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FISCAL IMPACT REPORT

SPONSOR SRC **ORIGINAL DATE** 01/26/11
LAST UPDATED 03/11/11 **HB** _____

SHORT TITLE State Ethics Commission Act **SB** 164,172,293 & 420/SRCS

ANALYST Wilson

APPROPRIATION (dollars in thousands)

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

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	FY12	FY13		
	\$10.0-\$35.0*	\$10.0-\$35.0*		General Fund

(Parenthesis () Indicate Revenue Decreases)

*This assumes one disclosure violation a year. See fiscal implications below.

Relates to HB 154, HB 155 & SB 182

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General (AGO)
 Corrections Department (CD)
 Department of Transportation (DOT)
 Secretary of State (SOS)

SUMMARY

Synopsis of Bill

The Senate Rules Committee substitute for Senate Bill 164 appropriates \$200,000 from the general fund to the State Ethics Commission (SEC) for expenditure in fiscal year 2012 to carry out the provisions of the State Ethics Commission Act.

SB 172 creates the SEC that will be composed of seven members appointed as follows:

- (1) one commissioner appointed by the majority floor leader of the House of Representatives;
- (2) one commissioner appointed by the minority floor leader of the House of Representatives;
- (3) one commissioner appointed by the majority floor leader of the Senate;
- (4) one commissioner appointed by the minority floor leader of the Senate;
- (5) two commissioners appointed by the Governor, one of whom shall be a member of the Democratic party and one of whom shall be a member of the Republican party; and
- (6) one commissioner appointed by the chief justice of the Supreme Court, who shall be a retired judge and who shall chair the commission.

There is a provision that due regard be given to geographic representation and the cultural diversity of the state. SEC terms will be for four years with a limit of two consecutive terms. Four commissioners consisting of two republicans and two democrats will constitute a quorum. All commissioners must be New Mexico residents, members of the same political party or no political party for more than three years, have reviewed the State Ethics Commissioner Act, and have taken an oath of office.

Members will be prohibited during their terms of service from holding or seeking elective public office, an appointed public position, or an office in a political party. In addition they may not change political parties.

The SEC will be responsible for receiving and investigating alleged ethics violation complaints, holding hearings as necessary, compiling and maintaining findings and advisory opinions, drafting a proposed code of ethics for public officials. The SEC is charged with hiring an executive director knowledgeable about state ethics laws and promulgating rules necessary for the completion of SEC duties. In addition, the SEC is given the right to recommend disciplinary actions, subpoena witnesses and documentation necessary for the investigation of potential ethical violations.

The executive director must take an oath of office, perform investigations, present complaints and investigations to the SEC, prepare an annual budget, and recommend any rules or legislative changes needed for the proper administration of the State Ethics Commission Act, as well as any other duties assigned by the SEC. The director may hire a general counsel.

Respondents are given the right to obtain representation from the Risk Management Division within the General Services Department; however, if there are findings of ethical violations, he or she will be responsible for compensation or reimbursement for said counsel.

In cases where there is a potential conflict of interest for a commissioner, he or she may recuse his or herself. One commissioner has the right to recuse another on the grounds of conflict of interest. If more than two commissioners have been recused and there is no longer a quorum, an interim commissioner may be appointed by the remaining commissioners in accordance with the requirements of all commissioners, including political party.

The SEC has the right issue public reprimands, censures, or recommendations for disciplinary action against a respondent. Ethical violations that the SEC believes rise to the level of criminal behavior shall be referred to the Attorney General or the appropriate District Attorney. SEC meetings must be scheduled within 60 days of the receipt of a complaint. In addition, the SEC will only have jurisdiction over actions taken within the prior three years. Complainants are protected from retaliation by this Act.

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 or unencumbered balance remaining at the end of fiscal year 2012 shall revert to the general fund.

The disclosure of any confidential complaint, report, file, record or communication in violation of the Act is a misdemeanor and shall be punished by a fine of not more than \$10,000 or by imprisonment for not more than one year or both.

In addition to a penalty imposed for the improper disclosure a court may impose a civil penalty not to exceed \$25,000 for each of the Act.

SIGNIFICANT ISSUES

The AGO provided 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 such a commission 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.

The SOS believes the limitation placed upon the Governor stating his or her two appointed members must be from the Republican and Democratic parties could be interpreted as discriminatory by members of any minor political parties.

In addition, the SOS states that they are 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.

DOT reports that State Personnel Board rules promulgated pursuant to NMSA 1978, §10-9-10, require that the confidentiality of disciplinary actions be maintained absent a lawful subpoena,

court order or permission from the employee. This bill will allow the commission to publicly reprimand, censure or recommend disciplinary action against a state officer or employees in the executive branch, which is in conflict with the SPB rule.

CD notes 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.

ADMINISTRATIVE IMPLICATIONS

The SEC will be required to hire an executive director who may hire counsel and other personnel as needed.

Other Agencies affected by this bill can handle the provisions of this bill with existing staff as part of ongoing responsibilities.

RELATIONSHIP

This bill relates to other ethics and elections bills:

HB 154, No Election Expenditures from Corporations

HB 155, Disclosure of Funds for Election Advocacy

SB 182, Limit Contributions in Certain Elections

DW/bym