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FISCAL IMPACT REPORT

ORIGINAL DATE 2/1/08

SPONSOR Lopez LAST UPDATED _____ HB _____

SHORT TITLE Ethical Conduct Of Political Subdivisions SB 320

ANALYST Wilson

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY08	FY09	FY10	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$0.1	\$0.1		Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to other ethics bills

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Attorney General's Office (AGO)
 Department of Finance & Administration (DFA)
 Public Education Department (PED)
 State Personnel Office (SPO)

SUMMARY

Synopsis of Bill

Senate Bill 320 amends the Governmental Conduct Act to include public officers and employees of all political subdivisions of the state. The bill broadens the definition of "public officer or employee" to include "any elected or appointed official or employee of a state agency or local government agency" and adds a definition for "local government agency," which includes "any branch, agency, instrumentality, institution or other entity of any political subdivision of the state." The bill will make the current prohibitions now applicable to those individuals added by these changes to the definitions.

The bill also adds language duplicating existing provisions regarding contracts with state agencies but substituting "local government agency" where the original provisions say "state agency," thus making it explicit that these prohibitions apply with equal force to local government agencies.

The bill adds language specifying that the Attorney General, as well as the Secretary of State, shall be responsible for advising and educating persons covered by the Act.

Finally, the bill adds a new section providing that nothing in the Act shall be construed to preclude a local government agency from adopting laws, ordinances, rules or standards that are more stringent than those required by the Act.

FISCAL IMPLICATIONS

DFA states the fiscal impact of this legislation is minimal. There may be some small fiscal impact to the Secretary of State and the Attorney General, which are charged with education and referrals for enforcement.

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary will be proportional to the enforcement of this law and commenced prosecutions and civil actions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

SPO notes there will be an added burden on all local agencies in order to comply with the provisions of this bill, but they should be able to handle the requirements with existing resources.

SIGNIFICANT ISSUES

DFA provided the following:

This bill will impose several new ethics requirements on local governments, which have not previously been covered by the Governmental Conduct Act. First, it will prohibit local government officers and employees from coercing other officers or employees to perform political activities, contribute to political parties, or vote a certain way. While also protected by the U.S. Constitution, this statute amendment will help protect local government employees from intimidation in the workplace.

Second, the bill will require all local government officers and employees to disclose all outside employment to their supervisor or, if there is no supervisor, to the Secretary of State. This was a new statutory requirement for state officers and employees in 2007, and may prevent conflicts of interest between officers'/employees' public and private duties. As it requires disclosure of all outside employment, including that which is not in conflict with stated job duties, there may be some invasion of privacy.

Third, the bill prevents local government agencies from entering into contracts with officers or employees of that local government, their family members, or with a business in which an officer, employee, or family member has a substantial ownership interest, unless the contract is awarded under a bid or request for proposal process pursuant to the Procurement Code; the potential contractor is not eligible under a sole source or small purchase contract. This is likely to prevent any unfair contract awards and ensure a fair process for all local government contracts.

Fourth, the bill limits business involvement by local government officers and employees after their departure from the local government post. It prohibits local governments from entering into contracts with a person or business represented by a former officer or employee within one year if the contract is a result of an action by the officer or employee and has a value of more than \$1,000, and it prohibits local governments from entering into such contracts at all if the contract is a direct result of the former officer's or employee's action while employed. It also prohibits the former officer or employee from pursuing such action. This will prevent conflicts of interest and unethical behavior by officers/employees with an eye toward business dealings after their government service. Similarly, it prevents sales by officers, employees, their families, and their businesses to the local government agency employer, to any employees under their supervision, and to any person under their regulatory authority. Some local governments, particularly very small communities, may find it difficult to avoid such conflicts, however, there are exceptions for sales to the agency or employees if the sale is in good faith and the officer/employee is unaware of the conflict.

The AGO provided the following:

This bill erases the patchwork of ethics laws that currently apply to government, and in its place, the bill creates a uniform body of ethics laws that apply systematically to all public bodies, officials, and employees.

Currently, the Governmental Conduct Act places ethics requirements only on state government, with one exception: Section 10-16-13 prohibits local governments from awarding bids to an employee who prepared the bid.

The Governmental Conduct Act prohibits state officers and employees from taking official acts for the primary purpose of directly enhancing their financial interest. There is no rationale for placing this ethical standard only on state government, and this bill will correct this. Similarly, the Governmental Conduct Act prohibits state officers and employees from using confidential information for anyone's personal gain. Again, there is no rationale for placing this ethical standard only on state government, and this bill will correct this.

ADMINISTRATIVE IMPLICATIONS

The bill imposes a duty on the Secretary of State and Attorney General to advise those persons required to perform duties under the Governmental Conduct Act of those duties at least annually. With the inclusion in the act of local government agencies, there may also be additional enforcement duties imposed on the Secretary of State, Attorney General, and local District Attorneys.

RELATIONSHIP

SB 320 relates to:

HB 160, Amend Gift Act Allowable Amounts
HB 309, State Ethics Commission Act
HB 344, State Ethics Commission Act
HJM 24, Study Bipartisan State Elections Commission

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SB 132, Whistleblower Protection Act
SB 376, State Ethics Commission Act
SB 437, State Ethics Commission Act
SJR 6, Create State Ethics Commission, CA

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