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FISCAL IMPACT REPORT

SPONSOR Kane ORIGINAL DATE 01/24/14
LAST UPDATED _____ HB 82

SHORT TITLE Elected Official & Cabinet Secretary Lobbying SB _____

ANALYST Cerny

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI			

(Parenthesis () Indicate Expenditure Decreases)

Duplicates SB 96

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Regulation Commission (PRC)
Office of the Attorney General (AGO)
Secretary of State (SOS)
State Personnel Office (SPO)

SUMMARY

Synopsis of Bill

House Bill 82 amends the Lobbyist Regulation Act (LRA) to prohibit former PRC commissioners, former legislators and former cabinet secretaries from accepting compensation as lobbyists for a period of calendar two years following the end of their service.

In addition, HB 82 prohibits employers of lobbyists from compensating elected officials for a period of two calendar years after service and imposes a misdemeanor criminal penalty if violated.

HB 82 would apply to all persons who hold the office of statewide elected official, public regulation commissioner, state legislator or cabinet secretary on or after July 1, 2014.

FISCAL IMPLICATIONS

There would be no fiscal impact related to tracking and reporting for the SOS.

SIGNIFICANT ISSUES

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.”

AGO analysis on a prior bill points out that 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’s employer from hiring and compensating such persons in the year after they leave government 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, regardless of whether they do or do not appear before their former agencies or other governmental bodies during that year.

In addition to that change, this bill places a two-year lobbying moratorium waiting period on legislators.

SPO analysis states HB 82 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.

PERFORMANCE IMPLICATIONS

SOS analysis states that: “The SOS is charged with administration of the Lobbyist Regulation Act, and would be the office to investigate complaints arising under this bill. This bill does not create any significant issues for the SOS.”

The State’s judicial system should be able to accommodate any criminal charges brought against any former statewide elected official, former public regulation commissioner, former state legislator or a former cabinet secretary who violates the provisions of the Lobbyist Regulation Act.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Duplicates SB 96 Elected Office & Cabinet Secretary Lobbying

OTHER SUBSTANTIVE ISSUES

The National Conference on State Legislatures reports that:

At least 31 states have enacted a “cooling-off period” before a former legislator can come back to work at the legislature as a lobbyist. Also known as revolving door laws, statutes range from Maryland, where the ban is until the conclusion of the next regular session, to eight states—Alabama, Colorado, Florida, Iowa, Kentucky, Louisiana, Montana, and New York—that ban former legislators for two years. Florida's two year ban applies to lobbying the body in which a member served, as well as the executive branch. In Minnesota, the ban only applies to House members, not those in the Senate, and exists in chamber rule. Ohio formerly had a one year ban, but the law was overturned by a federal district court in 2010. Delaware, Missouri, New Mexico and Wisconsin exempt legislators and certain legislative staff from their laws. Statutes in Kansas, Mississippi and Oklahoma restrict former legislators from certain contracting with government opportunities. (<http://www.ncsl.org/research/ethics/50-state-table-revolving-door-prohibitions.aspx>)

Section 10-16-3 NMSA 1978 of the Governmental Conduct Act requires legislators and public officials to treat their “government position as a public trust” and to “use the powers and resources of public office only to advance the public interest and not to obtain personal benefits.”

A widely-reported January 2014 survey commissioned by Common Cause New Mexico reported that “Seventy-eight percent of the voters surveyed also support requiring former legislators to wait at least two years after their term ends before they are able to become paid lobbyists to the legislature. Half of the voters surveyed say they *strongly support* the legislature adopting such a proposal. The survey was conducted by Research & Polling with a sample size of four hundred sixty-seven randomly selected registered voters. The report states that “A sample size of 467 at a 95% confidence level provides a maximum margin of error of approximately 4.5%.” (A complete copy of the survey may be found here: <http://www.commoncause.org/site/pp.asp?c=dkLNK1MQlwG&b=4847593> .)

CAC/ds