

LFC Requester:	Connor Jorgensen
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**AGENCY BILL ANALYSIS
2015 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:
Original **Amendment**
Correction **Substitute**

Date Feb. 2, 2015
Bill No: HB 241

Sponsor: Rep. Jim Dines
Short Public Officials As Lobbyists
Title: _____

Agency Code: Attorney General's Office
Person Writing Walter Hart, AAG
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act:

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Letter. This is a staff analysis in response to an agency’s, committee’s, or legislator’s request.

BILL SUMMARY

Synopsis: House Bill 241 adds new provisions to the Lobbyist Regulation Act, NMSA 1978, §§2-11-1 to -9 (1977, as amended through 2005), that prohibit “former statewide elected official[s]”, “former public regulation commissioner[s]”, “former state legislator[s]”, and “former cabinet secretar[ies]”, from accepting compensation as a lobbyist for a period of two calendar years after conclusion of their service. It also prohibits a “lobbyist’s employer” from compensating such persons “as a lobbyist” for the same period of time. Finally, it provides that violation of such provisions constitutes a criminal misdemeanor offense subject to sentencing pursuant to “Section 31-19-1 NMSA 1978.”

FISCAL IMPLICATIONS

Under existing law, the Attorney General is required to consult with the Secretary of State regarding the preparation of advisory opinions on matters concerning the Lobbyist Regulation Act. See NMSA 1978, §2-11-8.2A (1977, amended 1997). Also, the Secretary of State may refer a matter to the Attorney General for a civil injunctive or other appropriate order or enforcement. See §2-11-8.2H. Expansion of the prohibitions of the Lobbyist Regulation Act by House Bill 241 will require the Office of the Attorney General to perform additional duties relative to interpretation and enforcement of such prohibitions. Additionally, the Attorney General could be involved in criminal prosecutions to enforce the provisions of House Bill 241. However, House Bill 241 provides no appropriation for additional staff or resources.

SIGNIFICANT ISSUES

Constitutional Issues: Prohibition of lobbying activity implicates free speech rights under the First Amendment to the United States Constitution and likely under the New Mexico Constitution. Federal free speech rights have been evaluated with respect to at least one other state’s lobbying prohibition statute under a strict scrutiny analysis, which requires a compelling government interest and narrow tailoring of the statute to accomplish that end. See e.g., Brinkman v. Budish, 629 F.Supp. 2d 855 (S.D. Ohio 2010) (finding a First Amendment violation where prohibition extended to *uncompensated* lobbying activity). Internet research indicates that at least 32 states have enacted “revolving door laws” that prohibit state legislators from lobbying their state legislatures for a period of time after they

leave their positions as state legislators. See <http://www.ncsl.org/research/ethics/50-state-table-revolving-door-prohibitions.aspx> However, additional research of these statutes and any jurisprudence concerning them has not been undertaken for this report.

Statutory Overlap and Conflict: House Bill 241 presents potential overlap and contradiction of its provisions with existing provisions of the Governmental Conduct Act, NMSA 1978, 10-16-1 to -18 (1967, as amended through 2011). The Governmental Conduct Act defines the term “public officer or employee”, see §10-16-3 I, in such a way as would appear to include “former statewide elected official[s]”, “former public regulation commissioner[s]”, and “former cabinet secretar[ies]” (but not “former state legislator[s]”) as those terms would be used in the Lobbyist Regulation Act if amended by House Bill 241. Under the Governmental Conduct Act, [f]or a period of **one** year after leaving government service or employment, a former public officer or employee shall not represent for pay a person before the state agency or local government agency at which the former public officer or employee served or worked.” §10-16-8 D. Under the Lobbyist Regulation Act, “lobbying” includes “attempting to influence ... an official action”, see §2-11-2 D (2), “or nonaction” “of a state official or state agency, board or commission in a rulemaking proceeding”, see §2-11-2 G. (However, the existing Lobbyist Regulation Act excludes its application to (a) any “witness called by a legislative committee or administrative agency to appear before [it]”, and (b) any “individual who provides only oral or written public testimony” to such entities. See 2-11-2E (6) and (7).) In sum, for certain classifications of persons, the provisions of House Bill 231 appear to impose a two-year prohibition on at least some of the same conduct for which the Governmental Conduct Act imposes a one-year prohibition.

Statutory Clarity: The current Lobbyist Regulation Act permits imposition of certain civil penalties and enforcement procedures with respect to actual or potential violation of its provisions. See 2-11-8.2. House Bill 241 provides a new criminal penalty, but does not explicitly state whether the new criminal penalty is in addition to or exclusive of potential civil penalties and enforcement procedures.

PERFORMANCE IMPLICATIONS

See Fiscal Implications above.

ADMINISTRATIVE IMPLICATIONS

See Fiscal Implications above.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

TECHNICAL ISSUES

Definitional Consistency: The Lobbyist Regulation Act currently defines a “state public officer” as “a person holding a statewide office provided for in the Constitution of New Mexico.” See §2-11-2L. House Bill 241 uses the new and undefined term “statewide elected official”. It does not appear that the new term is intended to include or exclude any persons not already included in the existing definition of “state public officer”.

Accordingly, absent justification and distinction, use of the new term creates unnecessary uncertainty in its meaning. (Are there any “statewide elected official[s]” whose office is not provided for in the Constitution of New Mexico?)

Definitional Under-inclusiveness: Also, to the extent a person may have been appointed to fill a statewide office vacancy for which that person was never elected, it might be argued in that instance that the provisions of House Bill 241 relative to “statewide elected official[s]” do not apply to that person. Accordingly, if the term “statewide elected official” is to be used, it probably should be defined in §2-11-2 to address this issue.

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS

See Technical Issues above.