

LFC Requester:	
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**AGENCY BILL ANALYSIS
2015 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{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 1-10-16
Bill No: HB80

Sponsor: Brian Egolf
Short Title: State Ethics Commission Act

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

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		
0	0	n/a	n/a

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		
0	0	0	n/a	n/a

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	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:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

HB80 creates the state ethics commission as an adjunct agency of the executive branch, and transfers responsibility for administering the Campaign Reporting Act, the Voter Action Act, the Lobbyist Regulation Act, the Governmental Conduct Act, the Financial Disclosure Act, and the Gift Act from the secretary of state to the new ethics commission.

Sections 1 through 16 of HB80 set out new material creating the state ethics commission. It is the responsibility of the commission to:

- Receive, initiate and investigate complaints alleging ethics violations against public officers, public employees, state employees, candidates for elected office, government contractors and lobbyists regarding the acts administered by the commission and regarding the procurement code, as well as codes of ethics adopted pursuant to those acts or pursuant to the State Ethics Commission Act. However, the commission shall not investigate allegations of misconduct involving campaign advertisements;
- Conduct hearings on complaints. Where an ethical violation is found by clear and convincing evidence, the commission may issue a reprimand or censure, or recommend disciplinary action;
- Issue advisory opinions when a request is made in writing by a state official, state employee, government contractor or lobbyist;
- Administer the Campaign Reporting Act, the Voter Action Act, the Lobbyist Regulation Act, the Governmental Conduct Act, the Financial Disclosure Act, and the Gift Act;
- Develop rules to administer the State Ethics Commission Act;
- Compile, adopt, index, maintain and provide public access to all advisory opinions and reports required to be made public;
- Draft a proposed code of ethics for state officials and state employees and submit the code to elected state officials and state agencies for adoption;
- Compile, publish and make available an ethics guide;
- Offer annual training to public officers, state officers, candidates for public office, government contractors, lobbyists and others; and
- Submit an annual report to the legislature and the governor.

HB80 specifies the composition of the 11-person commission: 5 commissioners are appointed by the governor (with no more than 3 appointees of the same party, and at least one appointed from each congressional district); one appointment each is made by the president pro tempore of the

senate, the minority floor leader, the speaker of the house and the minority floor leader, and two district court judges are appointed by the chief justice of the supreme court. The district judges shall not be of the same political party or from the same congressional district. No more than 5 commissioners may be of the same party, and the appointing authorities are directed to take into account cultural and geographic diversity in making their selections. Commissioners serve staggered 4-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. Six commissioners are required for a quorum. During their tenure, commissioners may not seek or hold office in a political party, seek or hold elected public office or appointed public position, or be a state employee, state contractor or lobbyist. Similar prohibitions are in effect for one year after a commissioner leaves office, and during that year a former commissioner may not represent a respondent or accept employment or otherwise provide services to a respondent. (An exception is made for the district court judges appointed by the chief justice of the supreme court, who may continue their work as judges during and after service on the commission.) Commissioners receive only per diem and mileage.

The commission shall elect a chair, who must be one of the governor's appointees. The commission may appoint an executive director (who must be an attorney), who in turn may hire a general counsel and additional personnel. It is the executive director's responsibility to perform investigations, bring complaints and the results of investigations to the commission, prepare the annual budget, and recommend rule changes and legislative changes to the commission. HB80 sets out restrictions on employment that apply when the director leaves service with the commission.

HB80 sets out the process for seeking and issuing advisory opinions and the process for filing complaints and conducting hearings on complaints. It also prohibits retaliatory action against a person who, in good faith, files a complaint or participates in an investigation or hearing.

HB80 provides that if conduct may amount to a criminal violation, the commission "shall immediately refer the matter to the attorney general or an appropriate district attorney," along with all evidence collected in the investigation.

HB80 addresses confidentiality issues, specifying what matters are confidential, requiring closed hearings, and providing civil and criminal penalties for disclosure of confidential materials by a commissioner, the director, the commission's employees or agents, and complainants. (See Section 16.)

Sections 17 through 61 of HB80 amend the Campaign Reporting Act, the Voter Action Act, the Lobbyist Regulation Act, the Governmental Conduct Act, the Financial Disclosure Act, and the Gift Act to move responsibility for administering those acts from the secretary of state to the state ethics commission. HB80 also amends the Open Meetings Act to recognize that meetings of the state ethics commission relating to complaints or investigations of alleged ethic violations are closed meetings.

Section 62 of HB80 is a temporary provision providing that on January 1, 2017 all functions, appropriations, money, records, property, equipment and supplies of the office of the secretary of state used in administering the relevant acts will transfer to the commission, along with contracts, grants, agreements and other obligations, and provides that the rules of the secretary of state pertaining to the administration of those acts shall be considered rules of the state ethics commission.

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.

HB80 moves funding from the secretary of state to the new commission. No additional appropriation is made for the commission.

It is not known whether the administrative switch from the secretary of state to the ethics commission under HB80 will have any fiscal implications for the AODA or the district attorneys because it is not known whether HB80 will affect the number of potential criminal cases referred to district attorneys, or affect the number of ethics investigations that will be requested by the district attorneys or the number of ethics cases to which the district attorneys will need to respond.

Because HB80 creates a new crime – a misdemeanor associated with the release of confidential information – the district attorneys will have additional costs associated with prosecuting cases brought under that provision.

SIGNIFICANT ISSUES

HB80 creates an independent state ethics commission, with detailed requirements for the composition and operation of the commission designed to achieve political and geographical diversity. The commission is responsible for administering many acts formerly administered by the secretary of state, and also has more general responsibilities related to ethics in state government.

HB80 defines ethical violations to include not only violations of the specific acts administered by the ethics commission, but also violations of “any code of ethics” adopted pursuant to those acts or pursuant to the State Ethics Commission Act itself. The acts administered by the commission provide for sanctions, which usually involve civil or criminal penalties. Those sanctions will be available to the ethics commission when addressing violations of those acts. But when addressing violations of other ethical codes, the State Ethics Commission only provides for reprimands, censure and referrals for disciplinary proceedings.

Although HB80 covers “candidates for elected office” the act specifically prohibits the commission from investigating allegations of misconduct involving campaign advertisements.

HB80 prohibits retaliatory action against a person who acts in good faith in filing a complaint, or in participating in an investigation or hearing. It is unclear how this provision will be enforced.

HB80 provides for closed hearings, and contains provisions to keep information related to those hearings confidential. Information is released to the public if an ethical violation is found. These provisions protect individuals who are found not guilty of an ethical violation. However, keeping the proceedings of the commission closed may lead to distrust of the commission and its “secret” process. For example, the press may report on conduct by a public official that appears unethical. But the public will not be kept informed of an investigation or learn why an

investigation was not pursued.

PERFORMANCE IMPLICATIONS

The district attorneys (and other entities) may seek advisory opinions from the commission, receive a proposed code of ethics from the commission, receive an ethics guide and ethics training from the commission, may file complaints with the commission and may be the subject of investigations by the commission.

The district attorneys will receive referrals for criminal cases from the ethics commission, rather than from the secretary of state. In addition, HB80 creates one new crime, related to the release of information that is confidential under the State Ethics Commission Act.

ADMINISTRATIVE IMPLICATIONS

See Performance Implications, above.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None noted.

TECHNICAL ISSUES

None noted.

OTHER SUBSTANTIVE ISSUES

None.

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.