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## FISCAL IMPACT REPORT

ORIGINAL DATE 01/27/10

SPONSOR Feldman LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE State Ethics Commission Act SB 154

ANALYST Ortiz

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY10	FY11		
	\$200.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB43, HB125, SB43, and SB108.

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY10	FY11	FY12	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		\$200.0 apprx.	\$850.0 apprx.	Recurring	General Fund	

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of Finance and Administration (DFA)

### SUMMARY

#### Synopsis of Bill

Senate Bill 154 enacts a State Ethics Commission Act, amends the Campaign Reporting Act, Voter Action Act, Lobbyist Regulation Act, Governmental Conduct Act, Financial Disclosure Act, and Gift Act by removing the responsibilities from the Secretary of State and placing them with the state ethics commission. The bill transfers all functions, appropriations; money, records, property, equipment and supplies used by the Secretary of State's ethics division to the state ethics commission and appropriates \$200 thousand from the general fund to the state ethics commission.

The commission is created as an adjunct to the executive branch under the direction of eleven commissioners, appointments made as follows:

- Five by the governor, no more than three from same political party and at least one from each congressional district;
- One by the president pro tempore of the senate;
- One by the minority floor leader of the senate;
- One by the speaker of the house of representatives; and
- Two by the chief justice of the Supreme Court, who shall be district court judges and from different political parties and congressional districts.

The Commission's duties and powers include:

- Receive and investigate complaints against state officials, state employees, government contractors and lobbyists;
- Hold hearings;
- Administer the provisions of the Campaign Reporting Act; the Voter Action Act; the Lobbyist Regulation Act, the Governmental Conduct Act, the Financial Disclosure Act, and the Gift Act.
- Promulgate rules;
- Provide public access to all advisory opinions and reports;
- Draft a proposed code of ethics for state officials and employees and submit to state officials for adoptions;
- Make an ethics guide available and offer annual ethics trainings to state officials and employees and government contractors and lobbyists;
- Employ an executive director, who shall be an attorney (the executive director may also hire a general counsel and other necessary personnel);
- Submit an annual report to the legislature and governor;
- Initiate complaints;
- Issue subpoenas; and
- Issue advisory opinions.

Violations may be filed by a person who has knowledge of an alleged violation or initiated by the commission upon receipt of evidence. If the Commission finds the conduct constitutes an ethics violation it submits a report to the Attorney General and appropriate branches of government and state agencies. If the commission finds a criminal violation, it makes an immediate referral to the attorney general or appropriate district attorney.

## **FISCAL IMPLICATIONS**

The appropriation of \$200 thousand contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of fiscal year 2011 shall revert to the general fund.

## **SIGNIFICANT ISSUES**

DFA expresses the following:

“This bill contains all the best pieces of the various ethics bills and, as such, would be the strongest of the several so far introduced. The use of the judiciary would seem a great boon to fairness and objectivity on the commission. The ability to issue their own

subpoenas gives the commission the authority it would need to do its work. Allowing the commission to make recommendations for disciplinary action and offer public censures and rebukes would tend to make the bodies to which it refers ethics violators more likely to accept and act upon the commission's findings. The method of funding the mandate is unique among the bills and would seem to be workable at first glance.”

## **PERFORMANCE IMPLICATIONS**

There is nothing in the bill that would force governing authorities to which cases are referred to follow the recommendations or accept the opinions of the commission regarding a particular respondent.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

HB43, which creates a seven member commission with jurisdiction over state elected officials and employees, state government contractors and lobbyists;

HB125, which creates an 11 member commission, with jurisdiction over state elected officials and employees, state government contractors and lobbyists and includes a \$200 thousand appropriation;

SB43, which creates an 11 member commission and has jurisdiction over some but not all state employees, oversee state elected official complaints, contractors and lobbyist complaints; and

SB108, which creates a 10 member commission, with jurisdiction over state elected officials and employees, state government contractors and lobbyists and includes a \$500 thousand appropriation.

## **TECHNICAL ISSUES**

The bill would not include officials and administrators of school districts and charter schools as does HB 138. Also, this particular bill does not call for any study for expansion to local governmental entities and their employees and officials as do several of the others.

## **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."

EO/svb