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FISCAL IMPACT REPORT

ORIGINAL DATE 02/20/09

SPONSOR Park LAST UPDATED 03/04/09 HB 550/aHJC

SHORT TITLE Local School Board Governmental Conduct SB _____

ANALYST Wilson

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY09 | FY10 | FY11 | 3 Year Total Cost | Recurring or Non-Rec | Fund Affected |
|--------------|------|----------------------|----------------------|----------------------|-------------------------|------------------|
| Total | | Unknown See Below | Unknown See Below | | Recurring | General Fund |

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 99, HB 151, HB 244, HB 252, HB 253, HB 272, HB 495, HB 535, HB 553, HB 614, HB 686, HB 808, HB 850, HB 891, SB 49, SB 94, SB 116, SB 128, SB 139, SB 140, SB 163, SB 258, SB 262, SB 263, SB 269, SB 296, SB 346, SB 451, SB 521, SB 535, SB 555, SB 557 SB 606, SB 611, SB 646, SB 652, SB 676 & SB 693

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)

Public Education Department (PED)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment to HB 550 requires PED to adopt a separate code of conduct for elected school board members.

Synopsis of Original Bill

House Bill 550 amends the School Election Law by requiring a person elected to a school board to comply with the Governmental Conduct Act. The bill does the following:

- amends the definition section of the Governmental Conduct Act by including a person elected to a school board as a “public officer or employee”;
- re-defines public officer or employee to exclude legislators but include a person appointed or elected to a local school board; and

- amends section 22-5-4 NMSA 1978 of the Public School Code by adding the requirement to the duties of local school boards that they comply with the Governmental Conduct Act.

FISCAL IMPLICATIONS

The affected agencies should be able to handle the enforcement of the provisions in this bill with existing resources.

SIGNIFICANT ISSUES

The AGO provided the following:

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 take one step toward correcting 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 take one step toward correcting this.

PED provided the following:

Section 2 of the bill removes the conduct of legislators from falling under the public officer definition in the Governmental Conduct Act. Presumably, this is clean-up language since legislators are mentioned in the bill. However, this may still cause confusion of whether removal of legislators from the "public officer" definition expresses an intent that the Act no longer apply to legislators.

It is not clear whether Section 10-16-4.2 of the Governmental Conduct Act will require a local school board member to report their outside employment to the Secretary of State.

It is not clear whether Section 10-16-11 of the Governmental Conduct Act requiring the adoption of a code of conduct will apply to local school boards.

Given that the Governmental Conduct Act imposes criminal sanctions for violation, it may be advisable to also amend Section 22-5-13 NMSA 1978 by adding governmental conduct training to the list of mandatory training that the PED must provide to new school board members.

ADMINISTRATIVE IMPLICATIONS

Local school board members will require some initial training as to their duties under the Governmental Conduct Act since violation of the act is a crime punishable as a misdemeanor in one part of the law and a felony in another part. However, Section 10-16-13.1 of the Governmental Conduct Act requires the Secretary of State to provide annual ethics training.

RELATIONSHIP

HB 550 relates to the following ethics bills:

HB 99, Prohibit Former Legislators as Lobbyists
HB 151, State Ethics Commission Act
HB 244, Prohibit Contractor Contribution Solicitation
HB 252, Political Contributions to Candidates
HB 253, Quarterly Filing of Certain Campaign Reports
HB 272, Quarterly Campaign Report Filing
HB 495, Political Candidate & Committee Donations
HB 535, Lobbyist Identification Badges
HB 553, Disclosure of Lobbyist Expenses
HB 614, State Ethics Commission Act
HB 686, AG Prosecution of State Officer Crimes
HB 808, Tax-Exempt Election Contributions & Reporting
HB 891, Election Communication Contribution Reporting
HB 850, Governmental Conduct Act for All Employees
SB 49, Governmental Conduct Act For Public Officers
SB 94, Prohibit Former Legislators as Lobbyists
SB 116, Limit Contributions to Candidates & PACs
SB 128, Require Biannual Campaign Reports
SB 139, State Ethics Commission Act
SB 140, State Ethics Commission Act
SB 163, Prohibit Former Legislators as Lobbyists
SB 258, Contribution from State Contractors
SB 262, Political Contributions to Candidates
SB 263, Contractor Disclosure of Contributions
SB 269, State Bipartisan Ethics Commission Act
SB 296, State Contractor Contribution Disclosure
SB 346, Political Contributions to Candidates
SB 451, Contributions to PERA Board Candidates
SB 521, Campaign Contributions in Certain Elections
SB 535, Election Definition of Political Committee
SB 555, Public Employee & Officer Conduct
SB 557, State Ethics Commissions Act
SB 606, Expand Definition of Lobbyist
SB 611, Investment Contractor Contributions
SB 646, Judicial Candidate Campaign Contributions
SB 652, Campaign Reporting Private Cause of Action
SB 676, School Board Candidate Contributions
SB 693, Prohibit Certain Contributions to Candidates

DW/mc:svb