

LFC Requester:

Charlene Cerny

**AGENCY BILL ANALYSIS  
2015 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  Amendment   
Correction  Substitute

Date Prepared: 1-17-15

Bill No: HB 115

Sponsor: Rep. Brian Egolf

Agency/Code: Attorney General's Office

Short Title:

Person Writing Analysis: Betsy Glenn

State Ethics Commission Act

Phone: 827-6425

Email eglenn@nmag.gov

:

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		

(Parenthesis ( ) Indicate Expenditure Decreases)

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

	<b>FY15</b>	<b>FY16</b>	<b>FY17</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurrin g</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

Duplicates/Relates to Appropriation in the General Appropriation Act:

**SECTION III: NARRATIVE**

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

**BILL SUMMARY**

Synopsis:

HB 115 enacts the State Ethics Commission Act. The proposed Act creates an eleven-member commission as an adjunct agency of the executive branch. As an adjunct agency, the commission would have policymaking and administrative autonomy separate from any other state agency.

The commission's responsibilities include (1) investigating and hearing complaints alleging ethical violations against state officials, state employees, government contractors and lobbyists and (2) administering the Campaign Reporting Act, Voter Action Act, Lobbyist Regulation Act, Governmental Conduct Act, Financial Disclosure Act and Gift Act. The commission is precluded from considering a complaint filed more than three years after the date of the alleged misconduct and generally may not take action on a complaint against a candidate for public office between the filing date for a primary election and the date of the general election.

HB 115 provides that commission hearings are closed to the public. Unless disclosure is otherwise required or allowed by the State Ethics Commission Act, complaints, reports, files, records and communications pertaining to alleged ethical violations are confidential and not subject to the Inspection of Public Records Act. Improper disclosure of confidential material is a misdemeanor punishable by fine, imprisonment or both and a civil penalty of up to \$25,000 for each violation.

The commission is required to refer potential criminal violations to the attorney general or appropriate district attorney.

HB 115 makes corresponding amendments to the Campaign Report Act, Voter Action Act,

Lobbyist Regulation Act, Governmental Conduct Act, Financial Disclosure Act and Gift Act to reflect the commission's responsibilities for administering those Acts under HB 115.

## **FISCAL IMPLICATIONS**

### **SIGNIFICANT ISSUES**

1. Whether NM should join the approximately 41 other States that have independent Ethics Commissions similar to that proposed in this bill.

2. Section 12 of the bill provides confidentiality for complaints, reports, files, records and communications collected or generated by the commission and prohibits disclosure of confidential materials, with certain exceptions. Section 16 punishes disclosure of confidential materials with criminal and civil penalties, but applies only to the commission's director, employees and agents and "to a complainant from the time the complaint is filed until it is resolved and a final determination made." Because some complaints may be dismissed without any resolution or determination, the bill might be amended to clarify that the commission's decision to reject, dismiss or not act on a complaint constitutes a resolution or final determination that allows a complainant to disclose confidential materials without risk of penalty under Section 16.

3. Whether the initial year's proposed \$200,000 appropriation is adequate for the Commission to begin its work. More importantly, it would seem critically important that an Ethics Commission like that proposed should not be enacted unless it is fully funded at a level to be operationally effective. Query: what will that ongoing appropriation level need to be?

4. Section 11 of HB 115 provides that "commission hearings" on a complaint or investigation are closed to the public. Section 49 makes a corresponding amendment to the Open Meetings Act by adding an exception to that Act's public meeting requirements for "meetings of the state ethics commission relating to complaints or investigations of alleged ethics violations." To avoid confusion regarding whether any meeting or only hearings held by the commission relating to a complaint or investigation may be closed, the pertinent language in Sections 11 and 49 might be made more consistent. For example, the word "meetings" in Section 49 could be changed to "hearings."

### **PERFORMANCE IMPLICATIONS**

N/A

### **ADMINISTRATIVE IMPLICATIONS**

N/A

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

N/A

### **TECHNICAL ISSUES**

N/A

### **OTHER SUBSTANTIVE ISSUES**

N/A

### **ALTERNATIVES**

N/A

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo. Administration of the Campaign Reporting Act, Voter Action Act, Lobbyist

Regulation Act, Governmental Conduct Act, Financial Disclosure Act and Gift Act will remain with the secretary of state.

**AMENDMENTS**

See discussion above under "Significant Issues."