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F I S C A L I M P A C T R E P O R T

SPONSOR Cook ORIGINAL DATE 2/28/17 LAST UPDATED _____ HB 388
SHORT TITLE Financial Disclosure of Consultant Operations 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 388 (HB388) relates to House Bill 291, Financial Disclosure for Appointees.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
Attorney General's Office (AGO)
Department of Transportation (DOT)
Secretary of State's Office (SOS)

SUMMARY

Synopsis of Bill

House Bill 388 (HB388) would amend the Financial Disclosure Act by adding a mandatory requirement for “consulting operations or similar businesses” to disclose the names and addresses of all clients contributing more than one thousand dollars (\$1,000) in fees to the reporting person or their spouse’s gross income. This requirement would only be applicable to a person that is subject to the Financial Disclosure Act.

FISCAL IMPLICATIONS

The bill does not include an appropriation.

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The Secretary of State's Office (SOS) notes under the bill's provisions it would be required to update the prescribed form used for disclosing the information required pursuant to the Financial Disclosure Act. The impact of this change is anticipated to be minimal.

SIGNIFICANT ISSUES

The Attorney General's Office (AGO) notes depending on the nature of the consulting work, the very nature of a client list could be confidential. Moreover, there could be many consulting services provided by candidates or appointed employees that do not relate at all to their function in state government.

The New Mexico Department of Transportation (NMDOT) notes the bill would amend NMSA 1978, Section 10-16A-3 of the Financial Disclosure Act by lowering the reporting threshold from \$5,000 to \$1,000 for disclosing income received by persons identified in the Act, and their spouse, from a consulting operation or similar business. The bill does not apply to other categories of employment identified in Section 10-16A-3. The bill also requires the disclosure of the name and address of all clients who contributed more than \$1,000 to the reporting person's, or their spouse's, gross income. Currently, only the name and address of a client is required to be disclosed if the spouse or a person in the reporting person's or spouse's law firm, consulting operation, or similar business is a registered lobbyist.

RELATIONSHIP

The New Mexico Department of Transportation (NMDOT) notes individual members of the State Transportation Commission are currently subject to a commission-enacted code of conduct which requires disclosure of outside employment regardless of the nature and amount of income received from the outside employment. It does not currently require identification of a client. Both the Secretary of Transportation and the members of the State Transportation Commission are subject to the outside employment disclosure requirements of the Governmental Conduct Act, but the Governmental Conduct Act does not contain any reporting thresholds or client identification obligations as proposed in HB388.

TECHNICAL ISSUES

The Administrative Office of the Courts (AOC) and the Attorney General's Office (AGO) note the bill does not define "consulting operation or similar business." Although the term is already used in Section 10-16A-3(C)(2) as one of the categories of income when one is deciding what needs to be disclosed with regard to the reporting individual's or spouse's clients, there could be some confusion as to what constitutes a "consulting operation or similar business".

OTHER SUBSTANTIVE ISSUES

The Administrative Office of the Courts (AOC) indicates objections could be made to the disclosure requirement in the bill because of the requirement being overly broad and impinging upon the free speech of a spouse and the spouse's clients. If the "consulting operation or similar business" is law-related and the spouse is an attorney, there may be objections to disclosure of what could arguably be protected attorney-client information.

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Section 10-16A-7 NMSA 1978 provides a misdemeanor penalty for violation of the Financial Disclosure Act. Section 10-16A-8 NMSA 1978 permits the Attorney General or a District Attorney to institute a civil action in district court for a violation of the Financial Disclosure Act. Relief may include a permanent or temporary injunction, a restraining order or any other appropriate order, including an order for a civil penalty of \$250 for each violation not to exceed \$5,000.

The AOC also notes the Code of Judicial Conduct, 21-100 NMRA *et seq.*, provides ethical rules and canons for judges to observe. 21-300 NMRA, Canon 3, provides that a judge shall conduct the judge's personal and extrajudicial activities to minimize the risk of conflict with the obligations of judicial office. 21-311 NMRA, within Canon 3, governs a judge's financial or business activities. 21-315 NMRA, also within Canon 3, governs reporting requirements for a judge. 21-406 NMRA, Subsections A and B, govern violations by incumbents and violations by candidates for judicial office, respectively. Given the existence and substance of the Code of Judicial Conduct and its canons and rules, the conduct of a judge is already policed, a judge or judge's spouse should be exempt from the HB388 disclosure requirement.

RAE/al