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FISCAL IMPACT REPORT

ORIGINAL DATE 02/12/10
 LAST UPDATED 02/17/10

SPONSOR SRC _____ HB _____
 SHORT TITLE State Ethics Commission Act _____ SB CS/43, 108, 154, 268/
 aSJC/aSFC _____
 ANALYST Ortiz _____

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY10	FY11		
	No Appropriation		

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB43, HB125, HB138, SB43, SB44 and SB211

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY10	FY11	FY12	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$200.0	\$200.0	\$400.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses received from

The agencies shown below responded to some of the bills combined in the SRC:

- Administrative Office of the Courts (AOC)
- Attorney Generals Office (AGO)
- Lt. Governor's Office (Lt. Gov)
- Office of the State Auditor (OSA)
- Department of Finance & Administration (DFA)

SUMMARY

Synopsis of SFC Amendment

The Senate Finance Committee amendment to the Senate Rules Committee substitute for Senate Bills 43, 108, 154 and 268 strikes the appropriation.

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to the Senate Rules Committee substitute for Senate Bills 43, 108, 154 and 268 reduces the number of commissioners to seven so that two are appointed by the governor and from each political party and one is appointed by the chief justice of the Supreme Court.

Synopsis of Bill

The Senate Rules Committee substitute for Senate Bills 43, 108, 154 and 268 appropriates \$200 thousand from the general fund to the State Ethics Commission to carry out the provisions of the state ethics commission.

The substitute enacts a State Ethics Commission Act and creates an eight member commission. The following shall each appoint one commissioner:

- The speaker of the House of Representatives;
- The minority floor leader of the House of Representatives;
- The majority floor leader of the Senate;
- The minority floor leader of the Senate

The governor shall appoint four commissioners – two from the same political party of the governor, one from the other major political party, and a registered voter who is neither Democrat nor Republican. They shall serve four year terms but no more than two consecutive terms.

The Commission duties and powers include:

- Receiving and investigating complaints alleging ethics violation against state officials, state employees, government contractors and lobbyists;
- Holding hearings to determine if there has been an ethics violation;
- Promulgating rules necessary to implement the State Ethics Act;
- Providing public access to all advisory opinions and reports;
- Drafting a code of ethics for adoption by state agencies;
- Employing an executive director who must be an attorney; and
- Submitting an annual report to the legislature and governor.

The Commission may also do the following:

- Initiate complaints;
- Petition a district court to issue subpoenas;
- Issue advisory opinions;
- Publish an ethics guide; and
- Offer annual ethics training to state officials, state employees, government contractors and lobbyists.

If the Commission finds by clear and convincing evidence that there has been an ethics violation the Commission shall issue a public report and forward its conclusions and findings, along with the evidence, to the respondent, the attorney general, and (1) the appropriate legislative body if the respondent is a legislator, (2) the house of representatives if the respondent is a state official elected to the executive branch, (3) respondent's appointing authority if the respondent is an

appointed official, (4) the appropriate state agency if the respondent is a state employee, (5) the appropriate state agency if the respondent is a government contractor, or (6) the respondent's employer and clients if the respondent is a government contractor.

FISCAL IMPLICATIONS

Although the appropriation has been struck, there is still likely to be an expense related to this bill.

SIGNIFICANT ISSUES

The legislation would not establish a vetting procedure for appointees. In an analysis on a previous bill the Lt. Governor's office suggest that without such a vetting process it is conceivable that the commission will be populated by partisan appointees from both parties or populated by members with potential conflicts of interest, further guaranteeing that the commission is ineffective and paralyzed by political actions.

ADMINISTRATIVE IMPLICATIONS

Analysis provided by the Office of the State Auditor on similar pieces of ethics related legislation explained that a commissioner may be removed **only** for incompetence, neglect of duty or malfeasance in office." The reasons cited for removal may be incomplete given the nature of a commissioner's duties. The act should state that a commissioner may also be removed for the commission of a felony such as theft, embezzlement, fraud, and other illegal acts such as violations of the governmental conduct act or an act involving unethical behavior like those mentioned in the act. It should also state that a potential commissioner must not have been convicted of a felony.

RELATIONSHIP

Relates to the following ethics and governmental conduct bills: HB43, HB125, HB138, SB43, SB44 and SB211

OTHER SUBSTANTIVE ISSUES

A review of governmental ethics was part of the 2009 work plan of the Courts, Corrections and Justice Committee.

New Mexico is among the ten states without an ethics commission. Of the states with ethics commissions, they all have the authority to investigate allegations of violations of the ethics code sections it administers. Members of 38 ethics commissions have the authority to initiate an investigation by filing a complaint, although in some states ethics commission staff cannot initiate an investigation. Only in Florida does the complaint have to come from outside the commission's office. In Alabama and Kentucky, commissioners who file complaints must recuse themselves from involvement in the investigation and hearings related to that case.

Every ethics commission has the authority to issue advisory opinions. Only in Florida and North Carolina must the requester take the advice in the opinion. In several states, including Texas,

Washington and Nevada, the commission does not have to be asked, but can render an opinion on any issue.

Excerpt below is from the National Conference of State Legislators.

The challenge facing legislative ethics committees is how to ensure their "credibility" with the press or the public. Most professions - including doctors, lawyers and teachers - discipline their own members through internal committees without facing accusations of attempts to protect their own. However, legislators who intend to discipline their fellow members face a higher level of scrutiny, one resulting from a commitment to public service.

In his book *Drawing the Line*, Dr. Alan Rosenthal, professor of public policy and political science at the Eagleton Institute of Politics, Rutgers University describes the two viewpoints, saying, "On one side, colleagues want to be treated fairly and have their actions assessed in a broader context. On the other side, the media want guilt established and punishment dispensed."

Former Delegate Kenneth Montague, Jr., who was House Chair of Maryland's Joint Committee on Legislative Ethics and Chair of the Center for Ethics in Government Executive Board, would respond to both sides by saying, "Both state ethics committees and commissions play essential and consistent roles in ensuring that our public servants behave ethically. Let's justly punish the bad apples. But let us not forget that the basis of effective government is public confidence. Media and others choose, at times, to create an appearance of unethical behavior when the vast majority of legislators are ethical public servants who operate with integrity and who take their jobs seriously."

ALTERNATIVES

Include a vetting process.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

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.

EO/mt:mew