

LFC Requester:	Charlene Cerny
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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

Prepared: February 24 , 2015
Bill No: HB 537-305

Sponsor: Rep. Zachary Cook
Gov't Employee Political Activity

Agency Code: Attorney General's Office
S'

Person Writing
mfsdfs **Analysis**
 :

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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:

HB 537 amends Section 10-16-2 NMSA 1978 by adding three terms to the definition section of the Governmental Conduct Act.

“Political purpose” is defined as to support or oppose the nomination or election of candidates in elections or passage or defeat of ballot propositions.

“Public notice” is defined as disclosing in written form to the state agency or local public body with which the public office or employee is associated along with posting of disclosure in a public space, agency web site or local newspaper in a manner adequate to serve the purposes of transparency and accountability.

“Public resources” is defined as facilities, services, vehicles, property or supplies produced or paid for with public funds and includes the service of public officers or employees during normal working hours.

HB 537 amends Section 10-16-3.1, Prohibited Political Activities, by adding “Use of Public Resources” to the title of the Section. It also adds the term “ballot issues” to Subsection B making it a violation if a public officer or employee threatens to deny a

promotion or pay increase to an employee who does or does not vote for certain candidates or ballot issues.

In Subsection C of 10-16-3.1, the term “property” is removed and replaced with the term “public resources”. The phrase “for other than authorized purposes” is replaced with “other than for purposes authorized by law or for any political purpose”. This subsection is also amended by stating that the following are acceptable uses of public resources:

- (1) A statement by an elected official in support of or in opposition to any ballot proposition at an open press conference or in response to a specific inquiry;
- (2) A communication that factually describes the purposes of a measure if the communication does not advocate the passage or defeat of the measure;
- (3) De minimis use of public resources by elected officials incidental to the preparation or delivery of communications, including written and verbal communications initiated by them, of their views on ballot propositions that foreseeably may affect a matter that falls within their constitutional or statutory responsibilities; and
- (4) Activities that are part of the normal and regular duties of the office or agency.

FISCAL IMPLICATIONS

The AGO will have to revise and publish an updated version of the Governmental Conduct Act Compliance Guide to reflect the additions made by HB 537.

SIGNIFICANT ISSUES

Whether to include the bill’s proposed definitions to help clarify the terms in the Governmental Conduct Act.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

TECHNICAL ISSUES

The newly added definition of “public notice” states that an acceptable means of disclosure of the substantial interest of a public officer, in a government contract, is to post it on the related agency’s website. An unintended consequence is that it may be inferred to also place a duty of public notice on the agency. The definition could be changed to the following:

- “public notice” means disclosing in written form to the state agency or local government agency with which the public officer or employee is associated, including by posting the disclosure in a public space, on the agency web site or in a local newspaper in a manner adequate to serve the purposes of transparency and

accountability; provided that this does not impose a duty of public notice on the state agency or local government agency.

The newly added definition of public notice should replace the term “local public body” with the term “local government agency”, a term already defined in the Governmental Conduct Act.

On page 3, line 11, the term “public office” should read “public officer”.

On page 4, lines 24 and 25 and page 5, line 1, the phrase “for any political purpose” should be placed after the phrase “local government agency”. Also, page 5, line 1, may be easier for the reader to understand if “shall” is added between “prohibition” and “not”. For example:

- Violating the officer’s or employee’s duty not to use public resources belonging to a state agency or local government agency, for any political purpose, or allow its use other than for purposes authorized by law; provided that this prohibition shall not be construed to prohibit the following:

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo; However, without the clarifications in HB 537, enforcing violations of the Governmental Conduct Act may be difficult.

As Section 10-16-13.1 currently exists, the title reads “Prohibited Political Activities”, however, Subsection C does not specifically refer to any political activity. It currently states that it is a violation to use property belonging to a state agency or local government agency, or allow its use, for other than authorized purposes. It is unclear what exactly government “property” includes. For instance, does the use of government employees and vehicles during normal work hours for a political purpose constitute using “property” belonging to a state agency or local government agency? It is also unclear whether Subsection C allows the use of government property for political purposes if it is authorized by someone in authority such as a supervisor or an elected official. HB 537 clarifies this by providing a definition for public resources and also specifying that it is a violation to use public resources if it is not authorized by law and also a violation to use public resources for any political purpose. Additionally, it provides a definition of “political purpose” which may assist in the enforcement of the act.

As Section 10-16-7 currently exists, a public officer or employee is required to disclose their substantial interest in a contract through public notice; however, public notice is not defined. It is unclear what a public officer or employee must do to comply with the

disclosure requirement in the Governmental Conduct Act. Without a definition of public notice, the disclosure requirement is unenforceable. HB 537 provides a definition for public notice which requires the public official or employee to disclose in written form to the state agency or local government agency with which they are associated, along with the options of either posting the disclosure in a public space, agency web site or local newspaper. It also provides the legislative intent by specifying that the disclosure should be done in a manner adequate to serve the purposes of transparency and accountability. These clarifications may be helpful in prosecuting violations of the Governmental Conduct Act.

AMENDMENTS

Please see suggestions noted above under technical issues.