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FISCAL IMPACT REPORT

SPONSOR Rodriguez DATE TYPED 02/10/05 HB _____

SHORT TITLE Local Government Databases as Public Records SB 403

ANALYST Ford

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			Minimal – See Narrative		Various

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with
HB 449, SB 319

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General (AGO)
Corrections Department
State Commission on Public Records

SUMMARY

Synopsis of Bill

Senate Bill 403 adds counties and municipalities to existing law that designates information contained in information systems databases as public records and provides for the disclosure and permitted use of those records. The bill also provides that a state agency, county, or municipality that charges royalties for an electronic copy of a public record may base the royalty on the cost to the public of developing the database.

Significant Issues

Section 14-3-15.1 NMSA 1978 uses archaic terms (such as “computer tape”) that do not specifically address the electronic transmission of information in databases or reflect current technologies such as USB flash drive devices and CD burners. The AGO notes that state agencies have had difficulty construing current law because of the archaic language.

The AGO also notes that the law treats information differently depending on its format. If information in a database is printed or typed, it is subject to disclosure pursuant to the Public Records Act. However, if the information is provided using a “computer tape or other medium containing a computerized database,” then different use restrictions apply. For example, in those cases, the database may not be used for solicitation or advertisement and the information may not be accessed by any other person unless approved beforehand. The AGO writes, “If the intent of this bill is to restrict the use of those public records after disclosure, it should impose those restrictions regardless of the media used to produce that information.”

In addition, the law’s creation of a disparity between paper and electronic formats does not recognize that many agencies may actually prefer to provide information in a digital format as it may be easier and less expensive than providing paper records.

The State Commission on Public Records notes that the existing provisions relating to royalties for the use of the computer database have been the subject of litigation. Most recently, the State Court of Appeals upheld the right of the Taxation and Revenue Department to deny a request for electronic records based on the refusal of a firm to pay royalties.

The State Commission on Public Records raises a question regarding the prohibition on state employment for any individual convicted of violating the usage restrictions of a database. The Commission asks whether this prohibition should extend to county and municipal employment as well as state employment.

FISCAL IMPLICATIONS

The bill may result in minor costs to the State Commission on Public Records to provide assistance to local governments regarding the proper handling of computer database records.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This bill conflicts with Senate Bill 319 and House Bill 449, both of which create new provisions regarding county and municipal databases that are based on the provisions of current law amended by Senate Bill 403.

POSSIBLE QUESTIONS

Current law uses out-dated terminologies which have caused difficulties to state agencies in implementation. Would this bill compound those difficulties by extending the provisions to counties and municipalities? Would it be appropriate to update the language of existing law to reflect current technologies and practices?

Is it appropriate for use restrictions to vary depending on the format of the information provided?

Should an individual who violates the permitted usage provisions of the law be barred from county and municipal employment as well as state employment?

EF/lg