

LFC Requester:	
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**AGENCY BILL ANALYSIS
2017 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

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{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

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 **Amendment**
Correction **Substitute**

Date 1- _____
Bill No: HB10

Sponsor: Ely & Ivey-Soto
Short Title: Public Accountability Act

Agency Code: 264
Person Writing Gail MacQuesten
Phone: 466-0532 **Emai** gailmacquesten@gmail.com

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY17	FY18		
0	0	n/a	n/a

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY17	FY18	FY19		
0	0	0	n/a	n/a

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	0	(minimal)	(minimal)	(minimal)	Recurring	General

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: SB72
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

HB10 creates the public accountability board as an adjunct agency, and transfers to the board responsibility for enforcing the civil compliance provisions of the Campaign Reporting Act, the Financial Disclosure Act, the Gift Act, the Governmental Conduct Act, the Inspection of Public Records Act, the Lobbyist Regulation Act, the Open Meetings Act, the Procurement Code, the Public Accountability Act, the School District Campaign Reporting Act, the Voter Action Act, and Article 9, Section 14 of the constitution of New Mexico. HB10 amends those acts to conform to the new provisions.

Public Accountability Board

Sections 1 through 15 of HB10 set out new material creating the public accountability board. It is the responsibility of the board to:

- Meet at least once each calendar quarter;
- Receive, initiate and investigate complaints;
- Conduct hearings;
- Administer the compliance provision of the Acts listed above;
- Promulgate rules necessary to implement and administer the provisions of the Public Accountability Act and the applicable civil compliance provisions of the listed Acts;
- Compile, index, maintain and provide public and online access to all advisory opinions and reports required to be made public;
- Compile, maintain and provide access to all codes of conduct filed with the board;
- Draft a proposed code of public accountability and submit the proposed code to each elected public officer and public body for adoption; and
- Prepare an annual report.

HB10 specifies the composition of the 12-person board: 3 members are appointed by the secretary of state (one upon the recommendation of the New Mexico municipal league, one upon the recommendation of the New Mexico association of counties, and one upon the recommendation of the New Mexico school boards association); 3 licensed New Mexico attorney members appointed by the board of commissioners of the state bar of New Mexico (with at least one member appointed from each congressional district); 3 members appointed by the governor (with at least one appointed from each congressional district); and 3 retired judges

appointed as board members by the chief justice of the supreme court (with at least one member appointed from each congressional district). No more than 5 board members may be of the same party. Board members serve staggered 6-year terms, may not serve for more than 2 consecutive terms, and may be removed only by the supreme court for incompetence, neglect of duty or malfeasance in office. Seven board members are required for a quorum. To qualify for appointment, a person must be a resident of New Mexico for at least four years, and not have changed qualified political party affiliation for at least two years prior to appointment. During their tenure, board members may not seek or hold office or act as a leader in a political organization or a qualified political party; seek or hold elected public office or appointed public position; be a state employee, state contractor or lobbyist; be employed or contracted by a political committee or a person in that person's capacity as a candidate for public office; publicly endorse or publicly oppose a candidate for public office or a ballot issue unrelated to the administration of justice or the legal system; make speeches on behalf of a political organization; or solicit funds for, pay an assessment to or make a contribution to a political organization or candidate. Board members receive per diem and mileage.

The commission shall elect a chair and a vice chair, who shall not be of the same qualified political party and shall not have been appointed by the same appointing authority.

The board shall appoint an executive director (appointed without regard to political party affiliation), who shall hold office for a four year term and may be removed by the board only for cause and with the concurrence of at least 9 board members. The director's duties include preparing an annual budget, recommending proposed rules or legislative changes, operating and maintaining a publicly accessible internet website, and reporting complaints referred to the board by the complaint review committee and the status of all open investigations and investigations closed since the board's last meeting. The executive director may hire a general counsel and additional personnel. The director shall not seek or hold an office in a political party or seek or hold an elected public office or an appointed public position.

HB10 sets out a procedure for board member recusal, and a process for seeking and issuing advisory opinions and the process for filing complaints and conducting hearings on complaints. If the respondent disputes the findings of the board, he or she may request a hearing by an independent hearing officer.

HB10 addresses confidentiality: hearings are public, a finding that a respondent's conduct constituted a breach shall be public record, and records of many violations are to be posted on the board's website. A dismissal of a complaint shall be public only upon the request of the respondent. Complaints, reports, files, records and communications are not subject to the Inspection of Public Records Act, except under limited circumstances.

HB10 amends affected Acts to conform to the Public Accountability Act.

Substantive Amendments

HB10 amends NMSA 1978, Section 2-6-1 to provide that a bill shall not be accepted for filing until after the beginning of the prohibited period for soliciting campaign contributions.

HB10 excludes from the definition of "lobbyist" the executive director of a nonprofit or an intergovernmental or trade association organized as a 501© who provides oral or written public testimony in connection with a legislative committee or in a rulemaking proceeding and whose

name and organization have been clearly and publicly identified.

HB10 makes permanent the Legislative Ethics Committee, and requires that it include two nonvoting public members, one appointed by the speaker of the house with the agreement of the majority and minority leaders of the house, and one appointed by the president pro tempore of the senate with the agreement of the majority and minority leaders of the senate. HB10 also requires the Committee issue an annual report, including a listing of the number of complaints received, the disposition of the complaints that have been resolved and the advisory opinions issued, and requires the committee to maintain a web page on the legislature's website.

HB10 amends NMSA 1978, Section 34-10-2.1, regarding the Judicial Standards Commission, to allow the commission to discipline or remove any justice, judge or magistrate for willful misconduct in office, persistent failure to inability to perform the judge's duties or habitual intemperance. The commission may also retire a justice, judge or magistrate for a disability that seriously interferes with the performance of his or her duties, and that is, or is likely to become of a permanent character. The commission is also given authority to regulate the conduct and character of court-appointed commissioners and judicial hearing officers.

HB10 repeals NMSA 1978, Sections 2-15-1 through 2-15-6, 2-15-10 regarding the Governmental Ethics Oversight Committee. Section 2-15-10 addresses criminal sanctions. HB10 also repeals NMSA 1978, Section 10-16-14 of the Governmental Conduct Act, providing for criminal sanctions.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

No appropriation is made in HB10. Because the Public Accountability Board is an adjunct agency, not associated with any existing department or agency, it will need its own funding.

The independent hearing officers will have increased responsibilities and costs.

HB10 transfers other responsibilities from the secretary of state to the board, accordingly, expenses for the secretary of state should decrease.

Expenses for the attorney general and the district attorneys should decrease. HB10 transfers civil enforcement of the following Acts from the attorney general and the district attorneys to the board: the Campaign Reporting Act, the School District Campaign Reporting Act, the Open Meetings Act, the Governmental Conduct Act, the Financial Disclosures Act, the Procurement Code and the Inspection of Public Records Act. HB10 also repeals some criminal sanctions, which would be handled by the attorney general and the district attorneys.

SIGNIFICANT ISSUES

HB10 creates an independent public accountability board, with detailed requirements for the composition and operation of the board. The board is responsible for civil enforcement of many acts formerly enforced by the secretary of state, the attorney general and the district attorneys.

The board also has more general responsibilities related to ethics in state government.

HB10 does not address criminal enforcement, and repeals sections regarding criminal enforcement in the existing statutes governing the Governmental Ethics Oversight Committee and the Governmental Conduct Act.

PERFORMANCE IMPLICATIONS

The district attorneys (and other entities) may seek advisory opinions from the board, may file complaints with the board and may be the subject of investigations by the board.

The district attorneys will no longer share with the attorney general the responsibility for civil enforcement of the Campaign Reporting Act, the School District Campaign Reporting Act, the Open Meetings Act, the Governmental Conduct Act, the Financial Disclosures Act, the Procurement Code and the Inspection of Public Records Act.

HB10 does not address criminal enforcement, except to take away criminal provisions in the statute governing the Governmental Ethics Oversight Committee and the Governmental Conduct Act. It also does not address situations in which a civil investigation conducted by the board uncovers a possible crime. Such cases should be referred to the attorney general or the district attorneys for prosecution.

ADMINISTRATIVE IMPLICATIONS

See Performance Implications, above.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB10 is similar to SB72.

TECHNICAL ISSUES

None noted.

OTHER SUBSTANTIVE ISSUES

It is not clear why Section 6 of HB10 gives the board the responsibility of enforcing the applicable civil compliance provisions of Article 9, Section 14 of the constitution of New Mexico. That constitutional provision addresses aid to private enterprise, veterans' scholarship programs, job opportunities and affordable housing. It does not contain civil compliance provisions.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Administration of New Mexico's existing statutes related to governmental ethics will be administered by the secretary of state.

AMENDMENTS

None proposed.