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FISCAL IMPACT REPORT

SPONSOR: Feldman DATE TYPED: 03/01/01 HB _____
 SHORT TITLE: Custodian of Public Records Duties SB 539/aSPAC
 ANALYST: Gonzales

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY01	FY02			
		Minimal	Recurring	GF

(Parenthesis () Indicate Revenue Decreases)

Relates to SB444 and HB632 (duplicates) _____

SOURCES OF INFORMATION

- Administrative Office of the Courts (AOC)
- Office of the Attorney General
- Taxation and Revenue Department
- General Services Department
- Office of the Public Defender
- Commission of Public Records
- State Personnel Office
- Tourism Department
- Public Regulation Commission
- Game and Fish Department
- Office of the State Engineer
- Human Services Department
- Labor Department
- Children, Youth and Families Department
- Corrections Department
- Department of Public Safety
- Commission on Higher Education

SUMMARY

Synopsis of Senate Public Affairs Committee Amendment

This amendment addresses the technical issues raised in the original bill analysis for clarity.

Synopsis of Original Bill

Senate Bill 539 amends a section of the Inspection of Public Records Act to require the custodian of public records for a public body to post in a conspicuous location at the administrative office of each public agency a notice for the inspection of public records describing: 1) a person's right to inspect a public body's records; 2) procedures for requesting inspection of public records; 3) procedures for requesting copies of public records; 4) fees for copying public records; and 5) the responsibility of a public body to make available public records for inspection.

Significant Issues

Some agencies currently require a written request to inspect public records, especially when records are stored off-site and time is needed for retrieval.

FISCAL IMPLICATIONS

There would be a minimal cost for public agencies to create and post the notices. However, for those agencies that already have public record policies, there should be no significant increase in costs since compliance with this bill would be to put the policies in writing and post them. Any fees collected by agencies who are not designated as an enterprise agency (most agencies) would revert to the general fund. The Labor Department notes "a uniform fees should also be enacted".

ADMINISTRATIVE IMPLICATIONS

There would be minimal impact to public agencies to create and post the new notices which most agencies indicated could be absorbed within their budget and in some cases may actually make staff time more efficient by having the notice posted rather than continuously explaining the procedures to the public.

AOC notes in order to provide consistent application in each public agency, it might be appropriate to have one standard description utilized in each public agency relating to the right of the person to inspect a public body's records and the responsibilities of a public body to make available public records for inspection.

The Office of the Public Defender reports its office may have difficulty complying with this legislation based on what constitutes a "public record" since most of the agency's work is covered by the attorney-client privilege. Additionally, the agency indicates "an administrative secretary FTE in Santa Fe administration would be essential to meet the requirements of this legislation."

RELATIONSHIP

This bill relates to SB444 and HB632 (duplicates), which limits fees for copying public records.

TECHNICAL ISSUES

The Office of the Attorney General notes the following technical issues:

The reference to "public agency" in subsection D [page 2, line 4 of the bill] should be changed to "public body". The term "public body" is a defined term in the Inspection of Public Records Act, so using that term would avoid any confusion or quibbling

regarding the entities covered by the bill's posting requirement. (The Commission of Public Records also notes this technical issue.)

The word "reasonable" might be added before the word "fees" in subsection D(4) [page 2, line 12 of the bill]. This change would underscore for the public body that the Act allows a custodian to charge only reasonable fees for copying public records.

OTHER SUBSTANTIVE ISSUES

The Commission of Public Records notes the following in regards to the posting of the notice:

The location prescribed for posting – "in the administrative office of each public agency" – may or may not be the most effective posting location depending on where records are located and how an agency defines "administrative area." Further the posting stipulated will only be effective for walk-in requests or for people who may visit the area and later make a written request. While there is likely no effective means of noticing all requesters, an agency's web page may provide a useful posting site, if the agency accepts requests for records via the internet.

The Human Services Department reports the following substantive issues with regard to confidential records:

Although the right to inspect public records is broad, records frequently requested of HSD by the public concern applicants and recipients of assistance. These records are confidential and protected from release by federal and state statutes and by regulations governing the Temporary Assistance to Needy Families (TANF), food stamp, Medicaid, and child support programs. In addition, HSD's own rules and regulations limit the release or use of information about applicants and recipients to purposes directly connected with the administration of the programs.

Requests for records concerning applicants and recipients of public assistance and requests for all other "public records" will require review by OGC in every case to determine whether they can in fact be released pursuant to the terms of the Act in conformance with the confidentiality provisions that protect most requested records from release except upon court order following the issuance of a subpoena.

SB 539 would require OGC to work with Income Support Division (ISD) central office staff to draft appropriate notices, so that the public can be made aware of the records they may properly request and those that are exempt from disclosure.

The Office of the Public Defender reports the following issue:

This agency can not be compelled to comply with legislation that requires posting "in a conspicuous location ... a notice describing "the right of a person to inspect a public body's records;" unless it is made clear that the public records of this department are **extraordinarily limited**. Further, the posting of such a message in a prominent area of this department – even with the necessary disclaimers – where it will be read by clients, is likely to inure a substantial harm to the trust, confidence and candor that is critical in the attorney/client relationship.