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FISCAL IMPACT REPORT

SPONSOR Doyle **ORIGINAL DATE** 02/17/11 **LAST UPDATED** _____ **HB** 383
SHORT TITLE Public Corruption Offenses and Investigations **SB** _____
ANALYST Segura

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
	none		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to
Duplicates Appropriation in the General Appropriation Act
Relates to Appropriation in the General Appropriation Act

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Department of Public Safety (DPS)
Administrative Office District Attorney (AODA)
Attorney General's Office (AGO)
Administrative Office of the Courts (AOC)
New Mexico Corrections Department (NMCD)

Synopsis of Bill

House Bill 383 specifies the criminal acts that qualify as public corruption offenses and creates a Public Corruption Investigations and Prosecution Division in the Department of Public Safety.

FISCAL IMPLICATIONS

House Bill 383 contains no appropriation although the bill mandates the creation of a new division within Department of Public Safety. According to DPS, the bill does not provide funding to support the operations of the division. However, DPS currently uses existing staff and resources to investigate allegations of corruption.

SIGNIFICANT ISSUES

The DPS supports the investigation of public corruption related crimes, and such investigations

are currently performed by the New Mexico State Police, Investigations Bureau. The bill defines and clarifies the criminal acts that qualify as public corruption offenses. The bill provides the authority to issue subpoenas to DPS. The authority to issue subpoenas would allow for greater investigative capabilities by the DPS/NMSP. Currently, the DPS/NMSP investigators must rely upon local, other state and federal authorities for subpoenas.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Bill 383 indirectly relates to the ethics commission bills that will be introduced during this session, (SB 164, SB 172, SB 293, and HB 195).

TECHNICAL ISSUES

According to DPS, the bill does not provide the statutory enforcement requirements of the new division.

The Attorney General's Office recommends deleting the word "committing" in Section 1(B) (5) and (6).

OTHER SUBSTANTIVE ISSUES

According to the Attorney General's Office HB 383 uses the word "prosecution" but does not specify whether this is to be limited to administrative prosecutions or if criminal prosecutions are also contemplated. Also, the AGO provides the following issues:

- It is unclear whether 9-19-7 (G) creates primary jurisdiction, secondary jurisdiction, or any jurisdiction at all, to prosecute public corruption offenses.
- The bill does not specify who is to prosecute, nor does the bill set out the process/procedure by which any prosecution is to be undertaken.
- It is unclear whether investigations and prosecutions would be limited only to the enumerated crimes.

The 13th District Attorney Offices exist under the Judiciary and the Attorney General's Office is a constitutionally independent office, giving these entities a degree of independence when prosecuting crimes committed by an Executive branch employee or official. Adding a new prosecutions division embedded within the Executive branch to investigate and prosecute offenses potentially committed by Executive employees or officials may raise conflict issues.

ALTERNATIVES

According to DPS, an alternative to House Bill 383 would be to not create a new division within DPS and to use the current established investigative units within DPS to investigate public corruption relates crimes. The New Mexico State Police currently has investigators that are qualified and who currently investigate crimes related to public corruption. Additionally, DPS currently maintains relationships with local District Attorney's Offices that have units that specifically prosecute public corruption cases.

A concern with the enactment of House Bill 383 by DPS is the status of the current manpower level of NMSP. Currently, investigators assigned to the Investigations Bureau of NMSP are recruited from the NMSP Uniform Bureau. As requests for investigations increase, this would affect the manpower and readiness status of the Uniform Bureau.