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FISCAL IMPACT REPORT

SPONSOR Baldonado ORIGINAL DATE 01/24/17
LAST UPDATED _____ HB 93

SHORT TITLE Cabinet Secretary Sources of Compensation SB _____

ANALYST Hanika-Ortiz

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

State Personnel Office (SPO)

Attorney General's Office (AGO)

Office of the State Auditor (OSA)

SUMMARY

Synopsis of Bill

House Bill 93 (HB 93) prohibits a New Mexico cabinet secretary from receiving compensation for services from any source other than the state. The prohibition appears to begin at the time of appointment as secretary-designate and continues after senate confirmation. The bill also prohibits a cabinet secretary from serving on a for-profit corporation's board of directors.

FISCAL IMPLICATIONS

No fiscal impact for state agencies.

SIGNIFICANT ISSUES

The AGO notes the Government Code of Conduct does not prohibit state officers from accepting compensation for services performed outside their scope of employment with the state. Rather, the Government Code of Conduct restricts state officers from accepting compensation for services provided outside the scope of employment that have real, potential or create an appearance of impropriety or conflicts of interest that may cause undue influence and abuse of the office.

PERFORMANCE IMPLICATIONS

All New Mexico public officers and employees are subject to the Governmental Conduct Act. According to the SPO, the Act prohibits a public officer from doing the following:

- taking an official act to directly enhance the public officer’s financial interests;
- engaging in any official act that directly affects the public officer’s financial interest;
- if participating in a contracting process, becoming an employee of the contractor; and
- entering into a contract with a state agency unless the public officer has disclosed the public officer’s financial interests through public notice.

The Act requires the AGO, any district attorney or state agency to enforce provisions of the Act.

The Act also requires any public officer or employee to disclose in writing all employment engaged in other than employment with or service to a state agency or local government agency.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to the Government Conduct Act. In addition, agencies report a number of bills this session aim to strengthen the rules and enforcement regarding ethical conduct by public officials.

TECHICAL ISSUES

The AGO’s analysis suggest the bill is confusing as to when the prohibition is required to be in effect, and what is actually covered under the term “service” since no definition is provided.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Tightening controls on public official’s other employment activities will not be in place.

AHO/al