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FISCAL IMPACT REPORT

ORIGINAL DATE 01/31/13

SPONSOR Cervantes LAST UPDATED _____ HB _____

SHORT TITLE No Public Resources for Political Purposes SB 136

ANALYST Cerny

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI			

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General (AGO)
 Administrative Office of the Courts (AOC)
 Secretary of State (SOS)

SUMMARY

Synopsis of Bill

Senate Bill 136 would add a new provision to Chapter 10, Article 16, the Governmental Conduct of Public Officers and Employees, in Subsection 3.1 relating to Prohibited Political Activities.

New Subsection D would prohibit using public resources to support or oppose a candidate, political campaign or other political organization.

The bill would also make a minor technical correction to Subsection C, adding the word “or” between the words “event” and “advising”.

In 2007 the Governmental Conduct Act was amended to prohibit, among other things, the coercion of public employees into supporting anything with a political purpose. Along these same lines, the 2007 amendment also prohibited the use of public property for political purposes.

This bill builds on this amendment by essentially broadening the scope of public property to include all “public resources.” Thus, “public resources” cannot be used “to support or oppose a candidate, political campaign or other political organization.”

FISCAL IMPLICATIONS

For the AOC 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 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.

SOS and AGO states no fiscal impact of this bill on their offices.

SIGNIFICANT ISSUES

It appears that the lack of a definition in the bill for the term “public resources” raises significant questions for affected agencies.

SOS states that its office is required to advise and seek to educate all persons required to perform duties under the Governmental Conduct Act.

SOS raises the following questions, pointing out that it is not entirely clear how this language would be applied in cases such as these:

If a municipality mails out a monthly newsletter from the Mayor, would that be considered a use of public resources to support a candidate - the Mayor?

If an elected official puts out a press release, would that be considered a use of public resources to support the elected official?

If a municipality hosts its legislator at city hall or a volunteer fire department, would that be an unlawful use of public resources? If a legislator attends a dedication of a capital outlay project, the same question arises.

AOC raises another potential conflict, with the judicial performance evaluation fund, which was created by the Legislature created in 2008 (Section 34-9-18 NMSA 1978) in the state treasury to be administered by the AOC. This fund utilizes state funding to report on judicial performance evaluations:

The money in this non-reverting fund is used by the administrative office of the courts for the operation and costs of the judicial performance evaluation commission to perform the duties required by the Supreme Court to evaluate appellate, district, and metropolitan court judges standing for retention.

The judicial performance evaluation commission, as part of its operation and costs of the evaluation program, releases its evaluations and recommendations of “Retain,” “Do Not Retain” or “No Opinion” on judges standing for retention to the voters at least 45 days before the retention election. With the use of state general funds and the non-reverting fund, this information is then disseminated to the voters either in print, website – www.nmjpec.org, radio, television broadcast or other electronic means.

Would the costs of publication and dissemination of judicial performance evaluations constitute a prohibited use of public resources?

PERFORMANCE IMPLICATIONS

The AOC states that the courts are participating in performance-based budgeting; one measure for the District Court's performance is clearance rates. For example, the district court's performance measure related to clearance rates may be impacted if increased penalties lead to an increased demand for jury trials and fewer plea bargains, thereby increasing the amount of judge and clerk time needed to dispose of cases. Should this bill impact the courts' performance-based budgeting measures, it may result in the need for additional resources

ADMINISTRATIVE IMPLICATIONS

AOC states: "There may be an administrative impact on the courts as the result of an increase in caseload and/or in the amount of time necessary to dispose of cases."

AGO states: "The AGO enforces the Governmental Conduct Act, but the administrative implications for this agency are *de minimus*."

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 13, HB 45, SB 9 and SB 12 all relate to Governmental Conduct.

AMENDMENTS

Since the bill lacks a definition of the term "public resources," SB 136 should be amended to include one.

CAC/bm