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FISCAL IMPACT REPORT

SPONSOR: McSorley DATE TYPED: 03/13/03 HB _____
 SHORT TITLE: Study Permanent Public Records SB SJM 57
 ANALYST: Gonzales

APPROPRIATION

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

(Parenthesis () Indicate Expenditure Decreases)

Duplicates HJM54 and Relates to HB112, HB254, and SB36

SOURCES OF INFORMATION

LFC Files
 State Commission of Public Records (CPR)
 Department of Health (DOH)

SUMMARY

Synopsis of Bill

Senate Joint Memorial 57 requests the State Commission of Public Records to establish a multi-agency task force to study confidentiality and open access in the management of the state's permanent public records and to develop recommendations concerning any modifications. The task force is also requested to report its progress and recommendations to the appropriate, appointed Legislative interim committee no later than October 2003.

Significant Issues

This memorial was requested by the State Commission of Public Records. According to CPR, most of the records now forever barred from public view could be opened at some point, adding to the accountability public access provides and contributing to the understanding of New Mexico's governmental processes and decision-making. However, the New Mexico statutes imposing confidentiality are numerous and the issues involved varied. The Commission, which debated the matter at some length, feels that it is imperative to solicit the opinions and recommendations of representatives of agencies that create and maintain permanent, confidential records before any effort to modify current restrictions is undertaken. Therefore, this memorial was requested. A significant number of the state's permanent records are deemed confidential under various state statutes, and for many of these there are no time limitations on the confidentiality

requirement. Consequently, the Commission and other state agencies that choose to hold their permanent records have an obligation to maintain these records in perpetuity – long after the need for confidentiality may have expired – with no chance that the records will ever be made available for public research.

Public records are preserved to promote accountability in government by providing a foundation for the development of present and future policies and for understanding New Mexico's history. The legislature has recognized the need for the protection of personal privacy as well as the need for open government. This memorial points out that the original need for confidentiality may no longer apply to some of these records and that these records may be of great value to scholars and others, yet they are not accessible to the public.

A variety of state and federal statutes make health and medical records confidential. This memorial does not address the need for personal health information to remain confidential. As the Department of Health points out, the federal Health Insurance Portability and Accountability Act (HIPAA) that addresses the security and privacy of health data would impact on decisions made by the task force created by this memorial. Therefore, DOH suggests that at least one expert in HIPAA should be a member of the Task Force.

FISCAL AND ADMINISTRATIVE IMPLICATIONS

The Commission of Public Records currently receives permanent, confidential records from well over 100 state agencies. These records require processing, storage under controlled conditions, and conservation, with the attendant costs, yet they will never be available to the public. The Commission, alone, presently maintains over 40,000 linear feet of permanent confidential records. The Commission is by no means suggesting that these records not be retained. Indeed, it believes that many provide important documentation of governmental processes and decisions that would be of considerable value to researchers and others interested in the history of New Mexico state government. However, under present provisions, the Commission must continue to incur the costs associated with preservation of these records with no expectation that they will ever be opened to the public, even after any reasonable basis for their confidentiality is gone.

It should be noted that the issue of unlimited confidentiality is addressed in the narrative portion of the budget recommendation for the Commission of Public Records in the Legislative Finance Committee budget document.

DUPLICATE/RELATIONSHIP

This memorial is a duplicate of HJM54. This memorial also relates to HB112, HB254 and SB36 which all relate to exceptions to the Public Records Act.

House Bill 112 and Senate Bill 36 create 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.

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.”

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Any additional exceptions created by these bills, should they become law, could be included in those confidentiality and access provisions the task force requested in this memorial would study.

POSSIBLE QUESTIONS

Is the timeline sufficient for the multi-agency task force to complete the complex and demanding tasks requested in this memorial?

Should the task force include a member from the Office of Vital Records and Health Statistics or others from the Department of Health due to the confidential status of health or medical records?

JMG/njw