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FISCAL IMPACT REPORT

ORIGINAL DATE

SPONSOR Garcia **LAST UPDATED** 01/27/11 **HB** _____

SHORT TITLE State Ethics Commission Act **SB** 172

ANALYST Wilson

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
	\$500.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General (AGO)
 Corrections Department (CD)
 Department of Transportation (DOT)
 Secretary of State (SOS)

SUMMARY

Synopsis of Bill

Senate Bill 172 appropriates \$500,000 from the general fund to the State Ethics Commission (SEC) for expenditure in fiscal year 2012 to carry out the provisions of the State Ethics Commission Act.

SB 172 creates a State Ethics Commission (SEC). The SEC will be composed of ten members appointed as follows:

- The Governor will appoint a total of four members- no more than two from the same political party.
- The President Pro-Tempore of the Senate, Speaker of The House Of Representatives, and Chief Justice of the Supreme Court will each appoint two members- no more than one from the same political party.

There is a provision that all five Public Regulation Commission districts must be represented and six members will constitute a quorum. Members will be prohibited during their terms of service

from:

- holding or seeking elective public office, an appointed public position, or an office in a political party;
- being a state employee, government contractor or a lobbyist; or
- making a campaign contribution to state official, state employee, government contractor, a lobbyist, or a candidate for state office.

The SEC will be responsible for receiving and investigating alleged ethics violation complaints, reporting any findings, compiling and maintaining findings and advisory opinions, publishing ethics and business ethics guides, and providing ethics trainings. The commission is charged with hiring an executive director and promulgating rules necessary for the completion of commission duties. In addition, the SEC is given the right to recommend disciplinary actions, subpoena witnesses and documentation necessary for the investigation of potential ethical violations.

The Executive Director is required to hire a general counsel, perform investigations, present complaints and investigations to the commission, prepare an annual budget, and recommend any rules or legislative changes needed for the proper administration of the State Ethics Commission Act.

Ethical violations that the SEC believe rise to the level of criminal behavior shall be referred to the Attorney General or the appropriate district attorney. SEC meetings must be scheduled within 90 days of the receipt of a complaint. Complainants are protected from retaliation by this Act.

FISCAL IMPLICATIONS

The appropriation of \$500,000 contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of fiscal year 2012 or unencumbered balance remaining at the end of fiscal year 2012 shall revert to the general fund.

SIGNIFICANT ISSUES

The AGO provided the following:

Whether New Mexico should join the 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 such a commission will be education and training to help change the culture of government and awareness of ethical issues.

There is currently no central public body with the responsibility to investigate all ethics violations. Instead, enforcement is piecemeal: for example, the Secretary of State shares responsibility with the Attorney General for enforcing the Financial Disclosures Act; in addition, the Secretary of State shares responsibility with the District Attorneys and the Attorney General for enforcing the Procurement Code and the Governmental Conduct Act; finally, no agency is charged with enforcing the Gift Act.

The SOS believes the provision disallowing SEC members from contributing to candidates for state office may be a violation of his or her first amendment right to free speech under a U.S

Supreme Court decision.

The SOS notes that many of the cases investigated by the SEC and its Executive Director would also have to be investigated by the SOS.

Furthermore the SOS notes that the SOS is statutorily responsible for the oversight of Lobbyist Regulation Act violations, Campaign Reporting Act violations, Governmental Conduct Act violations, and Gift Act violations. There is no provision in this bill to account for duplication of investigations.

ADMINISTRATIVE IMPLICATIONS

The SEC is required to hire an Executive Director who shall hire counsel and other personnel as needed.

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

RELATIONSHIP

SB 172 relates to other ethics and elections bills:

HB 154, No Election Expenditures from Corporations

HB 155, Disclosure of Funds for Election Advocacy

SB 164, State Ethics Commission Act

SB 182, Limit Contributions in Certain Elections

TECHNICAL ISSUES

The SOS notes that this legislation does not include a provision for the requirement of a sworn statement by witnesses or complainants.

DW/bym