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FISCAL IMPACT REPORT

ORIGINAL DATE 2/26/09
LAST UPDATED 3/10/09 **HB** 767/HCPACS
SPONSOR HCPAC
SHORT TITLE Law Enforcement Discovery & Confidentiality **SB** _____
ANALYST Hoffmann

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Attorney General's Office (AGO)
 Department of Public Safety (DPS)

No Response

Administrative Office of the District Attorneys (AODA)

SUMMARY

Synopsis of HCPAC Substitute for House Bill 767

The House Consumer and Public Affairs Committee substitute for House Bill 767 amends statutory sections related to discovery and confidentiality as follows.

It makes editorial changes to Section 57-1-1.1 NMSA 1978, and to Subsections A and B of 57-1-5 NMSA 1978.

It amends Section 57-1-1.1 NMSA 1978, within the Antitrust Act, to provide that testimony taken or material produced by compulsory process pursuant to this statutory section governing investigation by the AG and civil investigative demands shall be kept confidential by the AG unless confidentiality is waived by the person being investigated and the person who has testified, answered interrogatories or produced material, or disclosure is authorized by the court. The amendment provides further that prior to voluntary testimony or production of material in lieu of compulsory process, the person testifying or producing material shall be afforded the opportunity to request in writing confidentiality for the testimony taken or the material produced or both and such request shall be honored pursuant to the terms listed.

The substitute bill requires that materials produced by a federal agency or agency of another state that is identified as confidential or access-restricted under federal or state law, shall be given the same degree of confidentiality as would be required under those laws. The producing agency is required to identify the statutory or regulatory basis for such confidentiality. The amendment permits the AG to exchange information obtained by a civil investigative demand with comparable authorities of other states or the federal government. Information acquired by the AG through a response to a civil investigative demand or by exchange with other states or the federal government is exempt from inspection pursuant to the Inspection of Public Records Act. House Bill 767 provides that another state or a federal authority that receives confidential information from the AG shall be subject to the nondisclosure requirements of this section. The amendment provides that a written, signed confidentiality agreement between the AG and the other state or federal authority shall be sufficient to subject the other state or federal authority to the nondisclosure requirements of this section.

The substitute bill amends Section 57-12-12 NMSA 1978, governing a civil investigative demand within the Unfair Practices Act, by expanding the scope of materials to include “any other information that the Attorney General” believes to be relevant.

It further amends Section 57-12-12 NMSA 1978 to permit the AG to exchange information obtained by a civil investigative demand with comparable authorities of other states or the federal government. Information acquired by the AG through a response to a civil investigative demand or by exchange with other states or the federal government is exempt from inspection pursuant to the Inspection of Public Records Act. HB 767 provides that another state or a federal authority that receives confidential information from the AG shall be subject to the nondisclosure requirements of this section. The amendment provides that a written, signed confidentiality agreement between the AG and the other state or federal authority shall be sufficient to subject the other state or federal authority to the nondisclosure requirements of this section. If a person neglects or refuses to comply with an investigative demand, the AG may seek enforcement of the demand through the court, which may issue an order to appear for a deposition or to provide answers to interrogatories or responses to requests for admissions and may, upon failure of the person to comply with the order, punish the person for contempt.

FISCAL IMPLICATIONS

SPACS 767 makes no appropriations.

SIGNIFICANT ISSUES

The AGO1 reports that currently the confidentiality provisions of both the Antitrust Act and the Unfair Trade Practices Act hamper the ability of the Attorney General to share information with other law enforcement agencies that are engaged in multi-state investigations into the same misconduct. This bill simply incorporates a similar provision that exists in the Charitable Solicitations Act, Section § 57-22-9.2, allowing the Attorney General to share information.

OTHER SUBSTANTIVE ISSUES

The AGO states that House Bill 767 expands the pre-litigation discovery tools available to the AG from just document production to the full set of tools available in litigation: interrogatories, depositions and requests for admission of facts.

CH/mt

¹ The analysis from the Attorney General’s Office includes the following disclaimer.
*“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.”*