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FISCAL IMPACT REPORT



SPONSOR: Varela DATE TYPED: 01-24-02 HB 43

SHORT TITLE: Records Center Revolving Fund SB _____

ANALYST: Gonzales

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY02	FY03	FY02	FY03		
*	*	25.0	44.0	Recurring	OSF

(Parenthesis () Indicate Expenditure Decreases)

* This bill transfers money in the existing special revolving fund to the newly created state records revolving fund. The additional impact reflects the revenue now being collected from the direct publication by the agency of the New Mexico Register (these fees are authorized by statute but had, prior to August 2001, been paid to a third-party publisher.

Relates to Appropriation in The General Appropriation Acts introduced in the 2002 regular legislative session: HB2 and SB1

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY02	FY03			
25.0*	44.0*	44.0	Recurring	OSF

(Parenthesis () Indicate Revenue Decreases)

*The revenue noted is as of August 2001 being earned by the agency from the in-house publication of the New Mexico Register. The fees generated are already authorized in statute and defined in rule, but prior to August 2001, paid directly to a third party publisher.

SOURCES OF INFORMATION

LFC Files
State Commission of Public Records

SUMMARY

Synopsis of Bill

House Bill 43 amends Section 14-3-19 NMSA 1978 of the Public Records Act to delete reference to a “special revolving fund” established by Laws 1961, Chapter 111 and instead creates the “records center revolving fund” allowing the deposit of revenue generated under the Public Records and State Rules Acts into the fund. This bill also transfers funds from the current revolving fund (currently used as part of the agency’s operating budget) into the new revolving fund. Additionally, the bill makes a minor change to “clean-up” language in the act. This bill contains an emergency clause.

Significant Issues

The technological advances that have occurred in the past five years have made new services and delivery methods possible in providing access to the State's public records. In order to accommodate some of those changes, it is necessary to slightly modify the language of the Public Records Act that creates the State Records Center's revolving fund. It also provides the legislature with the opportunity to clean up language that should not have been compiled, to correct references to the Commission of Public Records (Commission).

Section 14-3-19 1978 created a nonreverting special revolving fund with which the Commission may purchase for resale items such as storage boxes, forms, microfilm supplies and other supplies and materials necessary to facilitate the various aspects of its programs. This fund was created to allow the agency to retain fund balances to make capital purchases in subsequent years.

The Commission of Public Records is statutorily obligated to ensure the production of the *New Mexico Register (Register)* and the *New Mexico Administrative Code (NMAC)*. Section 14-4-7.1 NMSA 1978, requires the *Register* to be published at least twice a month and Section 14-4-7.2 NMSA 1978, requires that the *NMAC* must be compiled and updated at least once a year. The Commission of Public Records recently took over the publication of the *Register* and the Compilation of *NMAC*. In the past, both the *New Mexico Register* and *NMAC* were produced by an outside publisher who collected fees for access to these documents. Because it is no longer possible to maintain the arrangement with the publisher, it is necessary for the Commission of Public Records to produce those documents in-house. With in-house production, the delivery time of the printed *Register* is expected to improve, and for the first time, allow the public to access the *Register* free online. This online presentation is expected to ease the use of *NMAC*.

The change in language allows the agency to deposit revenue collected pursuant to the State Rules Act (e.g. state agencies publishing notices and adopted rules and subscriptions to print versions of the *Register* in the Records Center Revolving Fund. This revenue will be budgeted to support one FTE and other costs related to producing the *New Mexico Register* and *NMAC*.

HB 2 and SB 1, the LFC recommendations, include appropriations to the Commission of Public Records of projected revenues of \$105.2 and cash balance fund of \$26.7 to support expenditures from the revolving fund and to purchase supplies from its regular operating budget and \$44.0 from revenues expected to be collected due to the production and publication of the *Register* and the *NMAC* that fund an FTE to act as editor of the *Register* and compiler of the *NMAC*. The in house production will improve the delivery time of the printed *Register* and, for the first time, make the *Register*

and the *NMAC* available free online. The online version will greatly increase the public's access to the *Register* and the *NMAC* and thereby improve the ease of its use.

The Commission of Public Records states that both HB 2 and SB 1 contain performance measures that would be adversely impacted should the legislation fail. The number of days to make filed rules available on line carries a standard of 60 days. The agency states the following issues in its analysis of this bill "Our experience with the previous private sector publisher was that current rules were not available for nearly 110 days for both the online or CD versions in FY 2001. The performance measure, "percent of annual strategic plan items achieved on schedule" would be also be impacted. The 2003 strategic priorities include action items to "Provide on-line access to SRCA collections" and "Create a system of ready access to information on proposed rule making, adopted rules and the current rules of the Executive that is freely accessible to all New Mexicans." When developed, these action items targeted moving the *Register* and *NMAC* from *publications available only by subscriptions* to free on-line publications. Failure of this legislation would require third-party publication and paid or limited access to the publications and a return to delayed availability of current rules on-line.

The Department of Finance has opined that current language in the revolving fund does not allow budgeting of revenue collected from *Register* activities. Failure of this bill will impede the agencies ability to budget revenue and expenditures necessary to produce the statutorily mandated publications.

FISCAL IMPLICATIONS

This bill would allow the agency to collect and use the revenues generated by the production and publication of the *Register* and *NMAC* for these same purposes. State agencies have paid for publishing their notices of rule-making and adopted rules since the enactment of the *New Mexico Register* provision of the State Rules Act. Those payments went to a private publisher and now are made directly to the Commission of Public Records. Rates remain the same as those established under the private sector publisher and are included in the appropriation for the agency as offsetting expenditures and revenue. ***There is no increased fiscal impact to the State.***

ADMINISTRATIVE IMPLICATIONS

The agency states the sudden termination of the contract to publish the *New Mexico Register* and *New Mexico Administrative Code* forced the agency to explore other alternatives. With the technology now available, the agency was able to assume publication of the *New Mexico Register* and the *NMAC* and used current resources to fund a term position (FY 2002 only) to act as Editor and Compiler. These resources were originally budgeted for expenditures supporting records and archives revolving fund activities. Those activities were deferred to accommodate the funding of the position so that the Commission could continue to carry out its duties under the State Rules Act.

RELATIONSHIP

HB 2 and SB 1 include appropriations to the Commission of Public Records that fund an FTE to act as editor of the *Register* and compiler of the *NMAC*. This bill is necessary to support the recommendation made by the LFC for this agency and the use of these funds.

JMG/njw