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FISCAL IMPACT REPORT

SPONSOR McQueen **ORIGINAL DATE** 1/31/17
LAST UPDATED 2/18/17 **HB** 119/aHJC

SHORT TITLE Prohibition Period for Candidate Contribution **SB** _____

ANALYST Esquibel

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY17	FY18		
N/A	N/A	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

House Bill 119 conflicts with House Bill 10, Public Accountability Act, and Senate Bill 72, Public Accountability Act, and relates to Senate Bill 96, Public Financing of Campaign Fixes.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)

Secretary of State's Office (SOS)

SUMMARY

Synopsis of HJC Amendments

The House Judiciary Committee (HJC) amendments to House Bill 119 add back the word "knowingly" to soliciting or accepting a contribution to maintain the intent of the statute. The HJC amendments also clarify that a "contribution" is governed by the provisions of the Campaign Reporting Act.

Synopsis of Bill

House Bill 119 would amend Section 1-19-34.1 related to the prohibited period of the Campaign Reporting Act. The bill would remove the word "knowingly" from current language and would make it unlawful for a state legislator or Governor, or a candidate for the state Legislature or Governor, or any agent on behalf of either, to solicit or accept a contribution.

For state legislators or candidates for the state Legislature, the prohibited period would be beginning January 1 prior to any regular session of the Legislature or, in the case of a special

session, after the proclamation has been issued, and ending on adjournment of the regular or special session.

For governors or candidates for governor, the prohibited period would be beginning January 1 prior to any regular session of the Legislature or, in the case of a special session, after the proclamation has been issued, and ending on the twentieth day following the adjournment of the regular or special session.

FISCAL IMPLICATIONS

The bill does not include an appropriation.

SIGNIFICANT ISSUES

The Attorney General’s Office (AGO) indicates except during a “prohibited period,” individuals may contribute to candidates at any time during the year. State legislators and candidates for the state Legislature, and the Governor and candidates for Governor, or agents acting on their behalf, are prohibited from soliciting contributions during the “prohibited period.” [NMSA 1978, § 1-19-34.1.]

The removing of “political purpose” has no effect on the statute’s application for a contribution necessarily requires that something is made or received for a political purpose.

By removing “knowingly” from the statute this would remove the intent or *mens rea* of the statute. Therefore, a violation of this statute would become strict liability. The HJC amendments address this issue.

Contribution is defined by NMSA 1978, Section 1-19-26(F) as a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made or received for a *political purpose*, including payment of a debt incurred in an election campaign. But "contribution" does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee (emphasis added).

By adding the word “accept” the statute would also hold responsible candidates who are passive regarding receiving contributions during the prohibited period.

ADMINISTRATIVE IMPLICATIONS

The Secretary of State’s Office (SOS) reports under the provisions of the bill it could see a reduction in complaints related to the prohibited period as the legislation makes clear that soliciting and accepting contributions during the prohibited period is not allowed. Current law creates some vagueness that leads to complaints and varying interpretations of the meaning of the law, and the clarifying language is viewed by the SOS as beneficial to effective enforcement of this provision.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Senate Bill 72, Public Accountability Act, and House Bill 10, Public Accountability Act, would remove the enforcement provision of the Campaign Reporting Act as proposed by HB119 and place enforcement of the Campaign Reporting Act with the proposed Public Accountability Board.

TECHNICAL ISSUES

The Attorney General's Office notes regarding the same provisions in the legislation applying to political action committees (PACs).

OTHER SUBSTANTIVE ISSUES

The Attorney General's Office writes the legislative session fundraising prohibition in the Campaign Reporting Act, Section [1-19-34.1](#) NMSA 1978, does not apply to contributions to candidates for federal office based on the doctrine of federal preemption and because the state Campaign Reporting Act does not regulate contributions to candidates for federal office. [2007 Op. Att'y Gen. No. [07-01](#).]

RAE/jle/al/sb