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FISCAL IMPACT REPORT

ORIGINAL DATE 02/15/09

SPONSOR Lopez LAST UPDATED _____ HB _____

SHORT TITLE Public Employee & Officer Conduct SB 555

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)

Relates to HB 99, HB 151, HB 244, HB 252, HB 253, HB 272, HB 495, HB 535, HB 553, HB 614, HB 686, 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 521, SB 535 & SB 557

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Corrections Department (CD)
 Secretary of State (SOS)

SUMMARY

Synopsis of Bill

Senate Bill 555 amends the Governmental Conduct Act (“Act”) to require legislators having a financial interest that will be directly affected by the legislator’s official act to disclose the precise nature and value of such interest to his or her chief clerk prior to taking any official action. The disclosure constitutes a public record under the Inspection of Public Records Act.

The 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. The bill also prohibits public officers and employees from acquiring a financial interest when he or she believes or has reason to believe that the new financial interest will be directly affected by his or her official act.

The bill also makes the Act applicable to all public officers and employees so that it encompasses all cities, counties and other political subdivisions of the state, and not just state officers and employees. The term public officer and employee as defined in the Act does not include legislators.

Finally, the bill specifically authorizes local governments to adopt laws, rules or standards more stringent than those required by the Act.

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. 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

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 Governmental Conduct 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

RELATIONSHIP

SB 55 relates to other ethics bills as follows:

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
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 521, Campaign Contributions in Certain Elections
SB 535, Election Definition of Political Committee
SB 557, State Ethics Commissions Act

OTHER SUBSTANTIVE ISSUES

The AOC provided the following analysis of SB 555 amendments and enactments to the Governmental Conduct 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 be 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 Governmental Conduct 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 in conformance with the Act.