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FISCAL IMPACT REPORT

ORIGINAL DATE 2/5/18

SPONSOR Steinborn LAST UPDATED _____ HB _____

SHORT TITLE Lobbyist Reporting Requirements SB 173

ANALYST Amacher

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY18	FY19	FY20	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Indeterminate	Indeterminate	See Fiscal Impacts		See Fiscal Impacts

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB 67, SB 107

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Office of the Attorney General (AGO)

Secretary of State's Office (SOS)

SUMMARY

Synopsis of Bill

Senate Bill 173 amends the reporting requirement to include estimated lobbying expense reports of lobbyists and the lobbyists' employers; requires reports to be posted on the Secretary of State's lobbyist disclosure website; offers conforming amendments to the Lobbyist Regulation Act. If enacted, the effective date of this bill is December 15, 2018.

FISCAL IMPLICATIONS

The Secretary of State (SOS) notes the current campaign reporting system, CFIS, is not equipped to make estimated expense reports as required by this bill. The proposed legislation would require the SOS to add an additional reporting type to the lobbyist module of the existing CFIS in order to capture the required information which would result in a fiscal impact to the SOS.

The SOS has submitted an IT special appropriation request for consideration during this session to replace CFIS in order to comply with legislation passed in 2016. Should this bill pass, the additional reporting proposed could be incorporated into the development of the new CFIS if funding for the new system is approved.

SIGNIFICANT ISSUES

Senate Bill 173 amends the reporting requirements of lobbyists and their employers to include estimated lobbying expense reports. An annual estimated lobbying expense report must be filed with the Secretary of the State (SOS) no later than January 15 by the lobbyist and by May 1 by the lobbyist's employer. The prescribed form of electronic format as approved by the SOS must include the following:

- A sworn statement of the total estimated expenses that will be incurred from January 1 through April 25 of the current year; and
- A sworn statement setting forth the amount of total lobbying expenses actually incurred from April 26 through December 31 of the preceding year; provided that no statement is required unless: a) the total expense actually incurred differ by more than ten percent from the amount estimated for that period; or b) expenses were actually incurred from April 26 through December 31 of the preceding year and no report was filed for that time period.

After initial employment or retention of a lobbyist and before the lobbyist engages in such work; the employer must amend the amount of total estimated expenses reported or ensure file the required report for the remainder of the reporting period in which the lobbyist is initially employed or retained.

SB 173 defines “lobbying expenses” as an aggregate total of expenditures and political contributions made by a lobbyist that are reimbursed by the employer; living and office expenses; total compensation paid to a lobbyist; salary paid to an employee lobbying on behalf of his/her employer; and any other lobbying expenditures made the employer and are not otherwise specified.

SB 173 requires lobbyist expense reports to be posted on the Secretary of State's lobbyist disclosure website within 48 hours of receipt, except that each statement and report received during a legislative session shall be posted within 24 hours.

If enacted, the effective date of this bill is December 15, 2018.

RELATIONSHIP

SB 173 relates to SB 67, Lobbyist Reporting Changes, which requires cumulative reporting of expenses incurred under \$100 and changes the reporting deadline to January 15.

SB 173 relates to SB 107, Post-Session Lobbying Report, which requires each lobbyist or his/her employer to file an expenditure report with the Secretary of State within one week following the conclusion of a legislative session. The report must reference the specific legislation lobbied and indicate support or opposition on behalf of the lobbyist or his/her employer.

OTHER SUBSTANTIVE ISSUES

The NMAG notes if SB 173 is enacted, lobbyists would have to report their estimated living expenses and expenses incidental to establishing and maintaining an office but not their actual expenses with regard to those activities. As proposed, SB 173 requires that lobbyist's employers estimate lobbying expenses. This includes a lobbyist's “living expenses, expenses for maintain

an office and other expenses incidental to lobbying” that are reimbursed by the lobbyist’s employer. The N MAG points out that although the bill specifically defines “lobbying expenses” for purposes of the estimated lobbying expense reporting requirement, the Lobbyist Regulation Act (Act) also defines “expenditure” for purposes of the Act as “a payment, transfer or distribution or obligation or promise to pay, transfer or distribute any money or other thing of value but *does not include* a lobbyist’s own personal living expenses and the expenses incidental to establishing and maintaining an office in connection with lobbying activities or compensation paid to a lobbyist by a lobbyist’s employer” (Chapter 2-11(2) NMSA 1978). In addition, “A lobbyist’s personal living expenses and the expenses incidental to establishing and maintaining an office in connection with lobbying activities or compensation paid to a lobbyist by a lobbyist’s employer need not be reported (Chapter 2-11-6(F) NMSA 1978).

The N MAG notes that if SB 173 is enacted, lobbyist’s employers may be faced with filing two similar reports under the Act, each of which must comply with a different definition of covered expenses or expenditures. Even if the conflicting requirements can be harmonized, they may still result in confusion among lobbyist’s employers trying to comply with the Act. The N MAG point to the current act which requires some expenditure reports to be filed on the same days as the lobbying expense reports that would be required by SB 173. *Compare* to Chapter 2-11-6(E) NMSA 1978, (requiring “all expenditures and political contributions made or incurred during the preceding year and not previously reported” to be filed on January 15) *with* SB 173, Section 1(A) (requiring estimated lobbying expense report to be filed on January 15).

The N MAG suggests amending the definitions section of the Act to reconcile definitions of “lobbying expense” and “expenditure” to ensure no conflict or cause for confusion as noted above.

The AOC notes that Chapter 2-11-8.2 NMSA 1972, governs compliance with and enforcement of the Act, binding arbitration and civil penalties, and permits the Secretary of State to refer a matter to the attorney general or a district attorney for a civil injunctive or other appropriate order of enforcement. Furthermore, Chapter 2-11-9 NMSA 1978, provides that in addition to any other penalties that may be assessed, any knowing and willful violation of the Act requires the imposition of a \$5,000 fine and may result in the revocation of lobbyist registration and the enjoining of lobbying activities for up to three years.

The SOS expresses concern relating to the implementation of this bill if enacted. The bill requires lobbyist employers to file reports with the SOS, but fails to require a registration process for the employers. Currently, lobbyists are required to submit an authorization from their employers in order for the lobbyist to conduct activities on behalf of the employers. However, this bill goes beyond the status quo and requires the lobbyists’ employers to file reports with the SOS. This will require registration in order for the SOS to appropriately setup lobbyist employer access to CFIS.

The SOS also notes only lobbyist employers who incur lobbyist expenses, as defined by the Act, are required to file the newly proposed expense reports. The absence of a report would lead to the assumption that no expenses were incurred which may make tracking and assessing compliance difficult. The bill also requires that lobbyist employers amend their reports after employing a lobbyist to update expenses. This language assumes that the expenses initially reported were not estimated correctly which may be an incorrect assumption.

JMA/al