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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 1/28/16  
**LAST UPDATED** 2/11/16     **HJR** 5/HFI/CS

**SPONSOR** Dines

**SHORT TITLE** Independent Ethics Commission, CA     **SB** \_\_\_\_\_

**ANALYST** Jorgensen

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY17	FY18		
	\$390.0*	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

\*See discussion in fiscal implications below.

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

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		\$104.0+		\$104.0+	Nonrecurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

\*See fiscal implications below.

Conflicts with HB 80, SB 124

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the District Attorneys (AODA)

Administrative Office of the Courts (AOC)

Attorney General's Office (AGO)

Secretary of State (SOS)

### SUMMARY

#### Synopsis of Bill

The House Floor Substitute for House Joint Resolution 5 proposes to amend the New Mexico Constitution to create the State Ethics Commission. The commission would be an independent state agency consisting of nine commissioners and would initiate, receive, and investigate

complaints alleging violations regarding any law imposing ethical conduct upon state officers and employees, campaign finance laws, laws regulating lobbyists, and the disclosure requirements or standards of conduct for state contractors or seekers of state contacts. The commission would have the power to initiate complaints against state officials, state employees, government contractors and lobbyists and would have subpoena power and the power to issue advisory opinions.

The commission would be required to:

- Hire an executive director;
- Adjudicate complaints, and impose such penalties and sanctions as provided by law;
- Refer to the appropriate prosecutorial authority complaints alleging conduct that may be criminal violations of the law;
- Petition the courts for suspension or other appropriate action pending investigation by the appropriate enforcement authority for violations of the laws;
- Issue advisory opinions;
- Promulgate rules;
- Issue subpoenas; and
- Have such other powers and duties and administer or enforce such other acts as the legislature by law provides.

Commissioners shall be appointed for staggered four-year terms beginning July 1, 2017.

### **FISCAL IMPLICATIONS**

Should this amendment be accepted by voters, the Legislature would need to establish a budget for the commission for fiscal year 18, the first year of operations. Based upon information provided by the Secretary of State's Office, estimated annual costs for the commission are:

Personal Services / Employee Benefits:	\$230.0
<u>Other Costs:</u>	<u>\$160.0</u>
Total:	\$390.0

The SOS estimate for costs are based on an assumption of 2 FTE, an executive director and general counsel, operational costs, and mileage and per diem for commissioners.

Because the duties of the proposed commission significantly overlap with those currently performed by the SOS, it is possible that the budget of the SOS could be reduced to offset some of the costs of the new commission; the SOS has 5 FTE dealing primarily with issues which overlap with the duties of the proposed commission. However, because the SOS will continue administering the Campaign Reporting Act, the Lobbyist Regulation Act, the Voter Action Act, and complaints related to the Election Code or Municipal Election Code, the SOS will continue to require ethics-related staff regardless of the creation of a state ethics commission.

Under Section 1-16 NMSA 1978 and the New Mexico constitution, the Secretary of State (SOS) is required to print samples of the text of each constitutional amendment, in both Spanish and English; the state shall have sample ballots printed and furnished to the counties; and the expense incurred by the SOS in printing and distribution the ballots shall be paid by the state. The SOS is also required to publish them once a week for four weeks preceding the election in newspapers in

every county in the state. In 2010, the SOS reports the cost of placing a constitutional amendment on the ballot was \$104.0 thousand.

### **SIGNIFICANT ISSUES**

The House Floor Substitute for HJR 5 allows the commission to dismiss complaints deemed to be frivolous and requires all complaints dismissed without hearing to be made public. The commission will have exclusive jurisdiction over civil violations of laws under its jurisdiction, and all appeals to the decisions of the commission will be heard at the district court level in a trial de novo. The joint resolution states that the commission is not an alternative to impeachment and that the commission may refer matters to the Legislature for consideration of impeachment proceedings.

The SOS writes:

The complaints received during a non-general election year vary between 20 to 30 annual complaints, and vary in topics from municipal elections issues, to campaign reporting, to general government conduct. During a general election year, the SOS will receive between 50 and 60 complaints, mostly based upon campaign finance or campaign actions. Many complaints are resolved by reviewing each party's pleadings and coming to a determination. Many complaints are based upon misunderstanding of a situation or the law, and some are resolved with a review of the body of law surrounding the complaint. It is a small percentage of complaints processed with the SOS that are referred to a district attorney or the attorney general. There are instances where the SOS will work with a district attorney or the attorney general to get the full picture of a circumstance. Additionally, there are a few complainants that will file a police report, call the district attorney, file a complaint with the AG, and file a complaint with the SOS. In these instances the entities tend to work together for an appropriate resolution.

### **CONFLICT**

HJR 5 conflicts with HB 80 and SB 124 which both seek to create a state ethics commission.

### **OTHER SUBSTANTIVE ISSUES**

Should this amendment be accepted by voters, the Legislature would need to establish a budget for the commission for fiscal year 18, the first year of operations. Additionally, the SOS notes that passage of HJR 5 will require revisions of Acts effected by the creation of the ethics commission.

CJ/jo/jle/al/jo