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FISCAL IMPACT REPORT

SPONSOR: Duran DATE TYPED: 2/06/03 HB _____

SHORT TITLE: Public Records Exception SB 36

ANALYST: Gonzales

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
		\$0.1	Minimal	Recurring	County

(Parenthesis () Indicate Expenditure Decreases)

Duplicates HB 112

SOURCES OF INFORMATION

Responses Received From

Commission of Public Records, State Records Center and Archives
 Attorney General
 Department of Military Affairs
 Veterans' Service Commission

SUMMARY

Synopsis of Bill

Senate Bill 36 creates an exception under the Inspection of Public Records Act for military discharge papers filed with the county clerks of the various counties of the state.

Significant Issues

There is significant confidential information contained in the discharge papers of veterans such as social security numbers, date of birth, medical information, type of discharge, address, medals awarded, family information and location of their service.

The Commission of Public Records notes the following:

Military discharge records are federally created and regulated by federal regulations governing disclosure of personal information. The records addressed in the proposed

exemption are the copies filed voluntarily by veterans with the county clerks. The bill does not address copies filed or located elsewhere. Further, the provisions with respect to commingled records **may** conflict with federal requirements regarding redaction of identifying information. Those dealing with non-commingled records appear to exceed current federal standards as well as access provisions in place at the NM Commission of Public Records. Importantly, the bill bases the exemption – in other words, provides confidentiality for – records based on the filing system employed and filing location – not on privacy issues.

Differing standards may well exist with which the Commission of Public Records will have to comply in meeting requests for access to these records since 1) copies of these discharge papers may be filed in more than one location and, accordingly, the State Archives may receive them from more than one source; 2) the exemption only addresses those filed with the county clerks; 3) some may be commingled and others not; and 4) some commingled may have exemption requests attached.

FISCAL IMPLICATIONS

The Commission of Public Records states there would be no fiscal impact on the Commission in FY03 or FY04. However, as county records are transferred to the agency in the future, new procedures may need to be created to monitor access to these records. The bill, however, could possibly reduce costs and simplify administrative processes at the county level since the county clerk could simply deny access to non-commingled records, based on the proposed exemption, rather than having to redact selected information in the records that is confidential pursuant to federal law.

CONFLICT, DUPLICATION, RELATIONSHIP

Senate Bill 36 is a duplicate of House Bill 112.

The Commission of Public Records indicates the provisions of the bill **may** conflict with, in the case of commingled records, federal restrictions placed on the disclosure of identifying, personal information contained within military discharge records. With respect to non-commingled papers, the provisions appear to exceed federal requirements and current access procedures with respect to discharge papers held by the NM Commission of Public Records.

OTHER SUBSTANTIVE ISSUES

The Commission of Public Records lists the following issues:

- The bill only addresses discharge papers filed with county clerks. The originating copies are maintained by the federal government (although many were lost in the fire that destroyed the military records center in St. Louis). Some discharge papers are filed with the NM Veterans' Commission; some are filed with county assessors in the process of determining a veteran's qualifications for tax exemptions; and some have been accessioned into the State Archives and are in the legal custody of the State Commission of Public Records. With respect to the latter, there are currently 25 linear feet of military discharge records maintained by the agency. These records date from the Civil War

(1860s) and the World War II (1945-1947) periods. Access to these records is based on federal regulations and the Inspection of Public Records Act. The enactment of this bill would create a blanket exception to the Inspection of Public Records Act for non-commingled discharge papers filed in county offices prior to July 1, 2003 and for all discharge papers filed after that date in such offices. It would also allow open access to those pre-2003 records commingled with other recorded documents, unless the veteran requests an exception. This would create inconsistent access policies to military discharge records within the state, since this bill only applies to those discharge records filed with county clerks.

- The bill creates an exemption to the Inspection of Public Records Act for military discharge papers filed with the county clerks based on the filing system employed and the filing location, rather than regard for privacy issues. While the bill does make provision for veterans whose records have been commingled with other recorded documents to request confidentiality, the question has to be asked whether it is appropriate to place this burden on these veterans, especially when other veterans whose records have not been commingled by virtue of the filing system used are granted what is essentially unlimited confidentiality. Further, many of these veterans whose records have been commingled may well be deceased or unable to make such requests – and the bill makes no provision for requests for exemptions from disclosure filed by anyone other than the veteran.

JMG/yr:pr