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## FISCAL IMPACT REPORT

ORIGINAL DATE 01/21/15  
 SPONSOR Leavell LAST UPDATED 03/02/15 HB \_\_\_\_\_  
 SHORT TITLE Insurance Nominating Committee Changes SB 3/aSJC /aSFC  
 ANALYST Sanogo/Clark

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

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		See Fiscal Implications	See Fiscal Implications	See Fiscal Implications		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files  
 Office of Superintendent of Insurance (OSI)  
 Department of Finance and Administration (DFA)  
 Insurance Nominating Committee (INC)

### SUMMARY

#### Synopsis of SFC Amendment

The Senate Finance Committee (SFC) amends Senate Bill 3, extending the Financial Disclosure Act to members of the insurance nominating committee (Section 10-16A-3 NMSA 1978).

#### Synopsis of SJC Amendment

The Senate Judiciary Committee (SJC) amends Senate Bill 3, providing that any disclosures protected under the Whistleblower Protection Act or required by law shall not be restricted under SB 3.

#### Synopsis of Original Bill

Senate Bill 3 proposes amendments to the statutory requirements of the Insurance Nominating Committee (INC). Section 1 adds INC members to the definition of "public employee," amending Section 41-43-3 NMSA 1978.

Section 2 transfers authority to set the annual compensation of the superintendent from the Legislature to the INC, amending Section 59-A-2-2 NMSA 1978.

Section 3 amends Section 59A-2-2.1 NMSA 1978, by:

- clarifying that a vacancy on the committee shall be filled by the original appointing authority for the remainder of the term,

- specifying that INC members are eligible to receive per diem and mileage,
- stating that INC members are subject to the Governmental Conduct Act,
- stating that the INC is administratively attached to OSI, and
- setting confidentiality terms for OSI staff working on INC issues.

Section 4 relaxes certain restrictions on superintendent qualifications, amending Section 59-A-2-3 NMSA 1978.

### **FISCAL IMPLICATIONS**

Because the bill does not change the existing statutory range for the superintendent's compensation, there are no significant fiscal impacts, although the superintendent's salary of \$114,787 for FY15 is more than \$10 thousand less than the highest paid cabinet secretary's salary; thus, there could be a minor fiscal impact if INC chooses to increase the salary beyond the current appropriated level. OSI's revenues primarily revert to the general fund, so this could have a minor general fund impact.

### **SIGNIFICANT ISSUES**

DFA states that INC authority to establish the annual compensation of the superintendent may conflict with Article IV, Section 16 of the New Mexico Constitution, which gives the Legislature the authority to make appropriations for the expense of the executive, legislative and judiciary departments. The INC, however, contends that:

the current statutory method is not consistent with any other legislative practice, and is impractical and awkward. As superintendents are appointed for terms beginning January 1, it is not possible for the legislative session to set a starting salary that reflects the individual's qualifications.

DFA notes that lines 22-25 of page 8 appear to free a committee member from obligations to disclose any financial interests. However, the INC clarifies that the Financial Disclosures Act would not ensure meaningful disclosure:

The scope of Financial Disclosure Act excludes commission and board appointees such as INC members, who are not subject to Senate confirmation....Four members of the INC explicitly represent industry interests, such that further financial disclosures would not provide any real public benefit. The other five members are prohibited from having (or having a spouse or child who has) any direct financial interest in an insurer, insurance agency or insurance transaction, which is a stronger mechanism to prevent improper influence than disclosure. Thus, Insurance Nominating Committee consumer representatives and the chair will never have matters meriting disclosure (and if they did, the requirements in the Financial Disclosure Act are too general to ensure that any such conflict would be disclosed).

DFA highlighted that the phrase "in confidence" (in lines 13-17, page 10 ) is neither defined nor limited in any way. The INC asserts that the language of the bill makes the duty of confidentiality applicable only to information received from an INC member, but does not prevent an OSI staffer from conveying information he or she received directly about misconduct.

Regarding the prior residency requirement for superintendent candidates, the INC argues that

SB 3 will allow the committee to consider New Mexico connections and expertise as one of many qualifying factors of a superintendent, rather than an absolute bar.

**ADMINISTRATIVE IMPLICATIONS**

The OSI currently provides staff support to the INC. Staff costs are covered by the existing operating budget, and staff hours are not expected to be burdensome.

AIS/bb/JC/je