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FISCAL IMPACT REPORT

ORIGINAL DATE 2/19/07

SPONSOR Sanchez, M LAST UPDATED _____ HB _____

SHORT TITLE Public Computer Database Records SB 829

ANALYST Ortiz

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$0.1	\$0.1	\$0.1*	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

* See Narrative

Duplicates HB 950

SOURCES OF INFORMATION

LFC Files

Responses Received From

Commission of Public Records
 Office of Chief Information Officer
 Public Education Department (PED)
 General Services Department (GSD)
 NM Environment Department (NMED)
 Higher Education Department (HED)

SUMMARY

Synopsis of Bill

The Senate Bill 829 enacts a new section which:

- restates the existing provision contained in Section 14-3-15.1 NMSA 1978 that, unless

otherwise provided by state or federal law, information contained in a computer database is a public record and is subject to disclosure in a printed or typed format;

- provides that the state shall authorize an electronic copy of information in a database that is a public record on a currently available electronic medium for a person if the person pays a reasonable fee based upon the costs of materials, making the electronic copy and personnel time required to research and retrieve the electronic record;
- stipulates that, subject to confidentiality provisions of law, the state may permit another federal, state or local government entity access to all of any portion of a computer database created by the state; and
- provides that the state, at its option and if it has the capability, may permit access or use of its computer and network system to search, manipulate or retrieve information from a database and may charge reasonable fees based upon the costs of materials, personnel time, access time and the use of the network.

Additionally, the bill amends Section 14-3-15.1 NMSA 1978 to delete existing Subsection C, which permits the copying of computerized database that is a public record for a person but which also establishes limitations on the use of the database and provides for payment of a royalty or other agreed-upon consideration to the state.

The bill further amends the same section by deleting existing Subsection G, which establishes penalties for the unauthorized use of a database.

FISCAL IMPLICATIONS

The Chief Information Officer lists the following fiscal concerns:

The exact impact on the general fund cannot be quantified as it is based on a number of requests and the complexity associated with meeting the request as well as additional staff training.

Agencies will accrue significant administrative and staff costs to address changes proposed in SB 829. The exact amount cannot be quantified because it is based on the number of requests and their complexity and the additional training that will be required for staff.

The state and its agencies can expect to incur significant costs to remediate its network and computer systems and restore data if untrusted entities insert malicious code into the state network and computer systems.

Individuals or organizations requesting databases under the proposed changes can expect to invest heavily in the programming and technical infrastructure needed to extract data from databases. Specifically, the requestor will need the exact version of the database management system and the same technical infrastructure (server hardware and operating system) used to create the databases. Without these, the data cannot be obtained.

SIGNIFICANT ISSUES

Office of the Chief Information Officer offers provides the following, which are echoed by other respondents:

- The Public is entitled to some expectation of privacy with respect to personal data stored within state computer systems. NMSA 1978 14-3-15.1 currently provides those protections.
- In 1995, New Mexico passed legislation making it unlawful for any New Mexico's Motor

Vehicle Department (MVD) employee or contractor to disclose personal information about an individual obtained in connection with the issuance of a driver's license, driver's permit, vehicle title, or vehicle registration. Section 66-2-7.1 NMSA 1978 authorizes limited disclosure including disclosure to the individual/owner, the individual's authorized representative, or for nine purposes specified by law (e.g., law enforcement, legal action, research, or use by insurance companies and motor vehicle dealers).

- Section 66-2-7.1 NMSA 1978 prohibits both current and former state employees and contractors from disclosing motor vehicle data.
- SB 829 exposes the state network, agency networks, and agency computer systems to major security threats by allowing untrusted users into the state network, thereby increasing the likelihood that malicious code such as Trojan horses and viruses will be inserted. State agencies, including GSD Information Systems Division, currently spend hundreds of thousands of dollars on security software each year preventing the security exposures SB 829 will introduce.
- SB 829 makes no distinction between a “database” and the data/information contained within a database. A database consists of a schema (table structures), executable code needed to run the database, and a technical platform (a database management system, operating system, and server hardware). A requestor will not be able to access data contained within the database unless they have the same versions of the database management system, operating system, and server hardware, and create computer programs to extract the data from the database.
- State databases contain names, addresses, telephone numbers, driver’s licenses numbers, social security numbers, and other personally identifiable information of individuals who interact with state government. A recent NY Times article indicates identity fraud crime is the nation’s fastest growing crime. U.S. losses from identity fraud crime in 2006 were \$49 billion. The most prevalent type of identity theft is referred to as “synthetic” in which criminals fabricate an identity using the real names, addresses, social security numbers, and other personal information – exactly the kind of information state databases contain. NMSA 1978 14-3-15.1 currently provides the needed protections to guard against identity theft; this bill diminishes that protection.
- Congress enacted the *Driver's Privacy Protection Act of 1994 (DPPA)*, which established a regulatory scheme to restrict States' abilities to disclose a driver's personal information without first obtaining a driver's consent. The proposed State statute is silent on obtaining consent to release personal information.
- Disclosure of personal information is regulated at the Federal level by the Federal Privacy Act (45 U.S.C.A. section 552a) and the principles of fair information practices required by Federal law. The Federal Privacy Act also: prohibits the disclosure of any record by any means of communication except by prior written consent of the individual to whom the record pertains (an Opt-out process) except under certain conditions; requires an accounting of certain disclosures; and, makes it unlawful for a state agency to deny an individual any right or privilege based on his or her refusal to furnish a social security number. By providing *express consent*, individuals for whom personal information has been collected in the process of obtaining a driver's license or motor vehicle registration give the State their permission to use that information for other purposes. *Express consent* may be obtained in writing, verbally, or through electronic means. Current New Mexico statutes are silent on addressing these conditions of the Federal Privacy Act, as well as obtaining consent to release personal information.

PERFORMANCE IMPLICATIONS

The Commission of Public Records (and other agencies) will have to ensure that confidential information is secure and not made available. The redaction of confidential information could prove extremely time-consuming and prohibitively expensive and the costs for such redaction are not covered in the items that can be considered in setting fees. This bill may also require a review of database security and may require updates to the appropriate systems.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Duplicates HB 950

TECHNICAL ISSUES

On Page 2, Line 13, recommend striking “and if it has the capability”. This is too subjective. Persons requesting to access state computer databases would always assert the existence of a state capability. Access to state databases poses security issues, confidentiality issues and would inevitably disrupt the day-to-day activity of state employees. The ability to exercise discretion in requests to review databases should be based on these considerations, not if it has the capability.

Article 14-3-15.1.B refers to “the commission”, which is not defined in the bill. Nor are the terms “data,” “database” or “information”.

OTHER SUBSTANTIVE ISSUES

According to PED, this bill appears to eliminate the possibility of the state to exercise proprietary control over its data; it also permits people in the private sector, including business entities, to profit from information in governmental databases. This bill could dilute the image of the state. For example, while current law requires the State Seal to be maintained by the Secretary of State, under the terms of this bill anyone could request it electronically from a state agency for his or her use in advertisements or whatever else with impunity. State law does not currently prohibit the use of the seal.

POSSIBLE QUESTIONS

Should agencies subject to such laws as HIPPA, Sarbanes-Oxley, FERPA, FBI, or other confidentiality or privacy issues be exempt from this legislation?

EO/mt