATED _____ HB _____

SHORT TITLE No Public Funds to Influence Ballot Measures SB 111

ANALYST Wilson

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
	NFI (See Below)		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY10	FY11	FY12	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		(\$10.0-\$25.0)	(10.1-\$25.0)	(\$10.0-\$25.0)	Recurring	JPEP* & General Fund

(Parenthesis () Indicate Expenditure Decreases) *Judicial Performance Evaluation

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Attorney General (AGO)
 New Mexico Municipal League (NMML)
 Secretary of State (SOS)

SUMMARY

Synopsis of Bill

Senate Bill 111 adds a new section to the Election Code restricting the use of public funds to conduct an advertising campaign to influence the outcome of a constitutional amendment or other questions submitted to the voters.

The provisions of the bill apply to any state agency, political subdivision of the state, or any public officer or employee of a state agency or political subdivision of the state. A state agency is any branch, agency, instrumentality or institution of the state. Advertising campaign is defined as advertisements provided to the public either in print, by radio or television broadcast or by any other electronic means.

FISCAL IMPLICATIONS

In 2008, the legislature created the Judicial Performance Evaluation Fund, Section 34-9-18 (NMSA 1978), requiring money in this non-reverting fund to be used by the AOC for the operation and costs of the Judicial Performance Evaluation Commission (commission) to perform the duties required by the supreme court to evaluate appellate, district, and metropolitan court judges standing for retention.

The new section will prohibit the commission from being able to use the non-reverting general funds or state general funds to meet the Supreme Court's mandate, to provide judicial performance evaluation information to the voters of New Mexico.

SIGNIFICANT ISSUES

The bill does not specify a penalty for violations. NMSA 1-20-22 provides that, in the absence of a specific penalty, a willful violation of the Election Code is a petty misdemeanor. NMSA 1-20-23 provides that any state or county officer, or any deputy or assistant thereto who willfully violates the Election Code is guilty of a fourth degree felony, and, in addition, such violation may be cause for removal from office.

The AOC provided the following:

The Supreme Court established the Judicial Performance Evaluation Program (JPE) to improve the performance of New Mexico's judges and to provide credible information to New Mexico voters on all judges standing for retention. The program does not apply to judges running in partisan elections. The commission completes a written narrative profile for each judge standing for retention. The commission must provide one of the following recommendations: Retain or Do Not Retain. The narrative is an overall assessment of a judge.

Judicial performance evaluation programs carry several significant advantages. Every judge who is evaluated benefits from the feedback of the evaluation and is given an opportunity for self-improvement. Due to the nature of a judge's professional relationship with attorneys, court staff, and litigants, it is often difficult for a judge to get constructive feedback on his performance. JPEs allow for anonymous feedback so judges can learn about strengths and weaknesses they otherwise might not have received.

JPE provides a valuable source of information to voters. In many cases, it is the only source of information. Voters typically have no experience with individual judges, much less a sense of which judges are doing a good job on the bench.

ADMINISTRATIVE IMPLICATIONS

The SOS will be responsible for handling complaints occurring under this section and referral for prosecution, but additional workload resulting from this legislation is expected to be minimal.

POSSIBLE QUESTIONS

The NMML asks about the meaning of the language “to influence the outcome of a constitutional amendment or other question submitted to the voters.” Would an advertisement, for example, that simply recites the ballot measure and the factual implications of either passing the measure or rejecting the measure be considered an effort to “influence the outcome?”

DW/bym