

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website (www.nmlegis.gov) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 3/4/15

SPONSOR Cook/Wirth LAST UPDATED _____ HJR 15

SHORT TITLE State Ethics Commission, CA SB _____

ANALYST Jorgensen

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	\$15.2	\$15.2	Nonrecurring	SOS Operating Budget

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)

Department of Health (DOH)

SUMMARY

Synopsis of Bill

House Joint Resolution 15 amends the constitution to create an independent State Ethics Commission to oversee the conduct of state officers and employees in the executive and legislative branches of government. The State Ethics Commission would be made up of 11 commissioners, and staffed by an executive director, who must be a licensed attorney, and other staff as needed. The Commission has authority to receive, initiate, and investigate complaints alleging violations: (1) by state officials and employees of ethics standards; (2) campaign finance violations for state and county elections; (3) lobbyist registration requirements and conduct; and (4) standards of conduct for state contractors. This amendment would be submitted for decision at the next general election or special election that is called for that purpose.

If approved by the voters, appointment of commissioners will made beginning on July 1, 2017.

FISCAL IMPLICATIONS

Under Section 1-16-13 NMSA 1978 and the New Mexico 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 them once a week for four weeks preceding the election in newspapers in every county in the state. In 2014, the SOS estimated the cost per constitutional amendment to be \$15,217.

House Joint Resolution 15 – Page 2

However, if the ballot size is greater than one page, front and back, it would increase the cost of conducting the general election. In addition to the cost of the ballot, there will be added time for processing voters to vote and would mean additional ballot printing systems would be required to avoid having lines at voting convenience centers.

HJR 15 requires the salary of the executive director to be set equal to the pay of a district court judge. In FY15, a district judge's salary was \$119.3 thousand, and total compensation, including health insurance, retirement, and other withholdings are considered, it is likely that the cost of a judgeship is approximately \$160 thousand.

The State Personnel Office stated in their 2014 compensation report that the average total compensation for a state employee was \$73.2 thousand. If additional staff were necessary, it is likely that the per-FTE cost would approximate the state average FTE cost.

In addition to the costs of hiring an executive director and staff, there would need to be sufficient funding to pay per diem expenses of commissioners to attend meetings.

Finally, the AGO reports that it is not clear from the text of HJR 15 if the Attorney General's office would provide general counsel and administrative prosecutor services for the Commission, as the AGO does for many Boards and Commissions. That could be specified in the implementation legislation that will need to be enacted if this Constitutional Amendment is adopted by the voters.

SIGNIFICANT ISSUES

The DOH writes:

HJR15 does not detail the scope of enforcement authority for the proposed State Ethics Commission. Instead, Section 1 (H) (5) states that the Commission would have such powers and duties as the legislature later provides. As such, it is unclear whether the Commission's enforcement authority would conflict with provisions already in state law for discipline and termination of state employees.

HJR15 proposes to grant the Commission investigative authority over violations of ethical standards by state employees. This may result in a duplication of efforts. State agencies already do their own investigations into employee misconduct for disciplinary purposes through their Human Resources Bureaus. It is unclear whether investigations performed by the Commission could be shared with state agencies, and whether Human Resource investigations could be shared with the Commission.

HJR15 proposes to grant the proposed State Ethics Commission with authority over essentially two separate types of functions: (1) state employee and state official ethics violations; and (2) campaign finance and lobbyist regulation. It is unclear if these functions are well-suited for regulation by the same agency.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to HB 115 which would create an independent State Ethics Commission.

TECHNICAL ISSUES

HJR15 proposes to include complaints about state employees within the scope of the State Ethics Commission’s authority. State agencies already have procedures in place for discipline and/or dismissal of state employees for misconduct. Depending on the enforcement authority granted to the Commission, there is potential for conflict with NMSA § 10-9-18 and State Personnel Board rules which set forth the process for appeals to the State Personnel Board by state employees of disciplinary actions. Further, the Collective Bargaining Agreements (CBAs) with AFSME and CWA set forth rights to a State Personnel Board appeal or arbitration.

NMSA §10-16-18 already sets forth provisions for enforcement of the Governmental Conduct Code, granting enforcement authority to the Attorney General and District Attorneys.

ALTERNATIVES

Removing state employees from this proposal would eliminate the conflicts with NMSA § 10-9-18 and State Personnel Board Rules.

A State Ethics Commission could be created through statute without the need for a constitutional amendment.

POSSIBLE QUESTIONS

1. Why are members of the judiciary excluded?

CJ/je/bb