

LFC Requester:	Randall Soderquist
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**AGENCY BILL ANALYSIS
2013 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 **Committee / Floor Amendment** _____
Correction _____ **Committee Substitute** _____

Date February 4, 2013
Bill No: HB 190-305

Sponsor: Rep. Brian F. Egolf **Reviewing** Attorney General's Office
Short State Ethics Commission Act **Person Writing** Michael Williams
Title: _____ **Phone:** 222-9091 **Email** mwilliams@nmag.gov

SECTION II: FISCAL IMPACT ** FOR LFC OFFICIAL PURPOSES**
AGO STAFF SHOULD LEAVE SHADED AREAS BLANK

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	FY12	FY13		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General's Opinion nor an Attorney General's Advisory Opinion letter. This is a staff analysis in response to the agency's, committee's or legislator's request.

BILL SUMMARY

Summary Synopsis: HB 190 would create a bi-partisan 11 member State Ethics Commission (Commission) with the requirements that six commissioners are necessary for a quorum and at least six commissioners must agree before the Commission can take any action.

The Commission is mandated to:

- (1) receive and investigate complaints alleging ethics violations against state officials, state employees, government contractors and lobbyists;
- (2) hold hearings in appropriate cases to determine whether there has been an ethics violation;
- (3) beginning on January 1, 2014, administer the provisions of the following acts:
 - (a) the Campaign Reporting Act;
 - (b) the Voter Action Act;
 - (c) the Lobbyist Regulation Act;
 - (d) the Governmental Conduct Act;
 - (e) the Financial Disclosure Act; and
 - (f) the Gift Act;
- (4) develop, adopt and promulgate the rules necessary for it to implement and administer the provisions of the State Ethics Commission Act;
- (5) compile, index, maintain and provide public access to all advisory opinions and reports required to be made public pursuant to the State Ethics Commission Act;
- (6) draft a proposed code of ethics for state officials and state employees and submit the proposed code to each elected state official and state agency for adoption;
- (7) compile, adopt, publish and make available to all state officials, state employees, government contractors, and lobbyists an ethics guide that clearly and plainly explains the ethics requirements set forth in state law, including those that relate to conducting business with the state;
- (8) offer annual ethics training to state officials, state employees, government contractors, lobbyists and other interested persons;
- (9) employ an executive director, who shall be an attorney; and
- (10) submit an annual report of its activities, including any recommendations regarding state ethics laws or the scope of its powers and duties, in December of each year to the legislature and the governor.

HB 190 would require the Commission to appoint an executive director who is knowledgeable about state ethics law and who shall be appointed without reference to party affiliation and solely on the grounds of fitness to perform the duties of the office.

Among other things, the Commission is also given discretionary authority to:

- (1) receive and initiate complaints alleging ethics violations against state officials, state employees, government contractors and lobbyists;
- (2) issue certain subpoenas and petition a district court for enforcement of a subpoena and compelling compliance therewith; and
- (3) issue advisory opinions to state officials, state employees, government contractors and lobbyists in accordance with the provisions of the State Ethics Commission Act;

If, after a hearing on a complaint, the Commission finds by clear and convincing evidence that there has been an ethics violation, the Commission shall issue a written report that shall include findings of fact and conclusions of law. If the respondent in the case is a state official or state employee the written report may include a public reprimand or censure regarding the respondent's behavior or recommendations for disciplinary action against the respondent.

In addition, the Commission shall publicly disclose the written report and provide it, along with the evidence collected during its investigation, to the respondent, the attorney general, and the:

- (1) appropriate legislative body if the respondent is a member of the legislature;
- (2) house of representatives if the respondent is a state official elected to an office of the executive branch;
- (3) respondent's appointing authority if the respondent is an appointed state official;
- (4) appropriate state agency if the respondent is a state employee;
- (5) state agency with which the respondent has a government contract if the respondent is a government contractor; or
- (6) respondent's employer and clients if the respondent is a lobbyist.

HB 190 would require that the Commission promulgate rules establishing procedures for hearings. Hearings conducted by the Commission would not be subject to the Open Meetings Act and would be closed to the public. In the event that, after hearing, the Commission does not find by clear and convincing evidence that the respondent's conduct constituted an ethics violation, it would be required to dismiss the complaint and provide notice to the respondent. Such notice would not be made public except upon request of the respondent.

If the Commission were to find at any time that a respondent's conduct amounted to a criminal violation, it would be required to refer the matter to the Attorney General or appropriate District Attorney.

HB 190 would also transfer funding and equipment from the Secretary of State to the Commission. We note that HB 190 contains an apparent one-time appropriation of

\$200,000. Whether such an appropriation is adequate is uncertain, since the structure and purpose of the Commission are potentially quite expansive.

FISCAL IMPLICATIONS WITH ENACTING THIS BILL

There are no fiscal implications for this agency.

SIGNIFICANT LEGAL ISSUES

HB 190 is a complex bill with many facets. The main thrust of the bill does not present any obvious legal impediments. Indeed, HB 190 appears to have accounted for some of the past concerns that the AGO has expressed about similar bills.¹

PERFORMANCE IMPLICATIONS WITH ENACTING THIS BILL

There are no performance implications for this agency.

ADMINISTRATIVE IMPLICATIONS WITH ENACTING THIS BILL

There are no administrative implications for this agency.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP WITH BILLS INTRODUCED THIS SESSION

None known at this time.

TECHNICAL ISSUES OR DRAFTING ERROR

There are no technical issues or drafting errors.

OTHER SUBSTANTIVE LEGAL ISSUES

There are no other substantive legal issues.

ALTERNATIVES TO ENACTING THIS BILL

There are no recommended alternatives.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

At the present time, there is not a central public body charged with the responsibility to investigate ethics violations as contemplated by HB 190. Instead, enforcement is piecemeal: for example, the Secretary of State shares responsibility with the Attorney General for enforcing the Financial Disclosures Act; in addition, the Secretary of State shares responsibility with the

¹ For example, HB 408 from the 2011 Legislative Session included a requirement that complainants would be “[b]ound by the confidentiality rules of the State Ethics Commission and other provisions of the State Ethics Commission Act” and would have imposed a criminal penalty for such violation. The AGO expressed concern that the provision could infringe on a complainant’s First Amendment right to free speech and right to petition the government for redress of grievances.

District Attorneys and the Attorney General for enforcing the Procurement Code and the Governmental Conduct Act; finally, no agency is charged with enforcing the Gift Act.

AMENDMENTS NEEDED TO IMPROVE THIS BILL

There are no recommended amendments.