

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 02/21/11

SPONSOR Garcia, M.H. LAST UPDATED _____ HB 408

SHORT TITLE State Ethics Commission Act SB _____

ANALYST Wilson

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$200.0- \$500.0	\$200.0- \$500.0	\$400.0- 1,000.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 67, HB 154, HB 155, HB 195, SB 164, SB 172, SB 181, SB 182, SB 293, SB 420 & SB 432

SOURCES OF INFORMATION

LFC Files

Responses Received From

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

SUMMARY

Synopsis of Bill

House Bill 408 establishes the State Ethics Commission Act (Act) and creates the State Ethics Commission (SEC) to be led by a director. The bill transfers responsibilities for each of the following Acts from the Secretary of State to the SEC:

- Campaign Reporting Act;
- Voter Action Act;
- Lobbyist Regulation Act;
- Governmental Conduct Act;
- Financial Disclosure Act; and
- Gift Act.

Additionally, the SEC as established by the Act is to develop an ethics code; provide annual ethics training; publish ethic guides; issue advisory opinions; provide for the filing of complaints against state officials including some school officials, state employees, government contractors and lobbyists for ethics violations; conduct investigations and hearings; and petition the district courts to issue subpoenas.

House Bill 408– Page 2

HB 408 establishes penalties for commissioners, staff, and complainants who violate the confidentiality provisions of the bill and prohibits retaliation against those filing complaints.

In terms of the SEC's authority, HB 408 defines "state agency" as any department, commission, council, board, committee, agency or institution of the executive or legislative branch of government of the state specifying several other instrumentalities of the state, but not addressing the judicial branch. HB 408 defines "state employee" as an employee of a state agency and "state official" as a person elected to an office of the executive or legislative branch or a person appointed to a state agency.

State officials, as covered under the scope of the bill, include those elected or appointed to positions within the executive and legislative branches and, effective January 1, 2016, local public and charter school governing board members and school district superintendents. There is no direct reference to judges, judicial officials or the judicial branch of state government in the definitions section.

The SEC membership is set at seven comprised as follows: Two commissioners appointed by the Governor, one Democrat, one Republican; one commissioner appointed by the Speaker of the House; one by the House minority floor leader; one appointed by the majority floor leader of the Senate; one by the Senate minority floor leader. The Chief Justice of the Supreme Court is to appoint the final member, a retired judge, who will also chair the SEC. A quorum is defined as four members; two Democrats and two Republicans. The Supreme Court will have exclusive jurisdiction over removal of commissioners.

HB 408 calls for a detailed report to be compiled by the SEC and submitted to the Legislature and the Governor by January 1, 2013 regarding the SEC's jurisdiction, with timeline, staffing requirements, and budget.

FISCAL IMPLICATIONS

Unlike the other bills that establish a SEC, this bill has no appropriation. The other bills creating a SEC have carried appropriations of \$200,000 to \$500,000.

HB 408 proposes that with the exception of transitioning functions, assets, appropriations, etc currently assigned to the Secretary of State related to the various acts as noted in the first paragraph above, which will occur by January 1, 2012, all other provisions will occur effective July 1, 2011.

As this will impact the courts, there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary will be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase. Efforts to quantify specific fiscal impact by case are underway, but specific information is not available at this time.

SIGNIFICANT ISSUES

The AGO offered the following:

Whether New Mexico should join the 40 other states that have established independent ethics commissions like this bill proposes to review ethics issues. It can be strongly argued that the most important function of the SEC will be education and training to help change the culture of government and awareness of ethical issues.

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.

AODA provided the following:

The bill has possible criminal complaints about elections being referred to the AGO or the appropriate district attorney. The investigative staffs of district attorney offices are very small and it will be additional burden of investigating a possible crime. Criminal matters should be investigated by the police.

The bill creates a new crime, a misdemeanor for violation of the SEC's confidentiality provision. These cases will go to the magistrate and metropolitan courts which are already over-burdened and don't have sufficient judges and staff for their current caseloads.

CD states that certain citizens or groups could use this law to file frivolous or meritless complaints against CD employees and other public employees in order to harass or intimidate them. However, the bill does require that the complaint filed must be verified and it does require 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.

CD further notes that when the SEC itself initiates a complaint, it will be based on the receipt of evidence it deems sufficient. The SEC could then unfortunately rely on hearsay or other unreliable evidence, and it does not have to sign its complaint under penalty of perjury. There is thus more potential for the SEC to file or bring false or frivolous complaints, and there are no provisions in the bill to prevent or deter this.

ADMINISTRATIVE IMPLICATIONS

This bill does not include an appropriation. Because this bill transfers so many of the responsibilities of the Secretary of State to the SEC, there will have to be a fairly large staff for the SEC.

RELATIONSHIP

HB 408 relates to the following bills, each of which calls for the creation of a SEC: HB 195, SB 164, SB 172, SB 293 and SB 420. The differences include SEC membership, jurisdiction, and appropriation. HB 408 also expands beyond each of these bills to move significant, funding, responsibilities assets, etc. from the SOS to the proposed SEC.

Other ethics and elections bills are:

HB 67, Prohibit Public Official Lobbying for 1 Year
HB 154, No Election Expenditures from Corporations
HB 155, Disclosure of Funds for Election Advocacy
SB 181, Contributions from State Contractors
SB 182, Limit Contributions in Certain Elections
SB 432, Governmental Conduct & Contracts

OTHER SUBSTANTIVE ISSUES

The AGO notes the bill requires complainants to be bound by the confidentiality rules of the SEC and other provisions of the Act. The bill imposes a criminal penalty for violation. This provision, however could infringe on a complainant's first amendment right to free speech and right to petition the government for redress of grievances. In fact, among the 41 states with Ethics Commission, only a small handful has chosen to adopt a similar provision.

ALTERNATIVES

DOT suggests amending HB 408 to provide confidentiality of disciplinary reprimands or censures to state officials or employees to conform to current requirements of State Personnel Board rules, which have been promulgated pursuant to NMSA 1978, §10-9-10, and which require that the confidentiality of disciplinary actions be maintained absent a lawful subpoena, court order or permission from the employee.

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 S0Se shares responsibility with the district attorneys and the AGO for enforcing the Procurement Code and the Governmental Conduct Act; finally, no agency is charged with enforcing the Gift Act.

DW/svb