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## FISCAL IMPACT REPORT

**SPONSOR** Gentry & Feldman      **ORIGINAL DATE** 02/05/12  
**LAST UPDATED** 02/08/12      **HB** 163/a HCPAC

**SHORT TITLE** "Employee" & "Public Officer" Definitions      **SB** \_\_\_\_\_

Analyst Wilson

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

	FY12	FY13	FY14	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		Minimal				General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB 144 & SB 103

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General's Office (AGO)

Secretary of State (SOS)

State Personnel Office (SPO)

### SUMMARY

#### Synopsis of HCPAC Amendment

The House Consumer and Public Affairs amendment to House Bill 163 changes the definition of employee to mean a person who is hired by any state agency or local government agency and who receives compensation in the form of salary or is eligible for per diem or mileage.

The amendment also exempts a public officer of a local government agency from the restriction placed on a former public officer of a state agency or a legislator to not act as a lobbyist for a period of two years after leaving government service or employment.

#### Synopsis of Original Bill

House Bill 163 requires that a former public officer or a legislator shall not act as a lobbyist, as defined in the Lobbyist Regulation Act for a period of two years after leaving government

service or employment.

The bill defines employee as any person who is hired by any state agency and who receives compensation in the form of salary or is eligible for per diem or mileage;

### **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 would be proportional to the enforcement of this law and the number of petitions filed. 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.

### **SIGNIFICANT ISSUES**

The AGO notes that moratoriums on lobbying by former public officials are common across the country. For example, 26 states place moratoriums on lobbying by former state legislators. The purpose of these moratoriums is to close the revolving door that undermines public trust in government.

In addition the AGO provided the following:

This bill appears to inadvertently repeal the reforms made to the Act during the last legislative session. Last year the Legislature expanded the Act to include public officials and employees of local government. Originally, the Act only applied to state officials and employees.

However, by amending the definition of public officer and employee, the bill accidentally excludes local employees from the Act. The bill creates this error by removing employee from the definition of public officer and employee, and then creating a stand-alone definition of employee. However, this new stand-alone definition only includes employees hired by any state agency and inadvertently excludes employees hired by a local government agency.

As an example of how this amendment inadvertently repeals the reforms made to the Act, under § 10-16-3.1 a public officer or employee is prohibited from...threatening to deny a promotion or pay increase to an employee who does or does not vote for certain candidates. Under current law, public officer and employee includes both state and local government. But with the amendment, only state employees will be prohibited from engaging in this conduct. With the amendment, both state and local public officers will still be prohibited from engaging in this conduct.

Section 10-16-8 of New Mexico's Governmental Conduct Act already places a similar moratorium on local public officials--they are prohibited from representing anyone for pay before the government agency at which they formerly worked.

It is unclear, then, whether this bill actually intends to also ban local public officials from state legislative lobbying. As written, this bill could potentially run counter to the First Amendment which protects lobbying as free speech and freedom of association. It will

be hard to justify a ban on lobbying the legislature or governor by former local public officials because there is no appearance of impropriety created by a former school board member or municipal department head lobbying at the state level.

**RELATIONSHIP**

HB 144 and SB 103 place one year moratoriums on lobbying.

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

The AGO further provided the following:

These cooling off period laws are commonplace across the country because

- (1) Lobbying by legislators provide a vehicle for public servants to use their office for personal or private gain
- (2) This revolving door casts grave doubts on the integrity of legislation, and
- (3) This appearance of impropriety exacerbates public distrust in government

Failure to pass this bill will reinforce this appearance of impropriety in the public's mind, thereby undermining public trust in government.

DW/amm