

LFC Requester:

Connor Jorgensen

AGENCY BILL ANALYSIS
2016 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

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and

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{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 January 24, 2016

Bill No: SB 124

Sponsor: Sen. Linda M. Lopez

Agency Code: 305

Short Title: State Ethics Commission Act

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

HB80

HJR5

Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

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.

Synopsis:

Senate Bill 124 enacts a State Ethics Commission Act and create a State Ethics Commission. The Commission would consist of seven members, to be appointed by the majority and minority floor leaders of the house of representatives and the senate, the governor, and the chief justice of the supreme court. The proposed Act contains definitions, qualifications for commission members, commission duties and powers, details about the appointment of an executive director and the executive director’s duties and powers, recusal/disqualification of commissioners from certain proceedings and the subsequent appointment of temporary commissioners, ethics advisory opinions to be issued by the commission, requirements for complaints, investigations and hearings, the confidentiality of commission records, the referral of criminal violations of ethics laws, limitations on commission jurisdiction, prohibition of retaliatory action against a participant in a commission proceeding, and penalties for disclosure of confidential records during the course of a proceeding. The Bill creates a temporary provision related to a report by the commission due by January 1, 2019, and also creates a \$200,000 appropriation for the commission.

Senate Bill 124 also amends the Open Meetings Act to include an exception to the open meeting requirement for “meetings of the state ethics commission relating to complaints or investigations of alleged ethics violations.”

FISCAL IMPLICATIONS: None

SIGNIFICANT ISSUES:

- Senate Bill 124 requires that for a quorum to exist, four commissioners, consisting of two members of the largest political party in the state and two members of the second largest political party must be present to transact business. This seems to be problematic because it does not contemplate what happens if the appointed commissioners do not make up this composition, or what happens in the case where there are an insufficient number of appointed commissioners.
- Section 11 contains a provision stating that the commission may issue a written report that “include[s] a public reprimand or censure or recommendations for disciplinary action.” Presumably, the recommendations are made to one of the public agencies listed in Section

11(D) that receive the commission's written report and that have sufficient authority to implement the commission's recommendations. However, this might be clarified to avoid any confusion about who is responsible for taking disciplinary action.

- Section 14 states that the commission "shall not take action on a complaint file or initiated" between the filing date of the primary election through election day of the general election except to "dismiss complaints that are frivolous, unfounded or outside the jurisdiction of the commission." There is no information about whether the three-year limitations period for complaints specified in subsection A of Section 14 is stayed during that time.

PERFORMANCE IMPLICATIONS: N/A

ADMINISTRATIVE IMPLICATIONS: N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP:

- House Bill 80 also relates to the creation of a state ethics commission, but House Bill 80 mandates the transfer of a number of existing law functions from the secretary of state to the commission, while Senate Bill 124 creates a commission that would act independently of the secretary of state's duties to review ethics violations.
- House Joint Resolution 5 would also create a state ethics commission, but does so through a proposed constitutional amendment. It contains some similar language and provisions to Senate Bill 124, but has different requirements for the commission.

TECHNICAL ISSUES

- Senate Bill 124 requires that the commission shall appoint an executive director and states that the executive director shall be an attorney. However, the Bill does not clarify whether the executive director needs to be licensed or in good standing.
- Senate Bill 124 states in Section 3 that "[t]he appointing authorities shall give due regard to geographic representation and to the cultural diversity of the state" but gives no guidance regarding how or what this means.
- Section 9 provides a public official or public employee with representation by the risk management division, but requires that the respondent "reimburse the division for the respondent's equitable share of reasonable attorney fees and costs" if the respondent is found to have committed an ethics violation. This contains no guidance about what the respondent's "equitable share" is or how to calculate it.
- Section 11 provides that the "commission may appoint a retired judge to preside over and conduct the hearing" – the chair of the commission is a retired judge, would the chair be permitted to fill this role? The section goes on to explain that the retired judge shall have no vote at the hearing, but it might be worth clarifying whether this applies to appointing a member of the commission to be the presiding officer of a hearing.
- Section 11 also provides that if a commission dismisses a complaint, that notice must be provided within five days after the finding. However, the Bill contains no such provision for what happens with the finding of a violation. It might be helpful to have a time frame for delivering findings of fact and conclusions of law.

OTHER SUBSTANTIVE ISSUES: None

ALTERNATIVES: None

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL: Status Quo

AMENDMENTS: None