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FISCAL IMPACT REPORT

ORIGINAL DATE 02/15/09
LAST UPDATED 03/01/09 **HB** 686/aHCPAC

SPONSOR Cervantes

SHORT TITLE AG Prosecution of State Officer Crimes **SB** _____

ANALYST Wilson

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		Indeterminate See Below	Indeterminate See Below		Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

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)
 Public Defender Department (PDD)
 Secretary of State (SOS)
 State Auditor (SA)

SUMMARY

Synopsis of HCPAC Amendment

The House Consumer and Public Affairs amendment removes the language requiring the counties to pay for investigations and prosecutions when the attorney general is investigating and acting on behalf of the state or a county.

Synopsis of Original Bill

House Bill 686 amends a series of state laws to give the AGO primary authority to prosecute statewide elected officials, including judges, who commit public corruption crimes.

This bill also gives the Governor authority to select a district attorney to prosecute when an allegation of public corruption is made against the AG.

HB 686 amends Section 10-17-12, governing willful neglect of duty by public officers and employees to increase the misdemeanor penalty for a violation of this section to imprisonment for a term not to exceed 1 year or a fine of not more than \$1,000, from a prison term of not less than 10 not more than 60 days or a fine of not less than \$100 nor more than \$500.

The bill also amends Section 19-7-6, governing offenses by officers or employees of the land office, to provide a penalty for a violation of this statute of a fine of not more than \$1,000 or imprisonment of up to 3 years, or both.

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

Currently the district attorney in Santa Fe County has primary authority to prosecute statewide elected officials; the AGO can only prosecute when the district attorney declines to prosecute. However, there is some conflict in the law because some statutes, like the Racketeering Statute, give concurrent authority to the district attorney and the AGO to prosecute.

This bill clears up this confusion and places the burden on the AGO to prosecute statewide elected officials who commit public corruption crimes.

The state auditor notes that the bill provides that if the officer who allegedly committed the crime is the AG, the governor shall appoint a district attorney who may investigate and prosecute the AG. It is unclear why the bill provides for a governor appointment rather than allowing the district attorney in the county where the alleged violation occurred to investigate and prosecute the attorney general. If the district attorney then refuses, then perhaps the governor may appoint another district attorney or a special prosecutor to handle the matter.

The AGO states some recent public corruption cases have created confusion in the public's mind as to which law enforcement agency should prosecute government corruption. Most people look to the AGO to take the lead in these types of cases. This confusion will continue to exist if this bill is not passed.

ADMINISTRATIVE IMPLICATIONS

The AGO and other affected agencies should be able to handle the enforcement of the provisions in this bill as part of ongoing responsibilities

OTHER SUBSTANTIVE ISSUES

The AOC provided the following listing of the sections that are affected by this bill:

- Section 1-19-36 within the Campaign Reporting Act
- Section 1-19A-17 within the Voter Action Act
- A new section within Chapter 1, Article 20, governing election-related offense and penalties
- Section 6-3-8, addressing violations of expenditure restrictions on state budgets
- Section 6-10-40, governing officials receiving consideration for placing loan or deposit, misusing funds and failure to deposit
- Section 6-10-53, governing bribery of public treasurers and employees
- A new section within Chapter 8, Article 5, governing the AG
- Section 8-5-3, governing actions in civil and criminal cases against elected officials
- Section 8-6-6, governing malfeasance and neglect of duty by auditor or treasurer
- Section 8-6-7, governing wrongful drawing or payment of a warrant by secretary or treasurer
- Section 10-16-14 within the Governmental Conduct Act
- Section 10-16A-7 within the Financial Disclosure Act
- Section 10-17-12, governing willful neglect of duty by public officers and employees
- Section 13-1-199 within the Procurement Code
- Section 19-7-6, governing offenses by officers or employees of the land office
- A new section within Chapter 30, Article 23, governing misconduct by officials
- A new section within Chapter 30, Article 24, governing bribery
- Section 30-26-1, governing tampering with public records
- A new section within Chapter 30, Article 41, governing kickbacks, bribes and rebates
- Section 30-42-5, governing racketeering
- A new section within the Money Laundering Act
- Section 36-1-18, governing duties of district attorneys

DW/svb