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FISCAL IMPACT REPORT

ORIGINAL DATE 02/05/09

SPONSOR Asbill LAST UPDATED _____ HB _____

SHORT TITLE School Board Member Conflicts of Interest SB 364/aSEC

ANALYST Aguilar

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates HB334

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Education Department (PED)

Attorney General's Office (AGO)

SUMMARY

Synopsis of SEC Amendment

The Senate Education Committee Amendment to Senate Bill 364 adds language precluding an employee of a school district to serve as a member of a governing body of a charter school.

SIGNIFICANT ISSUES

PED notes that This bill might be seen as an infringement of the public school employees', charter school employees' and governing council members' rights to participate in the political process. [In *Becton v. Thomas*, 48 F. Supp. 2d 747, 757 (W.D. Tenn. 1999) v. *Thomas*, 48 F. Supp. 2d 747, 757 (W.D. Tenn. 1999), the court held that the "right to run for public office is constitutionally protected as a liberty interest under the Fourteenth Amendment's Due Process Clause." While not a fundamental right, it cannot be infringed upon by the state "[a]bsent a rational and legitimate government interest." *Id.* at 760 at 760. However courts have ruled that the federal Hatch Act's prohibition on candidacy for elective office was rationally related to the government's interest because it allowed the government to remove actual or apparent partisan influence from the administration of federal funds. The legitimate interest in preventing partisan influence in administering federal funds provided a rational basis for the Act's classification

distinguishing between appointed and elected officials and, accordingly, the Act did not violate the Equal Protection Clause, Molina-Crespo v. United States MSPB, 547 F.3d 651 (6th Cir. Ohio 2008)]

The issue is whether there is a rational and legitimate government interest in prohibiting employees of public schools and charter schools and members of charter schools' governing council from serving on local boards of education at the same time that they are serving on the governing council or employed by a public or charter school.

Synopsis of Original Bill

Senate Bill 364 provides that employees of public schools and charter schools would be prohibited from serving on local boards of education while they are employed by a public school or a charter school. The bill would also prohibit members of the governing council of a charter school from serving on local boards of education at the same time that they are serving on the governing council of a charter school.

SB-364 declares an emergency.

FISCAL IMPLICATIONS

None Noted.

SIGNIFICANT ISSUES

The bill appears to restrict employment at any school district or charter school statewide for anyone who serves on a local school board. It is unclear if this is the intent of the bill. If so, such a severe restriction may have considerable impact on the pool of available candidates to serve on school boards particularly in small and rural communities.

PED notes that this bill might be seen as an infringement of the public school employees', charter school employees' and governing council members' rights to participate in the political process under the Fourteenth Amendment of the U.S. Constitution's due process clause. It is unclear how serving as a board member in a district different than where the board member is employed either by another school district or charter school would be a conflict of interest.

TECHNICAL ISSUES

The Attorney General's Office notes that Senate Bill 364 does not appear to expressly conflict with other laws. However, it should be noted that the bill does not equally restrict local school board members and members of a governing body of a charter school. Under the bill, local school board members are prohibited from being employed by any local school district or a charter school. Members of a governing body of a charter school, however, are not prohibited from being employed by either a local school district or a charter school.