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FISCAL IMPACT REPORT

ORIGINAL DATE 03/02/09
LAST UPDATED 03/10/09 **HB** 850/aHHGAC/aHJC

SPONSOR Cervantes

SHORT TITLE Governmental Conduct Act For All Employees **SB** _____

ANALYST Wilson

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
	Minimal See Below	Minimal See Below	Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

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

(Parenthesis () Indicate Expenditure Decreases)

Duplicates SB 555

Relates to HB 99, HB 151, HB 244, HB 252, HB 253, HB 272, HB 495, HB 535, HB 550, HB 553, HB 614, HB 646, HB 686, HB 808, HB 878, HB 883, 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 557, SB 606, SB 611, SB 613, SB 646, SB 652, SB 676, SB 678 & SB 693

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Administrative Office of the Courts (AOC)
- Administrative Office of the District Attorneys (AODA)
- Attorney General's Office (AGO)
- Corrections Department (CD)
- Public Education Department (PED)
- State Personnel Office (SPO)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary amendment to HB 850 as follows:

- Expands the definition of financial interest to include ownership interest in business or property.
- Removes language requiring a legislator having a financial interest that will be directly affected by the legislator's official act to disclose the precise nature of the interest “no later than at the time of taking official action”.
- Adds language requiring a legislator having a financial interest that will be directly affected by the legislator's official act to disclose the precise nature of the interest to the legislator’s respective chief clerk “unless the financial interest has already been disclosed pursuant to the Financial Disclosure Act”.

Synopsis of HHGAC Amendment

The House Health & Government Affairs amendment to HB 850 clarifies that a public officer or employee shall not be disqualified from taking an official act if the financial interest involves a financial benefit that is not more than the benefit to the general public.

Synopsis of Original Bill

House Bill 850 extends the Governmental Conduct Act (ACT), Section 10-16-1 et seq., NMSA 1978, by including local government, local officials, and local public employees.

Currently, the Act places ethics requirements only on state government; only one section of the Act regulates local government: under Section 10-16-13 local governments are prohibited from awarding bids to a former employee who prepared the bid.

In addition, a new section in this bill ensures that local government retains the power to pass more stringent ethics requirements.

The bill also incorporates some of the ethics provisions that currently apply to local government. For example, the bill incorporates Section 3-10-4A which prohibits officers and employees from acquiring a financial interest in a business affected by their decisions. Likewise, the bill incorporates Section 3-10-5 which requires city councilors to disclose conflicts of interest. The bill then abolishes the local government ethics statutes which overlap with this bill.

Finally, the bill corrects a conflict within the current statute: section 10-16-7 allows contracts between employees and their government employers, while section 10-16-13.2 bans these contracts. This bill deletes section 10-16-13.2 while strengthening the provisions of section 10-16-7 by incorporating the requirements for competitive bidding from section §4-44-22C.

FISCAL IMPLICATIONS

The Act already applies to judicial branch employees. There will be no additional cost to compliance with a statute with which the Judiciary already complies. There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. 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.

SIGNIFICANT ISSUES

The AGO provided the following:

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

There is no logical rationale for different standards of conduct for government officials and employees. For example, the Act currently prohibits the state from contracting with a former employee who created the contract as a state employee. There is no logical rationale for placing this ethical standard only on state government, and not on city government as well. And vice versa, state law prohibits city and county employees from acquiring a financial interest in a business affected by their decisions. There is no logical rationale for placing this ethical standard only on local government, and not on state government as well. This bill will correct these gaps.

These are the current conflicting and overlapping ethics statutes that apply to state and local government:

	CITY GOVERNMENT (§3-10-4 thru -60)	COUNTY GOVERNMENT (§4-44-21 thru - 25)	STATE GOVERNMENT (§10-16-1 thru - 18)
Prohibition on acquiring financial interest in business affected by decisions	§3-10-4A	§4-44-22B	N/A
Prohibition on use of Confidential Information	§3-10-4B	§4-44-23	§10-16-6
Disclosure of financial interest	§3-10-5 (applies only to elected officials)	§4-44-25	§10-16-3C A “guiding principle”

	CITY GOVERNMENT (§3-10-4 thru -60)	COUNTY GOVERNMENT (§4-44-21 thru -25)	STATE GOVERNMENT (§10-16-1 thru -18)
Disqualification from decisions affecting financial interest	§3-10-5B (Only if Governing body votes to disqualify city councilor)	§4-44-22A	§10-16-4 (a 4 th degree felony)
Elected official cannot contract with government without public notice and competitive bidding and full disclosure	N/A	§4-44-22C	§10-16-7
Governmental body cannot contract with business represented by employee where contract is direct result of that employee’s decisions	N/A	§4-44-24	§10-16-8

As a final point, the AGO notes this bill strengthens the ethical requirements over the procurement process. The problem with the current Procurement Code is that there are 31 separate exemptions, including an exemption for home rule municipalities.

CD states this bill will allow public officers or employees to engage in official acts directly affecting his or her financial interest if the financial interest involves a benefit that is not more than the benefit to the general public. How is the officer or employee going to assess or determine the benefit to the general public? This portion of the bill is vague and is likely to allow these officers and employees to assess or determine the benefit to the general public in a less than objective fashion.

The AOC provided the following:

- SB 555 amends Section 10-16-4 NMSA 1978 to provide that a public officer or employee shall not be disqualified from taking an official act if the officer’s or employer’s affected financial interest involves a benefit that is not more than *the benefit to the general public*. It is possible that the benefit to the general public will not be capable of being quantified in a direct financial sense.
- Section 10-16-17 NMSA 1978 provides for a misdemeanor penalty for a violation of the Act. Section 10-16-18 provides for reference by the Secretary of State to the AG or a DA when the secretary reasonably believes that a person committed or is about to commit, a violation of the Act. The AG or DA may institute a civil action in district court if a violation has occurred or to prevent a violation of any provision of the Act. Relief may

include a permanent or temporary injunction, a restraining order or any other appropriate order, including an order for a civil penalty of \$250 for each violation not to exceed \$5,000. These provisions now apply to those who have been elected to, appointed to or hired for any entity of a political subdivision of the state.

ADMINISTRATIVE IMPLICATIONS

The affected agencies should be able to handle the enforcement of the provisions in this bill as part of ongoing responsibilities.

DUPLICATION, RELATIONSHIP

HB 850 duplicates SB 555

HB 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 550, Local School Board Governmental Conduct
- HB 553, Disclosure of Lobbyist Expenses
- HB 614, State Ethics Commission Act
- HB 646, School Board Candidate Contribution Info
- HB 686, AG Prosecution of State Officer Crimes
- HB 808, Tax-Exempt Election Contributions & Reporting
- HB 891, Election Communication Contribution Reporting
- HB 878, State Contractor Registration & Info
- HB 883, Clean Government Contracting Act
- 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 557, State Ethics Commissions Act

SB 606, Expand Definition of Lobbyist
SB 611, Investment Contractor Contributions
SB 613, Campaign Finance Changes
SB 646, Judicial Candidate Campaign Contributions
SB 652, Campaign Reporting Private Cause of Action
SB 676, School Board Candidate Contributions
SB 678, School Board Candidate Contributions
SB 693, Prohibit Certain Contributions to Candidates

OTHER SUBSTANTIVE ISSUES

The AOC provided the following analysis of HB 850 amendments and enactments to the Act, Section 10-16-1 NMSA 1978 et. seq. as follows:

- Section 1: Amends Section 10-16-2 NMSA 1978 to expand the definition of agency to include any entity of the state or of a political subdivision.
- Section 2: Amends Section 10-16-3 NMSA 1978 to provide that a legislator having a financial interest that will be directly affected by the legislator's official act shall disclose the precise nature and value of such interest to the legislator's respective chief clerk. Under the amendment, the disclosure constitutes a public record pursuant to the Inspection of Public Records Act.
- Section 3: Amends Section 10-16-3.1 NMSA 1978 to expand the application of prohibited political activities to all public officers and employees, which now includes those within an entity of the state or of a political subdivision.
- Section 4: Amends Section 10-16-4 NMSA 1978 to provide that a public officer or public employee shall not be disqualified from taking an official act if the financial interest involves a benefit that is not more than the benefit to the general public. SB 555 also prohibits a public officer, during the term for which elected, or public employee, during the period of employment, from acquiring a financial interest when the public officer or employee believes or should have reason to believe that the new financial interest will be directly affected by the officer's or employer's official act.
- Section 5: Amends Section 10-16-4.2 NMSA 1978 to require disclosure of outside employment is made in writing to the public officer or employee's respective agency.
- Section 8: Amends Section 10-16-8 NMSA 1978 to clarify that nothing in this section governing contracts involving former public officers or employees and representation of clients after government service shall be construed to apply to a precinct board member or a juror as a result of service in one of those capacities.
- Section 12: Amends Section 10-16-13.2 NMSA 1978 to remove the prohibition against a public officer or employee selling or being party to a transaction to sell goods, services, construction or items of tangible person property to the state agency with which the public officer or employee is employed as well as the exceptions to the prohibition.
- Section 14: Enacts a new section of the Act to provide that nothing within 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.
- Section 15: Repeals Sections 4-44-22 through 4-44-26 NMSA 1978 governing conduct of county officials.
- Sections of the Act not specified make technical changes.