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FISCAL IMPACT REPORT

ORIGINAL DATE 02/07/11

SPONSOR Egolf LAST UPDATED _____ HB 195

SHORT TITLE State Ethics Commission Act SB _____

ANALYST Wilson

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
	\$200.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

HB 195 relates to HB 154, HB 155, SB 164, SB 172 SB 182 & SB 293

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
 Administrative Office of the District Attorneys (AODA)
 Corrections Department (CD)
 Department of Transportation (DOT)

SUMMARY

Synopsis of Bill

House Bill 195 appropriates \$200,000 from the general fund to the State Ethics Commission (SEC) to carry out the provisions of the State Ethics Commission Act. HB195 establishes an independent ethics commission to oversee the filing of complaints against state officials, state employees, government contractors and lobbyists, develop an ethics code, provide annual ethics training and issue advisory opinions.

The SEC consists of eleven members, five appointed by the governor, no more than three of whom are of the same political party, with at least one appointed from each congressional district; one appointed by the Senate's President Pro Tempore; one appointed by the Senate Minority Leader; one appointed by the Speaker of the House; one appointed by the House Minority Leader; and two appointed by the Chief Justice of the New Mexico Supreme Court, who shall be district court judges, not of the same political party, and not from the same congressional district. No more than five of the appointees may be of the same political party. Members of the SEC shall be appointed for staggered terms of four years and cannot serve more than two consecutive terms.

Six members of the SEC constitute a quorum for the transaction of business. A person elected from among the Governor's appointees will chair the SEC. The SEC may elect other officers as it deems necessary.

A commissioner may be removed only for incompetence, neglect of duty or malfeasance in office. A proceeding for the removal of a commissioner may be commenced by the commission or by the Attorney General upon the request of the SEC. The New Mexico Supreme Court has exclusive jurisdiction over proceedings to remove commissioners, and its decision shall be final. A commissioner shall be given notice of hearing and an opportunity to be heard before the commissioner is removed.

No commissioner may hold office in a political party or public office, except the commissioners who are district court judges appointed by the judiciary, or be a state employee, contractor or lobbyist.

The commission shall employ an executive director who is an attorney. The executive director shall perform investigations, prepare an annual budget, and perform other duties assigned by the SEC. The executive director may hire general counsel for the SEC and other necessary personnel. The SEC will receive and investigate complaints of ethics violations and hold hearings to determine whether there has been an ethics violation. The SEC may initiate investigations and complaints, issue subpoenas, issue advisory opinions, and promulgate any other rules necessary to implement the Act and shall submit an annual report of its activities and recommendations.

A respondent who is a state official or employee is entitled to representation by the Risk Management Division of the General Services Department and must reimburse the division for the representation if he is found to have committed a violation. Hearings will be presided over by one of the judicial appointees and a finding of an ethics violation must be supported by clear and convincing evidence.

Violations that may constitute a criminal violation will be referred immediately to the Attorney General or a District Attorney. The Act does not preclude civil or criminal penalties against a person who files a false claim. The Act applies to conduct that occurs on or after January 1, 2012 and the statute of limitations for filing a complaint is three years from the date of the alleged violation.

The majority of the provisions in HB 195 will become effective July 2, 2011. However, the advisory opinion, complaint, investigations and hearings portions of this bill will be effective January 1, 2012.

FISCAL IMPLICATIONS

The appropriation of \$200,000 contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of fiscal year 2012 shall revert to the general fund.

SIGNIFICANT ISSUES

The AGO offered the following:

Should New Mexico create an independent SEC to oversee ethics issues affecting the executive and legislative branches of government? Forty other States have created various forms of independent ethics commissions.

Does the proposed independent SEC adequately ensure bipartisan action, help restore and enhance the public's trust in government? Does the proposed legislation possess sufficient resources to do its job effectively and does it have safeguards to protect against abuses and the pursuit of unwarranted or frivolous complaints?

The SOS is statutorily responsible for the oversight of Lobbyist Regulation Act violations, Campaign Reporting Act violations, Governmental Conduct Act violations, and Gift Act violations. There is no provision in this bill to account for duplication of investigations. Further, investigations conducted by the SOS's office are subject to the Inspection of Public Records Act, which creates a potential conflict with the confidentiality provisions of this bill.

CD notes that certain citizens or groups could use this law to file frivolous or meritless complaints against public employees in order to harass or intimidate them. However, the bill does require that the complaint filed must be specific and verified, and also requires actual knowledge of an alleged ethics violation as opposed to second-hand or hearsay knowledge. It also does not preclude civil or criminal actions against a person who files a false complaint. All of these provisions should help deter the filing of frivolous or false complaints.

ADMINISTRATIVE IMPLICATIONS

The AODA states that if enacted, this bill will increase complaints, both relevant and irrelevant. This will increase investigations and prosecutions in the AGO and the AODA offices

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 195 relates to:

HB 154, No Election Expenditures from Corporations

HB 155, Disclosure of Funds for Election Advocacy

SB 164, State Ethics Commission Act

SB 172, State Ethics Commission Act

SB 182, Limit Contributions in Certain Elections

SB 293, Enact "State Ethics Commission Act"

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 excuse 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.

The 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 responds 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 public servants who operate with integrity and who take their jobs seriously."

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 SOS 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.

DW/mew