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## FISCAL IMPACT REPORT

SPONSOR: Snyder DATE TYPED: 2/20/03 HB \_\_\_\_\_  
 SHORT TITLE: Inspection of Public Water & Wastewater Info. SB 382/aSRC  
 ANALYST: Maloy

### APPROPRIATION

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

Relates House Bill 254, exempting from public disclosure risk assessments and tactical response plans prepared by or for the state which may be used to facilitate a terrorist attack.

### SOURCES OF INFORMATION

Responses Received From  
 Environment Department  
 Public Regulatory Commission  
 Department of Public Safety  
 New Mexico Finance Authority

### SUMMARY

#### Synopsis of SRC Amendment

The Senate Rules Committee has amended SB 382 to clarify the language to relate directly to security vulnerabilities and not environmental assessments. This was an amendment recommended by the agencies that reviewed the original bill.

#### Synopsis of Original Bill

Senate Bill 382 amends the Inspection of Public Records Act to provide an exemption for “security and risk assessment information concerning drinking water and wastewater facilities”. The effect of this exemption is that such assessment records would not be open for public, or even inter-agency, review and copying.

Significant Issues

1. As a matter of public policy, both federal and state, the objective should always be making government records readily available for review and copying by any member of the public. The belief is that the citizenry had a right to know its government's business.

The question raised is whether the right of the citizenry to know its government's business is outweighed by government's interest in keeping "security and public" risks assessments relating to drinking and wastewater records from the public's view.

In today's political environment, the government interest in seeking exemptions such as this is largely protecting its citizenry from terrorist attack.

2. Existing exemptions in the law include such circumstances as:
  - i. records pertaining to physical or mental examinations and medical treatment of persons confined to an institution;
  - ii. letters of reference concerning employment licensing or permits';
  - iii. letters or memorandums that are matters of opinion in personnel files or students' cumulative files;
  - iv. law enforcement records revealing confidential sources, methods, investigations, possible evidence, and the like;
  - v. trade secrets, attorney-client privileged information; and
  - vi. public records containing the identity of, or identifying information relating to an applicant or nominee for the position of president of a public institution of higher education.
3. Does keeping water and wastewater facility security and risk assessment information from the public share an underlying purpose similar to those exemptions currently in the law? What if having this information readily available means that it may be used by those who seek to achieve extensive harm on a wide-scale basis?
4. SM 382 contains the term "risk assessment". This is a term of art for an environmental evaluation. Use of this term could be problematic as used in this public records exemption. For example, a public water system could decide that risks posed by contaminants found in the water supply fall under the exemption in order to keep chemical data from the public.

Presumably this is an unintended consequence of SB 382 that can be addressed through a minor amendment. (See Amendment section below.)

**FISCAL IMPLICATIONS**

The fiscal and/or administrative impact of this exemption is minimal.

**AMENDMENTS**

In order to keep a clear distinction between information that may be used by a terrorist to determine weaknesses in the water system that may be used to inflict maximum harm (vs.) environmental information (or other such information) relating to the cleanliness / purity / availability / etc. of water, the following amendment(s) are proposed:

- Page 2, Line 21, strike “risk” and insert “security vulnerability assessments”. Or,
- Alternatively, Page 2, Line 21, strike “risk assessment information concerning” and insert “information regarding risks posed to system security at”. Or,
- Alternatively, Page 2, Line 21, strike “and risk assessment information”.

**SJM/yr/njw**