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FISCAL IMPACT REPORT

ORIGINAL DATE 2/25/07

SPONSOR Boitano LAST UPDATED _____ HB _____

SHORT TITLE Extend Governmental Conduct Act SB 445

ANALYST Wilson

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$0.1	\$0.1	\$0.1	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB 400 and other ethics bills

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)

Department of Public Safety (DPS)

Public Education Department (PED)

SUMMARY

Synopsis of Bill

Senate Bill 445 Senate Bill 445 will amend the Governmental Conduct Act [Chapter 10, Article 16 NMSA 1978] by prohibiting a public officer or public employee from directly or indirectly threatening a law enforcement officer with retaliation or intimidation to avoid arrest or ticketing.

The bill adds cleanup language to make it clear that the ethical provisions in the Act apply to political subdivisions of the state and contracts entered into between the state or local government agency and a public officer or employee are prohibited unless there was prior disclosure of the potential contractor's substantial interest and the contract was awarded pursuant to the Procurement Code or a local procurement ordinance.

FISCAL IMPLICATIONS

The AGO believes this bill will increase enforcement responsibilities and they may need additional resources.

SIGNIFICANT ISSUES

Public service is always about protecting the common good, which may be defined as the common conditions that are important to the welfare of everyone-police, fire, parks, libraries, and other services. A public servant must always put the common good ahead of any personal, financial, or political benefit they might receive from a decision about such matters as where to situate a park or who should collect the garbage.

Also, conflicts of interest interfere with the basic ethical principle of fairness-treating everyone the same. A public official should not take unfair advantage of his or her position by voting on a matter that could benefit them at the expense of others.

Finally, conflicts of interest undermine trust. They make the public lose faith in the integrity of governmental decision-making processes.

Many times, government officials honestly believe that they are not being unduly influenced by their personal stake in an issue. They may feel, to the contrary, that their interest in the matter gives them special insight into the subject. A city councilmember who ran on a platform of revitalizing the downtown, for example, may feel entirely justified in supporting measures to improve the area, even if part of the benefit of such improvement might go to their own business. They might argue that they understand the problems of a downtown business because they own one. They might claim, further, that their constituents elected them specifically to represent this interest.

But conflict of interest laws prevent such partiality. First, it's almost impossible for individuals to determine whether they are being fair when their self-interest is involved. Also, as the Institute for Local Self-Government puts it, "The law is aimed at the perception, as well as the reality, that public official's personal interests may influence a decision." Even the appearance of impropriety undermines the public's faith that the process is fair.

Another common misconception about conflicts of interest is that officeholders are absolved of their responsibility merely by being transparent about their stake in the issue. It is not sufficient for government officials to make conflicts public. They must take themselves out of the decision-making process altogether.

This includes discussion and debate as well as actual voting. Abstention is only half the requirement. A public official is also expected to refrain from public pronouncements and private arm twisting on decisions in which he or she has an interest.

Note, also, that the interest may be personal as well as financial. Helping one's fraternal order to obtain rent-free space in a public building is a form of conflict of interest, especially if it improves one's standing in the organization. Being elected president of a community group because of such favors might prove to be in an officeholder's personal and political interest when the next election rolls around. Conversely, public office should not be used to punish one's personal and political enemies. Voting no on your annoying neighbor's reasonable zoning waiver request is another form of putting private ahead of public interest.

ADMINISTRATIVE IMPLICATIONS

The AGO believes this bill will increase enforcement responsibilities and they may need additional staff.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This bill is one of a series of ethics bills introduced this session. These include: HB 553, HB 818, HB 819, HB 820, HB 821, HB 822, HB 823, HB 1154, HB 1295, HB 1053, HB 1296, SB 342, SB 400, SB 445, SB 588, SB 671, SB 796, SB 799, SB 800, SB 815, SB 931, SB 953, SB 1043, SB 1051, SB 1107 and SB 1137.

SB 445 relates most closely to and somewhat conflicts with SB 400, with respect to inconsistent amended definitions of “public officer or employee” as found in NMSA 1978, § 10-16-2(G). SB 400 focuses on investment activities involving the state and those providing financial services involving public money to the state.

TECHNICAL ISSUES

Section 1 of the bill prohibiting abuse of power is, arguably, already prohibited by the crime of Extortion, as set forth in Section 30-16-9 NMSA 1978 of the Criminal Code. Violation of the Governmental Conduct Act is a misdemeanor; however, violation of extortion is a fourth degree felony. The “abuse of position” prohibition contained in section 1 of the bill contains a lesser punishment than the similar crime of “extortion”

DW/nt