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FISCAL IMPACT REPORT

ORIGINAL DATE 1/23/06
 LAST UPDATED 2/14/06

SPONSOR HJC HB CS/180/aHFI#1/aSRC

SHORT TITLE Amend Governmental Conduct Act SB _____

ANALYST Lewis

APPROPRIATION (dollars in thousands)

| Appropriation | | Recurring or Non-Rec | Fund Affected |
|---------------|------|-------------------------|------------------|
| FY06 | FY07 | | |
| | NFI | | |

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Secretary of State (SOS)
 Office of the Attorney General (AGO)
 New Mexico Corrections Department (NMCD)
 General Services Department (GSD)

SUMMARY

Synopsis of SRC Amendment

The Senate Rules Committee amendment provides that:

- the Governmental Conduct Act's ethical principles of public service shall apply to judges, justices of any court and magistrates, as well as to legislators, public officers and employees; and that
- a public officer or employee shall not
 - sell, offer to sell, coerce the sale of or be a party to a transaction to sell goods, services, construction or items of tangible personal property, directly or indirectly through the public officer's or employee's family or a business in which the public officer or employee has a substantial interest, to a person over whom the public officer or employee has regulatory authority;
 - receive a commission or profit from the sale or a transaction to sell goods, services, construction or items of tangible personal property to a person over whom the public officer or employee has regulatory authority; or
 - accept from a person over whom the public officer or employee has regulatory authority an offer of employment or an offer of a contract in which the public officer or employee

provides goods, services, construction, items of tangible personal property or other things of value to the person over whom the public officer or employee has regulatory authority.

Synopsis of HFI#1 Amendment

The House Floor amendment

- defines “local public body” as every political subdivision of the state and the agencies, instrumentalities and institutions of the state, including two-year post-secondary educational institutions; and
- provides that no local public body (instead of state agency) shall accept a bid or proposal from a person who directly or indirectly participated in the preparation of specifications, qualifications or evaluation criteria on which the competitive bidding or proposal was based.

Synopsis of Original Bill

The House Judiciary Committee substitute for House Bill 180 amends and enacts various sections of the Governmental Conduct Act (Section 10-16-1 through 10-16-18 NMSA 1978).

“Family” is defined to include an individual’s spouse, parents, children or siblings, by consanguinity or affinity.

A provision is removed that allowed the governor to make an exception to the requirement that a public officer or employee shall be disqualified from engaging in any official act directly affecting the public officer's or employee’s financial interest.

Legislators, public officers and employees are prohibited from disclosing information acquired by virtue of their state employment or office for their or another’s private gain.

State agencies are currently prohibited from entering into contracts with legislators, public officers or employees of the state, or with businesses in which they have a substantial interest, unless the public officer or employee has disclosed his substantial interest and unless the contract is awarded pursuant to the Procurement Code. The HJC substitute for HB 180:

- extends the prohibition to apply to the legislator’s, public officer’s or employee’s family; and
- provides that the exception does not apply to a sole source or small purchase contract.

The bill also adds that a person negotiating or executing a contract on behalf of a state agency shall exercise due diligence to ensure compliance with the provisions of this section.

New sections of the Governmental Conduct Act provide that:

- 1) A public officer or employee shall not sell, offer to sell, coerce the sale of, or be a party to a transaction to sell goods, services, construction or items of tangible personal property, directly or indirectly, through the public officer’s or employee’s family or a business in which the public officer or employee has a substantial interest, to the state agency with which the public officer or employee is employed, or to an employee supervised by the public officer or employee, unless the supervised employee initiates the sale.
- 2) Public officers and employees are prohibited from, directly or indirectly:
 - coercing or attempting to coerce a state officer or employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for a political purpose;
 - threatening to deny a promotion or pay increase to an employee who does or does not

- vote for certain candidates;
 - requiring an employee to contribute a percentage of the employee's pay to a political fund;
 - influencing a subordinate employee to purchase a ticket to a political fundraising dinner or similar event;
 - advising an employee to take part in political activity or similar activities; or
 - violating the officer's or employee's duty to not use state property, or allow its use, for other than authorized purposes.
- 3) A public officer or employee shall disclose in writing to the supervisor of the officer or employee, or in the event there is no supervisor, to the Secretary of State, all employment engaged in by the officer or employee other than the employment with the state.

SIGNIFICANT ISSUES

According to the Office of the Attorney General (AGO), the HJC substitute does not yet amend Sec. 10-16-3 to apply criminal penalties in the act to judges, although the Attorney General has specifically proposed that amendment to close what appears to be an unintended loophole in the law. The AGO asserts that judges should be subject to the act's criminal prohibitions to the same extent as legislators, public officers and employees.

According to the New Mexico Corrections Department (NMCD), the bill makes it clear that state agencies and employees must act ethically by avoiding certain business transactions or situations involving a conflict of interest or the appearance of impropriety, and by avoiding using their positions to exert improper political influence over other state employees.

ADMINISTRATIVE IMPLICATIONS

The Office of the Attorney General notes that it is one of the primary enforcers of the Governmental Conduct Act, and that this bill may create more enforcement actions and require more AGO resources.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

According to the General Services Department (GSD), family members of the impacted persons will continue to be able to receive contracts; contracts will continue to be awarded pursuant to all options available under the Procurement Code; and no statutory requirement to disclose outside employment will exist.

AMENDMENTS

The AGO proposes that Section 10-16-3 be amended to apply Subsections A through D expressly to any "justice, judge of any court, or magistrate" as well.

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