

LFC Requester:

Marty Daly

**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original	<input type="checkbox"/>	Amendment	<input type="checkbox"/>
Correction	<input type="checkbox"/>	Substitute	<input checked="" type="checkbox"/>

Date Prepared: 1/31/24

Bill No: HB 8

Sponsor: The Honorable Kathleen Cates, Tara Jaramillo, Yamira Gurrola and Bill Tallman

Agency Name and Code Number: 305 – New Mexico Department of Justice

Short Title: Elected Officials & Gov't Conduct Act Changes

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SECTION II: FISCAL IMPACT – n/a

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands) n/a

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

House Bill (“HB”) 8 would amend the Governmental Conduct Act (the “GCA”) at Section 10-16-1 et seq. It would broaden the scope of prohibited activities, increase the civil penalties for violations, and provide the new criminal sanction of a fourth degree felony for knowing or willful “quid pro quo” corrupt activities.

Section 1 would add a new definition of “political activity.”

Section 2 would amend Section 10-16-3.1 which prohibits certain political activities. It would replace the prohibition against improper use of public property “for other than authorized purposes” with a more specific prohibition against engaging in political activity under certain circumstances. Such circumstances would include being “on duty” or while using certain public property or vehicles.

Section 3 would add new civil liability for violations constituting an “abuse of office” or “quid pro quo corruption.” At proposed subsection (D) it would add criminal penalties to the GCA for more specific knowing or willful violations involving the “quid” of “any money or thing of value” for the “quo” of “promised performance of an official act.”

Section 4 would remove certain provisions from Section 10-16-4 that would be duplicative of the amendments proposed in Section 3.

Section 5 would amend Section 10-16-8 to clarify that its provisions at subsections (B) and (C) apply to both local government agencies and their officers and employees. It would add a new subsection that creates separate civil liability for employers of former public employees and officials who knowingly caused violations of this section.

Section 6 would increase the total maximum civil liability per violation from \$250 to \$5,000 and remove any cap on any total penalty awarded either per transaction or per case. As a result, any single civil action could result in a civil penalty up to \$5,000 regardless of the number of violations.

Section 7 would repeal Section 10-16-3. The New Mexico Supreme held in *Court in State v. Gutierrez*, 2023-NMSC-002 that the “ethical principles” in this section were not specific enough

to create crimes as they lacked sufficient definition to provide notice of the acts to be subject to criminal penalties.

FISCAL IMPLICATIONS

None noted.

SIGNIFICANT ISSUES

Page 6, lines 13-14 - The proposed subsection D of Section 3 of this bill would address an important shortfall of the Governmental Conduct Act (GCA) as noted in *Gutierrez, supra*. Notably, HB 8 would amend this subsection to include a *mens rea* of willful or knowing conduct.

PERFORMANCE IMPLICATIONS

None noted.

ADMINISTRATIVE IMPLICATIONS

The New Mexico Department of Justice (“NMDOJ”) has jurisdiction to enforce the GCA upon referral from the State Ethics Commission pursuant to Section 10-16-18. Proposed changes to the GCA in this bill would add liability for employers (Section 10-16-8(E)) and increase penalties for violations under the Act (Section 10-16-18(B)), which may result in additional referrals for enforcement to the NMDOJ and the State Ethics Commission.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None noted.

TECHNICAL ISSUES

None noted.

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

None noted.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The Governmental Conduct Act will continue to lack necessary clarity needed to properly define criminal violations as held in *State v. Gutierrez, 2023-NMSC-002*.

AMENDMENTS: