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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/11/11

SPONSOR Eichenberg LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Governmental Conduct & Contracts SB 432

ANALYST Wilson

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB 67, HB 155, HB 195 SB 164, SB 172, SB 181, SB 182 & SB 293

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)

Attorney General's Office (AGO)

Corrections Department (CD)

General Services Department (GSD)

### SUMMARY

#### Synopsis of Bill

Senate Bill 432 amends the Governmental Conduct Act (Act). It prohibits state and local government agencies employees participating directly or indirectly in the contracting process from becoming employees of the contractor contracting with the agency. It also provides a definition of what constitutes a contract under the Act.

The bill expands and clarifies the definition of a public officer or employee covered by the Act and the prohibition against certain designated political activities to include elected or appointed officials or employees of state and local government agencies.

The bill allows public officers or employees not to be disqualified from engaging in any official act directly affecting that officer's or employee's financial interest when the financial benefit of the financial interest to the public officer or employee is proportionally less than the benefit to the general public. The bill also prohibits public officers during their elected term and public employees during their employment period 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 employee's official act.

The bill also clarifies that the Act prohibits state agencies from entering into any contract with a public officer or employee or his or her business or that officer's or employee's family member or business unless the contract is awarded pursuant to a competitive process and unless the officer or employee has provided public notice of this fact. The same prohibition is extended to local government agencies as well.

The bill also extends the prohibitions against state agencies entering into contracts with former state agency employees to local government agencies. The bill also extends the prohibitions regarding bidding, certain business sales and contributions currently applicable to state agencies to local government agencies.

Finally, the bill states that nothing in the Act prevents or precludes state or local government agencies from adopting and publishing ordinances 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. 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. Efforts to quantify specific fiscal impact by case are underway, but specific information is not available at this time.

This may cause additional work for the agencies, but none of the agencies indicated a need for additional resources.

## **SIGNIFICANT ISSUES**

According to the AGO 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 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 Governmental Conduct 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.

The AGO prepared a chart to portray the current conflicting and overlapping ethics statutes that apply to state and local government:

	<b>CITY GOVERNMENT (§3-10-4 THRU - 60)</b>	<b>County GOVERNMENT (§4-44-21 THRU - 25)</b>	<b>STATE GOVERNMENT (§10-16-1 THRU - 18)</b>
<b>Prohibition on acquiring financial interest in business affected by decisions</b>	§3-10-4A	§4-44-22B	N/A
<b>Prohibition on use of Confidential Information</b>	§3-10-4B	§4-44-23	§10-16-6
<b>Disclosure of financial interest</b>	§3-10-5 (applies only to elected officials)	§4-44-25	§10-16-3C A “guiding principle”
<b>Disqualification from decisions affecting financial interest</b>	§3-10-5B (Only if Governing body votes to disqualify city councilor)	§4-44-22A	§10-16-4 (a 4 <sup>th</sup> degree felony)
<b>Elected official cannot contract with government without public notice and competitive bidding and full disclosure</b>	N/A	§4-44-22C	§10-16-7
<b>Governmental body cannot contract with business represented by employee where contract is direct result of that employee’s decisions</b>	N/A	§4-44-24	§10-16-8

As a final point, this bill strengthens the ethical requirements over the procurement process. The problem with the current Procurement Code is that there are 37 separate exemptions, including an exemption for home rule municipalities such as Albuquerque. As an example, Section 1 of the bill borrows this provision from Section 13-1-193 of the Procurement Code; under the current exemption for “contracts entered into by a local public body with a private independent contractor for the operation, or provision and operation, of a jail”. § 13-1-98, this provision did not apply to the recent situation where the Secretary of Corrections waived millions of dollars in contractual penalties by the jail contractor and then went to work for that same jail contractor.

CD offered the following:

The definition of public officer or employee includes board and commission members,

but excludes legislators. To help ensure high ethical standards for all public officers, the definition should include legislators.

### **ADMINISTRATIVE IMPLICATIONS**

Agencies affected by this bill can handle the provisions of this bill with existing staff as part of ongoing responsibilities.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Senate Bill 432 relates to the following ethics and elections bills:

HB 67, Prohibit Public Official Lobbying for 1 Year  
HB 154, No Election Expenditures from Corporations  
HB 155, Disclosure of Funds for Election Advocacy  
HB 195, State Ethics Commission Act  
SB 164, State Ethics Commission Act  
SB 172, State Ethics Commission Act  
SB 181, Contributions from State Contractors  
SB 182, Limit Contributions in Certain Elections  
SB 293, State Ethics Commission Act

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

The AGO provided the following:

The Governmental Conduct Act and its ethical principles will expressly apply only to state government, and not all local public bodies. There will continue to be conflicting and overlapping ethics statutes—as well as serious gaps—that apply to state and local government.

The absence of a uniform set of ethical standards will undermine public faith in government and create confusion in the public mind.

DW/mew