

LFC Requester:

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AGENCY BILL ANALYSIS
2016 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

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{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 January 23, 2016

Bill No: HB124

Sponsor: Gail Chasey
Short Gubernatorial Inauguration
Title: Contributions

Agency Code: 305
Person Writing Caroline Manierre
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: HB105
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

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.

Synopsis:

House Bill 124 amends the Campaign Reporting Act to require expenditure reporting for gubernatorial inauguration contributions. The bill would require that a governor-elect appoint an inaugural treasurer within ten days of receiving any contribution or making any expenditure for a gubernatorial inauguration. House Bill 124 provides particular requirements for contributions and expenditures made for a gubernatorial inauguration, including that these contributions and expenditures can only go through the inaugural treasurer, and that no contribution or receipt can be commingled with personal funds of the governor-elect or inaugural treasurer or be used for any purpose except legitimate gubernatorial inauguration expenses (including no use of the funds by the governor-elect or governor for personal use).

The bill imposes reporting requirements that include that the inaugural treasurer shall file two reports of expenditures and contributions with the secretary of state. The first is due March 15, to cover the period ending February 28, and the second is due July 15, to cover the period from March 1 to June 30. The expenditure/contribution reports must be submitted to the secretary of state and include information about a contributor or a person to whom an expenditure is made, occupation of a contributor of any person contributing two hundred fifty dollars or more in the aggregate, amount of an expenditure or contribution, purpose of an expenditure, and date of the expenditure or contribution. The reports must contain information regarding the opening and closing cash balances of the bank account maintained by the inaugural treasurer, and the amount of any unpaid debts and identity of the person to whom the debt is owed. The second report, due July 15, is a “termination report” and includes additional information as to the disposition of residual funds. Before the final report is filed, residual funds are to be either donated to a charitable organization as described in the Internal Revenue Code or remitted to the state treasurer who will credit the residual funds to the governor’s residence preservation fund.

House Bill 124 also contains prohibitions on contributions: a person cannot contribute more than two thousand dollars in the aggregate for a gubernatorial inauguration, shall not contribute in the name of another person, shall not accept a contribution made by someone in the name of another, and no person shall accept a contribution in excess of \$50 unless the contributor’s name and address is made known to the individual receiving the contribution.

FISCAL IMPLICATIONS : None

SIGNIFICANT ISSUES

- Since there has previously never been any regulation or disclosure in New Mexico of Inauguration contributions and expenditures per se, the basic issue HB 124 presents is whether to do so, and if so, whether the particular limitations and disclosures proposed in the bill are reasonable. HB 124 appears to be consistent with the interests in exposing maximum transparency of government operations.
- It might be helpful to include information about what exactly the “gubernatorial inauguration” refers to, particularly a reference to a time period, considering the time frames for submitting the reports are in March and July, but the references throughout the bill are to the governor-elect who constitutionally takes office on January 1 (especially since NMSA 1978, Section 1-19-34.1(B) (1995) states that “[i]t is unlawful during the prohibited period for the governor, or any agent on his behalf, to knowingly solicit a contribution for a political purpose...” and the contributions contemplated under House Bill 124 could be considered as for a political purpose). NMSA 1978, Section 8-2-1 (1967) deals with the transition between governors and as legislative policy states “The legislature finds that the lag between the election and the inauguration of a new governor is approximately two months and consequently there is a premium on the necessity of a well-planned period of transition.” *Id.* Would this period be considered under the reporting requirements? Some clarification might give additional guidance.
- House Bill 124 refers to “legitimate gubernatorial inauguration expenses” but does not include what might constitute “legitimate” expenses, such as inaugural events, official actions, the inauguration itself or any related celebrations. The bill also contains language that money received by the inaugural treasurer shall not be used “for the personal use of the governor-elect or governor.” Kansas currently has a very similar statute to House Bill 124, which contains the language “[f]or the purpose of this subsection, expenditures for ‘personal use’ shall include expenditures to defray normal living expenses and expenditures for personal benefit having no direct connection with or effect upon the inauguration.” Kan. Stat. Ann. § 25-4186. As it is written, House Bill 124 contains no such language and would leave this up to interpretation in individual cases.
- There are several provisions in House Bill 124 that are duplicative of other sections of the Campaign Reporting Act. These include the provision regarding accepting a contribution made by one person in the name of another, which is already prohibited by NMSA 1978, Section 1-19-34.3 (2009) – the provisions do not conflict and the language is the same, but it is already included in the Act. Additionally, House Bill 124 defines “contribution” and “expenditure” “[f]or the purposes of this section[.]” NMSA 1978, Section 1-19-26 (F) and (J) define contribution and expenditure “[a]s used in the Campaign Reporting Act[.]” While the definitions in House Bill 124 essentially mimic the definitions of the existing Act, omitting “for a political purpose,” the definitions in the Act contain additional language regarding what is and is not included within the definitions. This could potentially lead to an issue of ambiguity about whether certain things that would or would not be a contribution/expenditure under the Act generally would be treated the same for this provision. Finally, subheading E of House Bill 124 lists what reports of expenditures and contributions must include and is substantially similar to NMSA 1978, Section 1-19-31(2007), which lays out the required contents of “[e]ach required report of expenditures and contributions...” There is no clarifying language in House Bill 124 that the requirements listed under subheading E are the specific requirements for gubernatorial inauguration reports as opposed to the existing statutory language laying out the required report contents for the Act.

PERFORMANCE IMPLICATIONS: N/A

ADMINISTRATIVE IMPLICATIONS: N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP:

- House Bill 105 would require that all reports required to be submitted for campaign reporting be completed “in an electronic format prescribed by the secretary of state.” Currently House Bill 124 reads “each required report of expenditures and contributions shall be typed or printed legibly, or in an electronic format approved by the secretary of state[.]” Although not in direct conflict, this could lead to a potential issue where the electronic format approved does not include regular typing or legible printing (which seems to suggest a non-electronic format).
- House Bill 80 and Senate Bill 124 do not necessarily conflict with House Bill 124, but would amend the language in the Campaign Reporting Act to change from “secretary of state” to “state ethics commission.”
- Senate Bill 11 is loosely related in that it amends various sections of the Campaign Reporting Act, though it does not appear to contain any provisions that directly conflict with House Bill 124.

TECHNICAL ISSUES: N/A

OTHER SUBSTANTIVE ISSUES: N/A

ALTERNATIVES: N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL: Status Quo

AMENDMENTS: None