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FISCAL IMPACT REPORT

SPONSOR Altamirano DATE TYPED 1/31/05 HB _____

SHORT TITLE Creating Office of State Comptroller SB 170

ANALYST Hadwiger

APPROPRIATION (in \$000s)

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	\$750.0			Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Duplicates HB49. Both are LFC committee bills.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

State Auditor (SA)

Attorney General (AG)

General Services Department (GSD)

Corrections Department (CD)

Public Education Department (PED)

Human Services Department (HSD)

No responses had been received from the Taxation and Revenue Department, Department of Finance and Administration, or State Personnel Office at the time this fiscal impact report was prepared.

SUMMARY

Synopsis of Bill

Senate Bill 170 would create an Office of the State Comptroller as an adjunct agency, administratively attached to the Department of Finance and Administration. The comptroller would be appointed by the Governor with the advice and consent of the Senate. The bill sets out the comptroller's required qualifications—that he or she be a certified public accountant with audit and government experience. The comptroller would serve for a term of six years and be removed only for cause.

SB170 sets forth the following duties for the state comptroller:

1. Oversee the executive branch's implementation of the Accountability in Government Act
2. Oversee statutory oversight duties of specified divisions of the Department of Finance and Administration, as well as the State Personnel Office, Public Education Department, General Services Department, and Commission on Higher Education to assure compliance with statutory duties
3. Conduct periodic reviews and recommend revisions in policies, procedures and resources of the agencies above to assure statutory compliance
4. Work with the State Auditor on annual and special audits
5. As requested by interim legislative committees, gather, analyze and validate state agency information
6. Conduct performance audits pursuant to the Accountability in Government Act
7. Perform duties as assigned by the governor
8. Assist state agencies in resolving audit findings and reviewing performance measures
9. Contract for special audits and investigations
10. Promulgate rules as necessary to carry out these duties.

SB170 requires state agencies to provide complete cooperation to the state comptroller in the conduct of a performance audit and requires employees of state agencies to provide the comptroller access to specified public records and documents as well as to such property of a contractor of the agency. Inspectors general and internal auditors of state agencies would report to the comptroller periodically and as requested. The inspectors general and internal auditors, with the New Mexico state police, would be required to conduct such audits and special investigations as are requested by the state comptroller. The bill provides that final audits and reports of the comptroller would be public documents, but working papers would be confidential.

SB170 also makes it a duty for the Legislative Finance Committee (LFC) to conduct performance audits pursuant to the Accountability in Government Act. It also requires state agencies to provide complete cooperation to the LFC in the conduct of a performance audit and requires employees of state agencies to provide the LFC access to specified public records and documents as well as to such property of a contractor of the agency. The bill provides that final audits and reports of the LFC would be public documents, but working papers would be confidential.

Senate Bill 170 appropriates \$750 thousand from the general fund to the Office of the State Comptroller in the Department of Finance and Administration to carry out the provisions of the act.

Significant Issues

Senate Bill 170 proposes creation of an agency (the Office of the State Comptroller) within the executive branch that would provide a single point of oversight, or umbrella oversight, of statutory compliance of other state agencies. The purpose of this bill is to fill significant gaps within the current structure of oversight in New Mexico state government.

Currently, several state agencies are responsible for statutory and regulatory compliance with regard to a limited sector of state government activities, but there is no single authority with broad oversight. The State Personnel Office (SPO) enforces the Personnel Act, as well as oversees state compliance with federal law and other federal and state regulations. The financial control division of the Department of Finance and Administration (DFA) maintains the central ac-

counting system, validates legal appropriation of funds before vouchers or purchase orders are issued and is generally responsible for financial controls. The State Auditor is responsible for annual audits of agency finances, as well as special audits, with a particular focus on identifying financially fraudulent activities.

There are two shortcomings to the current method of oversight in the executive branch. First, there are gaps in coverage. No executive branch agency is responsible for performance audits under the Accountability in Government Act or for management and program audits that do not involve fraudulent activities. The State Auditor has generally declined to assume these responsibilities, even when offered additional resources to perform them. Second, to some degree, agencies such as SPO or the financial control division are responsible for overseeing statutory compliance of their own operations, creating a conflict of interest within the agency.

The Human Services Department indicated SB170 could increase state agency compliance with performance-based budgeting and its ultimate goals of improved performance and achieving stated missions, but could also increase the resources required to address additional auditing and reporting requests from the comptroller and LFC. This perspective was echoed by the Administrative Office of the Courts, which noted that the comptroller could possibly streamline audits and help state agencies to better comply with audit issues, but could also result in a need to respond to more audits.

The Corrections Department indicated that SB170 does not pose any significant issues for that agency. The bill may result in a slight increase in administrative requirements to comply with the reporting requirement or to assist in audits.

The Attorney General indicated concern that SB170 might violate separation of powers between the executive and legislative branch by requiring the comptroller to analyze information at the request of an interim legislative committee and by authorizing the LFC staff to audit executive branch agencies. This discussion reflects an ongoing tension between executive autonomy and executive privilege, on one hand, and legislative oversight on the other. In Congress, the U.S. Government Accountability Office (GAO) has functions similar to those of the LFC and access to extensive executive branch information. GAO activities include evaluations of federal programs; performance, financial and management audits; policy analyses; legal opinions; bid protest adjudications; and fraud investigations. It is not clear that the LFC responsibilities and access to information in this bill would encroach further upon executive privilege than the GAO does in Washington.

The Attorney General was also concerned that the expansion of LFC staff authority to include auditing agency contractors might violate constitutional privacy, search and seizure, and due process concerns.

The Office of the State Auditor indicated that the bill would duplicate responsibilities already assigned to several agencies, including the auditor (fraud investigations), the financial control division of the Department of Finance and Administration (internal control over finance and compliance with laws), and the LFC (review of agency operations and management). The State Auditor was concerned that the new office of comptroller could cause confusion regarding which agency is responsible for what. The State Auditor was also concerned that agency's independence could be impaired.

PERFORMANCE IMPLICATIONS

Under SB170, the Office of the State Comptroller and LFC would play a critical role in assuring the validity of performance measures submitted under the Accountability in Government Act and in assessing agency performance under the Act.

FISCAL IMPLICATIONS

The appropriation of \$750 thousand contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY06 would revert to the general fund.

Several agencies indicated concern that there might be additional costs incurred in copying and providing information to the comptroller. To some degree, this concern was offset by the possibility that the comptroller could improve operations or result in operational efficiencies.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB170 duplicates House Bill 49. Both are sponsored for the LFC.

DH/yr