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FISCAL IMPACT REPORT

ORIGINAL DATE 02/03/12
 LAST UPDATED 02/06/12 **HB** 170

SPONSOR Doyle

SHORT TITLE Public Corruption Offenses **SB** _____

ANALYST Sánchez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY12	FY13	FY14	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$2,191.4	\$2,191.4	\$4,388.2*	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

***Amount is based on a staff of 14 FTE paid comparably to the DPS Special Investigations Division AGO prosecutors and supplies and equipment to allow it to carry out its responsibilities.**

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General’s Office (AGO)
 Department of Public Safety (DPS)

SUMMARY

Synopsis of Bill

House Bill 170 adds the definition of public corruption offense to Section 9-19-2 NMSA 1978, Department of Public Safety Act. The definition includes

- Violation of ethical principles of public service (Section 10-16-3).
- Taking an official act for personal financial interest (Section 10-16-4).
- Paying or receiving public money for services not rendered (Section 30-23-2).
- Making or permitting false public voucher (Section 30-23-3).
- Committing unlawful interest in a public contract of more than \$50 (Section 30-23-6).
- Committing bribery of a public officer or employee (Section 30-24-1).
- Demanding or receiving a bribe by a public officer or employer (Section 30-24-2).
- Tampering with public records under (Section 30-26-1).
- Soliciting or receiving illegal kickbacks (Section 30-41-4).
- Offering or paying illegal kickback (Section 30-41-2).

The bill amends Section 9-19-9 NMSA 1978 to add a new division to the Department of Public Safety called “the public corruption investigations and prosecution division” and outlines the functions of the division as they relate to the investigation and prosecution of public corruption

offenses in the state.

FISCAL IMPLICATIONS

Creating a new division within the Department of Public Safety (DPS) would require either restructuring the current staff or adding staff to address the new function, which may not totally practical. It is difficult without extensive research to determine the number and type of staff, training and equipment the DPS would need to fully enforce the proposed change to the law. A conservative estimate for the staff and salaries, benefits of 30 percent and supplies and equipment the total amount for a new division could easily exceed \$2 million as outlined in the table below.

Salary in Thousands of Dollars

Director	\$80.0
Admin Assistant	\$34.3
Office Sup	\$28.3
Clerk	\$25.7
3 Investigator A	\$159.2
3 Investigator O	\$124.1
2 Prosecutors III	147.6
2 Legal Assistants	89.8
Benefits (~30%)	206.7
Equipment, Supplies, Training, etc	400.0
Total	\$2,191.4

Note: Salaries based on DPS-SID and AGO Prosecutors;
Benefits are an overall average; Equipment, etc. best estimate.

The Attorney General’s Office (AGO) reports no fiscal impact.

SIGNIFICANT ISSUES

The AGO notes that the Governor, who is the State’s chief executive, is not the State’s chief prosecutor. The NM Constitution provides for independently elected District Attorneys throughout the State and an independently elected statewide Attorney General. See Article VI, Sec. 24 and Article V, Sec. 1 of the N.M. Constitution. They are the State’s chief prosecutors, whose authority is derived from their separate and independent constitutional offices. The power to prosecute is vested exclusively in these two constitutional offices. (During territorial days, the Attorney General was the District Attorney from the First Judicial District.) This bill conflicts the DA’s and AG’s powers by attempting to create yet another prosecutorial office under the direct control of the Governor. It therefore appears to violate the separation of powers created by the NM Constitution. The bill also raises serious conflict of interest issues. How is it appropriate to allow the Governor as chief executive to appoint a prosecutor answerable directly to her to bring criminal actions against executive branch appointees and employees who are also answerable directly to her? Embedding a prosecutions division within the Executive branch to investigate and prosecute offenses committed by Executive branch employees or officials would seem to necessarily create conflicts of interest.

TECHNICAL ISSUES

Giving this new division the ability to issues subpoenas for use “in any of the courts of the state” potentially could create confusion. See, e.g., Rule 5-511 NMRA which governs the issuance and use of subpoenas in district court criminal cases.

OTHER SUBSTANTIVE ISSUES

The Department of Public Safety comments that it supports the investigation of public corruption related crimes, and such investigations are currently performed by the New Mexico State Police, Investigations Bureau. The bill defines and clarifies the criminal acts that qualify as public corruption offenses, which will bring more focus and potentially increase the number of investigations into potential public corruption. The bill provides the authority to issue subpoenas to DPS, which would be highly advantageous. The authority to issue subpoenas would allow for greater investigative capabilities by the DPS/NMSP. Currently, the DPS/NMSP investigators must rely upon local, other state, and federal authorities for subpoenas. DPS personnel continue to participate in the federal public corruption task force which includes the FBI, IRS, DEA and US Attorney’s Office. To support the investigation of such crimes, the bill proposes to create a new division dedicated to public corruption investigations and prosecution. While the concept is supportable, the primary concern with the Bill it does not specify or provide for additional personnel (investigators and prosecutors), as compared to the other divisions identified in the statute, which specifically identifies the personnel required to carry out the functions of the specific division. The Bill identifies that the “division shall consist of functions relating to the investigation and prosecution of public corruption offenses in the state,” but it does not provide for additional personnel to carry out those functions.

ALTERNATIVES

If the bill were revised to provide additional resources and limit the creation of a new division solely to investigate criminal activity of public corruption, with recommendations to the DA’s and AG to prosecute, that would appear to resolve the constitutional separation of powers issues.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo will remain in that 9-19-2 NMSA 1978 will remain in effect in its current form.

ABS/svb:amm