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## FISCAL IMPACT REPORT

SPONSOR HAFC ORIGINAL DATE 01/26/09 CS/CS/151 &  
LAST UPDATED 03/17/09 HB 614/aHFI#1/aHFI#2  
SHORT TITLE State Ethics Commission Act SB \_\_\_\_\_  
ANALYST Wilson

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	No Appropriation See Below		

(Parenthesis ( ) Indicate Revenue Decreases)

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
	Minimal	Minimal	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		\$5.0	\$5.0		Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB 99, HB 244, HB 252, HB 253, HB 272, HB 495, HB 535, HB 550, HB 553, HB 646, HB 686, HB 808, HB 850, HB 878, HB 883, HB 891, SB 49, SB 94, SB 116, SB 128, SB 139, SB 140, SB 163, SB 247, SB 258, SB 262, SB 263, SB 269, SB 296, SB 346, SB 451, SB 521, SB 535, SB 555, 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)  
Secretary of State (SOS)

**SUMMARY**

Synopsis of HFI #2 Amendment

The House Floor amendment #2 to the House Appropriations and Finance Committee Substitute for the House Judiciary Committee substitute for House Bills 151 & 614, adds language requiring a complainant to agree in writing to be bound by the confidentiality rules of the State Ethics Commission Act.

Synopsis of HFI #1 Amendment

The House Floor amendment #1 to the House Appropriations and Finance Committee Substitute for the House Judiciary Committee substitute for House Bills 151 & 614, adds language requiring the executive director of the State Ethics Commission to take an oath of office saying the he or she will support the constitution of the United State and the constitution and laws of New Mexico and executive director will faithfully and impartially discharge the duties of the office to the best of the executive director's ability.

Synopsis of Original Bill

The House Appropriations & Finance Committee substitute for House Bill 151 & House Bill 614 creates State Ethics Commission Act (Act) and creates a seven member commission as an adjunct agency. The bill defines the membership, terms, powers and duties of the SEC. The SEC is required to receive and investigate complaints against state officials, state employees, government contractors and lobbyists alleging ethics violations, report its findings and maintain public records as required pursuant to the Act.

The SEC will also be required to draft a proposed code of ethics for all state officials and state employees of the executive branch and submit the proposed code to each elected state official of the executive branch for adoption. In addition, the SEC will be required to promulgate rules necessary to implement and administer the act. The SEC may offer annual ethics training to all state officials, state employees, government contractors and lobbyists and may provide both an ethics guide and a business ethics guide for all state officials, state employees, government contractors and lobbyists.

The SEC may also request that the district court issue subpoenas under seal as necessary to require the attendance of witnesses and the production of accounts, books, papers, records and other documents relevant to an investigation conducted by the SEC. The SEC may issue public reprimands or censures or recommend disciplinary actions in accordance with the Act for ethics violations committed by state officials of the executive branch and state employees and issue advisory opinions.

The SEC shall not accept or review complaints concerning conduct that occurred more than three years prior to the day the complaint is received by the SEC.

If a complaint is filed against a judge or justice, the complaint must immediately be referred to the Judicial Standards Commission.

After investigation of a complaint against a legislator, if the SEC finds clear and convincing evidence exists to believe the legislator's alleged conduct constituted an ethics violation, the SEC shall refer the complaint with a confidential report to the appropriate legislative ethics committee.

The SEC shall not take action on a complaint filed or initiated against a candidate for public office on or after the filing date for the primary election, except the SEC must dismiss complaints that are frivolous.

This bill provides that a person who disclosed any information in violation of the Act is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than one year or both. Additionally, the court may impose a civil penalty not to exceed \$25,000 for each violation of confidentiality requirements under the Act.

This bill allows the SEC to appoint an executive director who must be an attorney and provides for the duties of the director. The director may hire a general counsel for the SEC and all other personnel required to enable the SEC to carry out its responsibilities.

This bill requires the SEC to submit a report by January 1, 2011 to the governor, the legislature and the chief justice of the Supreme Court regarding the extension of SEC jurisdiction to elected and appointed officials and employees of counties, municipalities and school districts.

The effective date of portions of the Act relating to the issuance of advisory opinions, complaints, investigations, confidentiality, findings and recommendations, required reports and criminal referrals, criminal violations, time limitations, complaints against legislators and report to appropriate legislative ethics committee is January 1, 2010. The effective date of all other sections is July 1, 2009.

## **FISCAL IMPLICATIONS**

Although the agency is given the authority to hire an executive director, a general counsel and other staff as necessary to carry out its responsibilities, there is no appropriation to the SEC. In addition, funding will be needed to cover operating costs, publications of ethics manuals, training for all State officials, State employees, government contracts and lobbyists, as well as mileage and per diem for SEC members.

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

The \$5,000 above is the best estimate for minimal administrative cost.

Revenues from the penalties section will be very minimal.

## **SIGNIFICANT ISSUES**

This legislation is a result of recommendations of a task force on ethics reform in its report submitted on October 4, 2006. The task force was established to study the issues of governmental ethics and campaign finance reform in an attempt to improve ethical behavior in state government.

The task force recommended establishing an independent SEC to promote increased accountability for ethical behavior among state officials and employees, lobbyists and those that conduct business with the state. In the 2007 and 2008 legislative session similar bills were introduced, but failed to pass.

This bill establishes the SEC as an adjunct agency, which is defined in Section 9-1-6 NMSA 1978 as an agency that is excluded from direct or administrative attachment to a department, and which retains policy making and administrative autonomy separate from any other instrumentality of state government.

The task force found that the SEC's political, administrative and legal independence will be of critical importance to the effective functioning and administration of the SEC.

The AGO notes that 40 other states that have established independent ethics commissions like this bill proposes to review ethics issues. It can be strongly argued that the most important function of the SEC will be education and training to help change the culture of government and awareness of ethical issues.

The AGO further notes there is currently no central public body with the responsibility to investigate all ethics violations. Instead, enforcement is piecemeal: for example, the SOS shares responsibility with the AGO for enforcing the Financial Disclosures Act; in addition, the General Services Department and SOS share responsibility with the District Attorneys and the AGO for enforcing the Procurement Code and the Governmental Conduct Act; finally, no agency is charged with enforcing the Gift Act.

## **ADMINISTRATIVE IMPLICATIONS**

The legislation does not specify an approved level of staff for the agency, but allows for an executive director, a general counsel and all other personnel as may be necessary to carry out the responsibilities of the SEC.

Until the staffing requirements of the agency are determined and the agency will begin operation, it is difficult to assess what appropriation level will be sufficient to adequately fund the SEC.

CD states that this bill will require CD employees to participate or respond to investigations, but this administrative burden could probably be absorbed by the CD due to the anticipated low number of investigations.

The SOS suggests amending the Campaign Reporting Act and the Lobbyist Reporting Act as both acts currently assign investigation duties to the SOS.

**DUPLICATION, RELATIONSHIP**

This substitute bill also relates to the following ethics bills:

HB 99, Prohibit Former Legislators as Lobbyists  
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 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 850, Governmental Conduct Act for All Employees  
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 247, Election Agent Registration Requirements  
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 555, Public Employee & Officer Conduct  
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