FISCAL IMPACT REPORT

SPONSOR SRC **LAST UPDATED**
ORIGINAL DATE 03/03/23
SHORT TITLE Former Legislators as Lobbyists **BILL NUMBER** CS/Senate Bill 34/SRCS
ANALYST Hitzman

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*
(dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
SOS Filing System Upgrades/ Maintenance	NFI	$30.0	NFI	$30.0	Nonrecurring	State Election Fund/General Fund
SOS Staff	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal		Recurring	General Fund

Parentheses ( ) indicate expenditure decreases.
*Amounts reflect most recent version of this legislation.

Sources of Information

LFC Files

Responses to Committee Substitute Received From
Secretary of State (SOS)
New Mexico Attorney General (NMAG)
Department of Public Safety (DPS)

Responses to Original Bill Received From
State Ethics Commission (SEC)
Administrative Office of the District Attorneys (AODA)
Administrative Office of the Courts (AOC)
New Mexico Corrections Department (NMCD)
Law Offices of the Public Defender (LOPD)

SUMMARY

Synopsis of SRC Substitute for Senate Bill 34

The Senate Rules Committee substitute for Senate Bill 34 (SB34) creates a new section of the Lobbyist Regulation Act (LRA) to prohibit former state legislators from accepting compensation as a lobbyist and prohibit lobbyist employers from compensating a former state legislator as a lobbyist for two years after conclusion of the former legislator's term in office. The bill provides that violations of these provisions shall be subject to the penalties of the LRA. This includes a

fine of up to $5,000 and may have the lobbyist registration revoked or lobbyist activities enjoined for up to three years.

The bill also adds that, when a lobbyist registers with the Secretary of State (SOS), the registration shall be filed under oath in an electronic format as prescribed by SOS, to include the full name, business address and name and address of each employer, as well as whether the lobbyist has served as a state legislator in the past two years. The SOS must notify employers if a lobbyist identifies they have been a state legislator in the past two years.

The bill applies to all persons who hold office of the state legislator after July 1, 2023.

The effective date of this bill is July 1, 2023.

FISCAL IMPLICATIONS

The bill does not contain an appropriation and would have little fiscal impact other than the costs to maintain the registrations within the SOS's filing systems and the small amount of revenue collected from fines for violators of the act. Because the number of individuals to whom this penalty could potentially apply is extremely limited (former legislators and their employers), it is not anticipated to be applied very frequently, and, therefore, the bill's fiscal impact due to the criminal penalty will likely be minimal.

SOS notes the following regarding the required registrations of lobbyists:

> The committee substitute for SB34 would require significant enhancements to existing reporting systems to accommodate the new proposed accountability measures in Section 2 of the bill. This section would require the creation of a new module within in existing systems to administer filings associated with the new, unique universe of former legislators as lobbyists.
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> This is an effort that could cost at least $30 thousand to develop. This increase in reports is expected to result in additional staff time spent on assistance, education, and compliance enforcement. Full funding of elections staff is necessary to keep up with the volume of work associated with all of the statutory duties supported by the office.

SIGNIFICANT ISSUES

The bill seems intended to deter legislators from capitalizing on their positions as former legislators and, as such, does not prohibit former legislators from lobbying if they are not being compensated for doing so. Employers would also be eligible to be penalized for compensating a legislator as a lobbyist within two years after they served as a legislator, regardless of whether the employer is aware of the individuals' status as a former legislator, as SB34 does not require proof that a violation was knowing or willful for criminal liability to attach.

Regarding penalties, the State Ethics Commission provides the following:

> The State Ethics Commission has jurisdiction to investigate and adjudicate a complaint alleging a civil violation of a provision of the Lobbyist Regulation Act. *See* NMSA 1978, § 2-11-8.3(A) (2021). The Lobbyist Regulation Act imposes civil penalties on lobbyists and lobbyist employers who fail to register or submit required reports of expenditures. *See* NMSA 1978, § 2-11-8.2(D) (2021). All knowing and willful

violations of the Lobbyist Regulation Act are punishable with a $5,000 civil penalty. *See* NMSA 1978, § 2-11-9 (1993).

The bill provides for these sorts of fines to be assessed for violators of the act in line with the LRA, rather than creating a new crime or changing the penalties associated with the LRA more generally.

Further, the State Ethics Commission (SEC) provides the following:

> State law prohibits former executive branch employees from representing a client before their former employer during the one-year period following their separation and permanently prohibits former executive-branch employees from representing clients on a matter the former employee participated in personally and substantially while in state service. *See* NMSA 1978, § 10-16-8(B), (D) (2011). These and similar restrictions in other jurisdictions (at the local, state, and federal level) are referred to as "revolving-door" statutes."
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> Federal law imposes criminal penalties on former members of congress who engage in paid or unpaid lobbying during the two year period following the member's departure from their legislative office. *See* 18 U.S.C. § 207(e)(1). Senate Bill 34 imposes a similar revolving-door prohibition on former legislators, although it does not prohibit a former legislator from engaging in unpaid lobbying activities. It prohibits former legislators from serving as paid lobbyists within the two-year period following their legislative service.
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> The government has a compelling interest in preventing quid pro quo corruption and the appearance thereof. *See, e.g.*, *Ortiz v. Taxation and Revenue Dep't, Motor Vehicle Div.*, 1998-NMCA-027, Paragraph 9, 124 N.M. 677; *see also Miller v. Ziegler*, 582 F.Supp.3d 640, 646 (W.D. Mo. 2022) ("[N]early 40 states have restrictions on lobbying after government service. Citizens have a right to expect and feel assured that public servants are actually serving the public rather than themselves. Public service sometimes requires personal sacrifice. Those unwilling to make the sacrifice need not undertake the duties of public service."). Missouri's two-year ban on paid lobbying by former legislators survived a First Amendment challenge, with the district court in that case finding that a two-year restriction on paid lobbying activities was narrowly tailored to serve a compelling governmental interest. *See Miller*, 582 F.Supp.3d at 647.
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> Revolving-door statutes like Senate Bill 34 do not only address the appearance of corruption that may arise when a former legislature is paid to lobby his or her former colleagues. The statutes combat actual conflicts of interest: when a legislator or other public official seeks employment with an individual, organization or firm that may be affected by the official's actions, that is a clear conflict of interest. As the American Law Institute has written, "[w]hen a public servant has a financial interest in a potential future employer's favorable evaluation of the public servant and the potential future employer has an interest that may be affected by the public servant's official actions, there is the real possibility that the public servant's actions will be influenced by the prospect of future employment, and there is certainly the possibility that this will appear to the public to be a conflict of interest." American Law Institute, Principals of Law: Government Ethics, Tentative Draft 2, at 65 (March 12, 2018).

Requiring disclosures to be filed under oath should improve the credibility and trustworthiness of such disclosures, and so will having the disclosures available on the SOS website. However, lobbyists may be concerned with having their address information posted on a website where others can find their employer and business information. However, having disclosures of this kind surrounding lobbyist activities is a way to improve accountability in government and prevent conflicts of interest or other unethical activities.

ADMINISTRATIVE IMPLICATIONS

For SOS, as noted above, there will need to be enhancements to the information systems at SOS, which could require additional administrative capacity at the agency. SOS recommends "that implementation of this new law be delated until January 1, 2025 in order to allow for the development of the new system enhancements."

TECHNICAL ISSUES

The bill does not define "compensation," so it is unclear whether this includes non-monetary forms of inducement. The Law Offices of the Public Defender (LOPD) finds that Sections B and C apply to "lobbyist's employers" without clarifying whether "person" in Section C applies to corporate entities other than a natural person. It is also unclear whether a former legislator can perform non-lobbying services for a lobbyist and still receive compensation under Subsection B.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

If not enacted, legislators would be allowed to seek and obtain employment as a lobbyist immediately following their legislative service.

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