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FISCAL IMPACT REPORT

ORIGINAL DATE 01/30/14

SPONSOR Keller & Cook **LAST UPDATED** _____ **HB** _____

SHORT TITLE State Ethics Commission, CA **SJR** 9

ANALYST Cerny

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
		>\$ 46.0*		>\$ 46.0	Nonrecurring	Election Fund
			Indeterminate	Indeterminate	Recurring	General Fund
Total		>\$ 46.0*	Indeterminate	Indeterminate		

(Parenthesis () Indicate Expenditure Decreases) *Relates only to cost of publishing the constitutional amendment.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the Attorney General (AGO)
 State Commission of Public Records (CPR)
 Secretary of State (SOS)
 Department of Finance and Administration (DFA)
 State Personnel Office (SPO)

SUMMARY

Synopsis of Bill

Senate Joint Resolution 9 would amend Article 5 of the New Mexico Constitution by adding a new section creating the “State Ethics Commission” (“Commission”), an independent state agency that would receive, initiate and investigate complaints against state officials and employees in the executive and legislative branches of government, government contractors and lobbyists, alleged to have committed ethics violations and would be under the direction of eleven commissioners.

The Commission is to be comprised of eleven commissioners, with no more than five members from the same political party. The governor is to appoint five members, no more than two from the same party and with at least one commissioner from each congressional district; the President

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Pro Tempore of the Senate, the Minority Floor Leader of the Senate, the Speaker of the House of Representatives and the Minority Floor Leader of the House of Representatives would each appoint one commissioner; the chief justice of the supreme court would appoint as commissioners two licensed attorneys from different political parties and congressional districts.

Commissioners would be appointed for staggered terms of four years, beginning July 1, 2015 with the length of the initial terms depending on the originally appointing body. Those appointed by the governor would draw lots to determine which three commissioners would serve a two-year initial term and which two commissioners a four year term. Commissioners appointed by the legislature would serve an initial term of three years while those appointed by the chief justice an initial term of four years. Thereafter, all commissioners would be appointed for four-year terms. Members will serve until their successors are appointed and qualified. No commissioner would serve more than two consecutive terms.

No action would be taken by the Commission unless at least six members concur.

A commissioner would be entitled to a notice of hearing and an opportunity to be heard before removal proceedings for incompetence, neglect of duty or malfeasance may be initiated by the Commission or by the attorney general. No action shall be taken by the Commission unless a quorum of six members concurs.

SJR 9 provides that the Commission shall receive an annual appropriation by the legislature and that it shall employ a licensed attorney in New Mexico as executive director with a salary equal to that of a district court judge, plus other staff as necessary.

SJR 9 would need to be submitted to the people for a vote at the next general election.

FISCAL IMPLICATIONS

Under Section 1-16-13 NMSA 1978 and the NM constitution, the SOS is required to print samples of the text of each constitutional amendment, in both Spanish and English, in an amount equal to ten percent of the registered voters in the state. The SOS is also required to publish the samples once a week for four weeks preceding the election in newspapers in every county in the state. In 2012, the cost for the 2012 General Election ballots was \$46,000 per constitutional amendment. However, if the ballot size increases so it becomes longer than one page, front and back, it would increase the cost of conducting the general election. This additional cost would come from costs associated with a longer ballot, additional time required to process individuals as they vote, and additional ballot printing systems to avoid long lines at voting convenience centers.

SJR 9 anticipates creation of a new independent state agency with an executive director compensated at the level of a district court judge plus other staff “as necessary.”

SPO analysis states “It should be noted that in previous legislation (H.B. 190, 2013), a sum of \$200.0 was suggested as the appropriate funding level. This prior recommended amount may be insufficient given the fact that SJR 9 proposes that the Executive Director receive a salary of approximately \$142.3, which is the salary of a District Judge at \$54.00 per hour plus benefits at 26%.” In addition, an administrator maybe required to oversee office matters.

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Additional expenses will include the costs of travel for commissioners, office supplies, technology and communications investments and the cost of office space, but these costs are indeterminate.

SOS analysis states: “The Secretary of State's office currently administers the Campaign Reporting Act, Lobbyist Regulation Act, Governmental Conduct Act and the Financial Disclosure Act. Three (3) FTE's work primarily on matters arising under these acts. Those FTE(s), or some of those FTE's, may not be needed and could be reassigned to the Ethics Commission.”

Commission of Public Records (CPR) analysis states there would be minimal fiscal impact to their agency, related only to rule promulgation and development of records retention schedules.

SIGNIFICANT ISSUES

To successfully amend the constitution, a majority of legislators in both the House and the Senate must vote in favor of the amendment. The SOS must publish the amendment in ways specified by Article 19, Section 1, and then a majority of voters must vote in favor of the amendment in the next general election.

SOS analysis states that the resolution addresses ethics violations against “state officials and employees in the executive and legislative branches of government, government contractors and lobbyists” and also contains language that would direct the commission to:

“administer the provisions of those acts assigned to it by law that concern the conduct of state officers and employees, state contractors, and lobbyists or *the election to public office*” [italics for emphasis]. These provisions appear to encompass the Lobbyist Regulation Act, the Governmental Conduct Act, and the Campaign Reporting Act. It appears the phrase “election to public office” is intended to address campaign finance regulations over entities not listed in this resolution – political committees, political parties and independent expenditure entities, to the extent that those entities are covered by the Campaign Reporting Act.”

PERFORMANCE IMPLICATIONS

Analysis from the AGO states that SJR 9: “Duplicates the authority already granted the secretary of state, the attorney general, the district attorney and the appropriate legislative bodies in the Governmental Conduct Act, NMSA 1978, section 10-16-3, 10-16-13.1, 10-16-14, 10-16-17 and 10-16-18.”

Duplication of authority is a concern of the DFA as well: “as to the function of the proposed commission with other state agencies such as the Office of the State Auditor, Attorney General and Regulations and Licensing Department (RLD), there is a potential waste of resource due to duplication.”

According to analysis from the CPR, SJR 9 if enacted would have minimal performance implications.

TECHNICAL ISSUES

DFA analysis states that when complaints are received by the Attorney General, State Auditor, and other commissions within the auspices of RLD, it is unclear whether they will be required to forward such to the Ethics Commission.

OTHER SUBSTANTIVE ISSUES

The National Conference on State Legislatures reports on its website that:

“Forty-one states provide external oversight of their ethics laws through an ethics commission established in statute or in the constitution. Seven states—Alaska, Illinois, Indiana, Kentucky, New Jersey, New York and Washington—have more than one commission that oversees different branches of government. In the nine states that do not have ethics commissions—Arizona, Idaho, New Hampshire, New Mexico, North Dakota, South Dakota, Vermont, Virginia and Wyoming—oversight can be provided through other state agencies such as the Office of the Secretary of State or Office of Attorney General or a legislative ethics committee.”

Budgets for these agencies range from a low of \$150.0 to a high of more \$8 million, depending on the state and the responsibilities of the agencies. In Alabama, a bill enacted in 2011 (Act 2011-259), provides an annual appropriation to the Ethics Commission in an amount equal to one tenth of one percent of total funds appropriated in the State General Fund Appropriations Act. A reduction of this funding requires approval of two-thirds of the Alabama House and Senate. Some Ethics Commissions incorporate Offices of State Inspectors.

The full NCSL report may be found here: <http://www.ncsl.org/research/ethics/state-ethics-commissions.aspx>.

ALTERNATIVES

DFA analysis suggests: “A bureau within the office of Attorney General or State Auditor may be established to achieve a financial efficiency and tap into resources and expertise which may already exist within the state government.”

POSSIBLE QUESTIONS

Is it the intent of the bill for the Commission to address campaign finance complaints related to entities not listed in this resolution – political committees, political parties and independent expenditure entities, to the extent that those entities are covered by the Campaign Reporting Act?

CAC/ds