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FISCAL IMPACT REPORT

SPONSOR: Vaughn DATE TYPED: 02/14/03 HB 254/aHGUAC

SHORT TITLE: Amend Inspection of Public Records Act SB _____

ANALYST: Gonzales

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			Nominal		

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB112 and SB36

SOURCES OF INFORMATION

Responses Received From
 State Commission of Public Records (CPR)
 State Highway and Transportation Department (SHTD)
 Attorney General (AG)
 Department of Health

SUMMARY

Synopsis of HGUAC Amendment

The House Government and Urban Affairs Committee amendment removes three words from the original bill language to clarify that only tactical response plans or procedures prepared for or by the state or political subdivision of the state are excluded from inspection by the public as opposed to “records that contain” the items listed above.

Synopsis of Original Bill

House Bill 254 provides an exception to the Inspection of Public Records Act for “records that contain tactical response plans or procedures prepared for or by the state or a political subdivision of the state since the publication could reveal specific vulnerabilities, risk assessments or tactical emergency security procedures that could be used to facilitate the planning or execution of a terrorist attack.”

Significant Issues

This bill is for the Corrections Oversight and Justice Committee, the Information Technology Oversight Committee and the Legislative Health and Human Services Committee.

According to both the Office of the Attorney General and the Department of Public Safety, this bill relates to the package of emergency preparedness bills that resulted from the legislation passed during the 2002 legislative session (SJM62/HJM34, emergency Preparedness Study). This bill was drafted in response to that legislation requesting the Office of the Attorney General, Department of Public Safety and the Department of Health to work together to assess the existing statutory and regulatory laws and functional emergency management areas. Further, the AG notes this legislation was based on the responses received from town hall meetings as well as meetings with interested groups such as the American Civil Liberties Union, the New Mexico Hospital and Health Systems Association, the New Mexico Press Association, the Foundation for Open Government and other state agencies.

ADMINISTRATIVE IMPLICATIONS

State Commission of Public Records staff would be required to identify records in the agency's custody that would be affected by the exception, and procedures—and possible rule changes—implemented to address denial of access to the records referred to in this bill. Additionally, agency staff in conjunction with the CPR staff would need to update records retention and disposition schedules.

RELATIONSHIP

This bill relates to House Bill 112 and Senate Bill 36 (duplicates) that propose to amend the Inspection of Public Records Act to provide an exception for certain veterans' discharge papers filed with county clerks.

This bill also relates to the package of emergency preparedness bills that resulted from the legislation passed during the 2002 legislative session (SJM62/HJM34, emergency Preparedness Study).

HB231, Public Health Emergency Act
HB232, Emergency Powers Code
HB253, Allow Governor Authority to Order Evacuations
SB194, Public Health Emergency Response Act
SB365, Substance Abuse and Crime Prevention Act

OTHER SUBSTANTIVE ISSUES

The State Commission of Public Records states that for clarity purposes, the definition section of the Act should be amended to define: what records, for example, fall within tactical response plans or procedures; tactical response plans or procedures; building plans or blueprints; information technology plans, required by law of state entities, that contain detailed information about agencies' IT infrastructure and disaster response provisions and, theoretically, could be used in planning or executing attacks on communications.

The State Highway and Transportation Department recommends that the exception be extended to include plans and other documents that contain information concerning bridges, transit facilities, public buildings, computer and telecommunications infrastructure and other critical public infrastructure which could be vulnerable to terrorist attacks.

POSSIBLE QUESTIONS

The State Commission of Public Records raises the following questions:

- Who makes the decisions with respect to what records qualify under this exception? Section 14-2-7 NMSA 1978 provides for designation of records custodians. Can each individual custodian decide what records in his or her custody are to be excepted from inspection? This could produce a situation where records that are freely available at one agency are denied at another.
- How long is access to be denied? When and how is record once determined to qualify for the exception, in effect, declassified? Or is the classification permanent?

JMG/sb/njw