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FISCAL IMPACT REPORT

SPONSOR	HJC	LAST UPDATED	
		ORIGINAL DATE	1/31/24
SHORT TITLE	Elected Officials & Gov't. Conduct Act Changes	BILL NUMBER	CS/House Bill 8/HJCS
		ANALYST	Daly

REVENUE* (dollars in thousands)

Type	FY24	FY25	FY26	FY27	FY28	Recurring or Nonrecurring	Fund Affected
Civil Fines		Indeterminate but minimally positive	Indeterminate but minimally positive	Indeterminate but minimally positive	Indeterminate but minimally positive	Recurring	General Fund

Parentheses () indicate revenue decreases.
*Amounts reflect most recent analysis of this legislation.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
SEC		(Indeterminate but minimal)	(Indeterminate but minimal)	(Indeterminate but minimal)	Recurring	General Fund
NMAG		Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund

Parentheses () indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Agency Analysis Received on Original Bill From
State Ethics Commission (SEC)
New Mexico Attorney General (NMAG)

SUMMARY

Synopsis of HJC Substitute for House Bill 8

The House Judiciary Committee substitute for House Bill 8 (CS/HB8) amends the Governmental Conduct Act. It adds a new definition of “political activity” and provides specific guidance to public officers and employees about prohibited acts, including engaging in political activities while on duty, in a government office, while wearing a uniform, or while using a government vehicle (except when state law enforcement officers are providing security to an elected state-wide official). Additionally, it clarifies provisions prohibiting abuse of office, quid pro quo

corruption, acquisition of financial interests resulting from an official act, and misuse of public property. The bill also makes a private employer of a former officer or employee liable for a prohibited act of that employee if the employer knowingly caused the violation to occur, including liability for any civil penalty or other remedies under the act. Finally, CS/HB8 substantially increases the civil penalty for a violation of the act from a flat \$250 to up to \$10 thousand per violation.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, or May 15, 2024, if enacted.

FISCAL IMPLICATIONS

The increased penalty in CS/HB8 will likely generate revenue to the general fund, but as the amount of increase is determinate upon the number of civil penalties imposed in a given year, which is unknown, the impact is minimal.

Further, in its earlier analysis, the State Ethics Commission (SEC) did not anticipate an increase to its operational costs due to additional referrals; rather, it suggested that CS/HB8's language removing gaps and ambiguities in the act might reduce those referrals. SEC did not quantify that impact, resulting in an indeterminate but minimal decrease in operating costs. On the other hand, in its earlier analysis, NMAG suggested it may receive additional referrals due to language adding liability for employers and increasing penalties, again without quantification, resulting in an indeterminate but minimal increase in operating costs.

SIGNIFICANT ISSUES

SEC reports the New Mexico Supreme Court recently issued an opinion in *State v Gutierrez et al*, 2023-NMSC -002, that bars criminal enforcement of Subsections 10-16-3(A) through (C) of the Act. SEC advised that the provisions of CS/HB8 address the issues raised in that case, and make the Act clearer, fairer, and better attuned to its purpose to ensure that individuals working in government in New Mexico use the powers and property of their government offices not to benefit themselves, but only to benefit the public; that analysis appears to also apply to CS/HB8. The New Mexico Attorney General echoed the need to revise the act following the *Gutierrez* decision, which it explained held that the ethical principles contained in the act could not be enforced as they fail to give sufficient notice of the acts being prohibited.

SEC noted that the new provisions banning political activity in what is now Section 2(C) are analogous to provisions in the federal Hatch Act, which conduct in the past has been the subject of administrative complaints under the Act because the original provisions were not clear. Additionally, SEC called attention to the new subsection (E) in what is now Section 5 of CS/HB8, noting that it is often the subsequent private employer that causes a former government employee to violate the revolving-door provisions of this section; making it explicit that an employer may be liable for knowingly causing its employee's violation provides clarity to that provision of the act. It also asserted that increasing penalties for violations may act as a deterrent.

TECHNICAL ISSUES

Page 4, line 5: It is suggested that the phrase “political purpose” which is not a defined term, be defined.

AMENDMENTS

In its previous analysis, NMAG suggested:

- Page 4-5: the political activities being prohibited might also include the use of the imprimatur of public office, such as sending a communication on printed or electronic letterhead of the public office, or using a public email account for that communication; and
- Page 5, lines 16-17: include “or imprimatur of office or position” following “power or resources.”

MD/al/ne