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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 3/01/19  
**LAST UPDATED** 3/02/19     **HB** \_\_\_\_\_

**SPONSOR** Lopez

**SHORT TITLE** State Ethics Commission Act     **SB** 619

**ANALYST** Glenn

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY20	FY21		
\$200.0		Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to CS/HB2&3  
 Relates to and conflicts with HB4

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico Attorney General (NMAG)  
 Administrative Office of the Courts (AOC)  
 Secretary of State's Office (SOS)

### SUMMARY

#### Synopsis of Bill

Senate Bill 619 enacts the State Ethics Commission Act. The act provides for the appointment of members of the State Ethics Commission, as created in Article V, Section 17, of the New Mexico Constitution, to review allegations of violations of ethical misconduct by elected and appointed public officials and employees in the legislative and executive branches of government and public schools; government contractors; and lobbyists. The commission has seven members, no more than three of whom may be members of the same political party. One commissioner each is appointed by the president pro tem of the Senate, the minority floor leader of the Senate, the speaker of the House, and the minority floor leader of the House. Two commissioners are appointed by the four legislatively appointed commissioners. One commissioner is appointed by the governor, who is required to be a retired judge and to chair the commission.

The commissioners are appointed for staggered terms of four years beginning on July 1, 2019, with initial terms specified in the bill. Commissioners are limited to two consecutive terms. A

vacant position is filled by the appropriate appointing authority and the successor serves for the remainder of the unexpired term. A commissioner may be removed for incompetence, neglect of duty, or malfeasance in office, after notice and the opportunity to be heard. The Supreme Court has jurisdiction over proceedings to remove commissioners.

The bill sets forth the criteria for qualifying for appointment to the commission and limitations that apply during a commissioner's tenure. The bill permits commissioners to recuse themselves or the commission to recuse commissioners from proceedings in which the commissioners have a conflict of interest.

The duties of the commission include receiving and investigating complaints against public officials, public employees, government contractors and lobbyists; holding hearings to determine whether violations have merit; promulgating rules necessary to implement and administer the act; compiling and providing public access to advisory opinions and reports; drafting a code of ethics for public officials and employees; and submitting an annual report to the governor. The commission is required to appoint an executive director, who must be an attorney. Discretionary duties of the commission include initiating alleged ethics violations complaints, petitioning courts to issue subpoenas, issuing advisory opinions on ethics, and offering ethics training.

The executive director's duties and powers include performing investigations, bringing complaints and investigation results before the commission for consideration, and preparing an annual budget. The director may hire a general counsel and employ additional personnel as necessary.

The bill provides that complaints alleging an ethics violation may be filed by a person with actual knowledge or of the violation or initiated by the commission. An "ethics violation" for purposes of the State Ethics Commission Act is an action that violates the Gift Act, the Governmental Conduct Act, the Procurement Code, the Lobbyist Regulation Act, the Financial Disclosure Act, the Voter Action Act, the Campaign Reporting Act, or any code of ethics adopted under those laws or the State Ethics Commission Act. [See Section 2(F).]

The executive director brings complaints before the commission, which is required to dismiss complaints that are frivolous, unfounded or outside the Commission's jurisdiction. If the commission decides to proceed with an investigation, the executive director is required to promptly notify the respondent of the investigation and allegations in the complaint. As part of an investigation executive director may administer oaths, interview witnesses and ask the commission to petition a district court to issue a subpoena under seal. A respondent who is a public official or public employee is entitled to representation by the Risk Management Division of the General Services Department.

After an investigation, the director is required to file a report with the commission, complainant, and respondent and to provide the respondent with reasonable written notice of the commission hearing on the complaint. The commission may appoint a retired judge to preside over and conduct the hearing. If, after a hearing, the commission finds by clear and convincing evidence that there has been an ethics violation, the commission is required to issue a written report that includes findings of fact and conclusions of law, and may include a public reprimand or censure or recommended disciplinary action. The commission must publicly disclose the report and provide it to the respondent, the NMAG and other specified agencies. If, after a hearing, the commission does not find an ethics violation, the commission is required to dismiss the

complaint and provide notice to the respondent and complainant. Commission hearings on a complaint are closed to the public.

Complaints, reports, and other specified materials pertaining to alleged ethics violations are confidential and may not be disclosed unless disclosure is required by the State Ethics Commission Act; they are offered into evidence at a judicial, legislative, or administrative proceeding; disclosure is required by law or ordered by a court; or the respondent files with the commission a written waiver of confidentiality.

The commission must immediately report a respondent's conduct that may amount to a criminal violation to the attorney general or appropriate district attorney.

SB619 includes time limitations on the commission's jurisdiction. Complaints must be filed with the commission within three years from the date the alleged conduct occurred. The commission is prohibited from taking action on a complaint filed against a candidate for a public office on or after the filing date for a primary election through election day of the general election, except that the commission must dismiss complaints that are frivolous, unfounded or outside its jurisdiction. The commission may not investigate allegations of misconduct involving campaign advertisements.

The State Ethics Commission Act provides that disclosure of any confidential complaint, report, file, record, or communication in violation of the Act is a misdemeanor, punishable by a fine of not more than \$10 thousand, imprisonment for up to one year, or both. In addition, a court may impose a civil penalty of not more than \$25 thousand for each violation of the act's provisions governing confidentiality of records. The act's penalty provisions apply to Commission members, the executive director, commission employees or agents and a complainant from the time the complaint is filed until it is resolved and a final determination made.

The commission is required to submit a report to the Legislature and the governor regarding the extension of Commission jurisdiction to officials and employees of political subdivisions of the state by January 1, 2022.

SB619 appropriates \$200 thousand from the general fund to the State Ethics Commission for expenditure in fiscal year 2020 to carry out the provisions of the State Ethics Commission Act.

The effective date of Sections 1 through 7 and 12 through 21 of the bill is July 1, 2019. The effective date of Sections 8 through 11 is January 1, 2020.

### **FISCAL IMPLICATIONS**

The appropriation of \$200 thousand contained in SB619 is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY20 shall revert to the general fund.

House Bill 2 makes a special appropriation of \$500 thousand for expenditure in FY19 and FY20 to the Department of Finance and Administration for the State Ethics Commission, contingent on the enactment of ethics commission-related legislation. Any unexpended balance of the appropriation remaining at the end of fiscal year 2020 shall revert to the general fund.

See HB2, Section 5(29), pages 171-72, 176.

**SIGNIFICANT ISSUES**

SB619 implements Article V, Section 17, of the New Mexico Constitution, which establishes the State Ethics Commission and was approved by the state’s voters in the 2018 general election.

SOS notes that SB619’s provisions authorizing the Commission to investigate complaints and impose disciplinary action for violations of the Lobbyist Regulation Act, Financial Disclosure Act, Voter Action Act, and Campaign Reporting Act and to issue advisory opinions create an overlap in jurisdiction with SOS, who is charged with administering and enforcing the same laws. SOS is concerned that the bill does not address how the Commission and the SOS will work together for proper administration and enforcement of the Acts, which may lead to inconsistent results and unintended gaps in enforcement of key provisions of law.

SOS notes that it has considerable experience and expertise in the areas over which the Commission has investigative and enforcement authority under SB619. Because of this expertise, SOS is well qualified to advise the Commission on best practices and compliance measures, as well as the impact of administrative rules that may govern the application of the laws. Because of the intersecting responsibilities of the two agencies under the statutes covered by the bill, SOS believes that, if the bill is enacted, the agencies should work together to ensure the laws are applied uniformly and consistently.

**ADMINISTRATIVE IMPLICATIONS**

NMAG notes SB619 requires NMAG to prosecute criminal violations referred by the State Ethics Commission. NMAG states this would increase the number of criminal prosecutions and require additional staff time.

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Relates to CS/HB2 & 3 General Appropriations Act of 2020

Relates to and conflicts with: HB 4 State Ethics Commission Act

BG/sb