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FISCAL IMPACT REPORT

ORIGINAL DATE 02/05/10
 LAST UPDATED 02/15/10 **HB** 242/aHJC

SPONSOR Park

SHORT TITLE Crime of Obstructing State Audits **SB** _____

ANALYST Archuleta

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY10	FY11	FY12	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total	NFI	NFI	NFI			

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

State Auditor's Office (SAO)
 Department of Finance and Administration (DFA)
 Public Education Department (PED)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment to HB 242 clarifies the essential elements of the crime of "obstruction of a state audit" by requiring that a person committing this offense must: knowingly and intentionally cause to be made to the state auditor or designee a false or misleading report with the intent of deceiving or misleading the state auditor; and knowingly and intentionally obstruct the state auditor or designee in the performance of an audit

Synopsis of Original Bill

House Bill 242 amends the State Audit Act by making obstruction of a state audit a misdemeanor subject to sentencing in accordance with the provisions of Section 31-19-1 NMSA 1978. The bill defines obstruction of a state audit as making or causing to be made to the state auditor or auditor's designated agent a false, misleading or unfounded report with the intent of deceiving or misleading the state auditor in the performance of an audit, special audit, examination or investigation. The bill also defines obstruction of a state audit as "intentionally hindering or obstructing the state auditor" in the performance of an audit, special audit, examination or investigation is a misdemeanor.

FISCAL IMPLICATIONS

No fiscal impact.

SIGNIFICANT ISSUES

The State Auditor’s Office notes the following:

This is a targeted measure that is critical to protect against fraud, waste and abuse in government. Early detection of fraud, waste and abuse can be avoided by obstructing audits. This legislation should provide a deterrent against efforts to prevent the government from detecting fraud. Acts covered by the statute include intentionally:

- lying to an auditor, threatening an auditor, concealing records, or refusing to allow the State Auditor access to financial records when the State Auditor is conducting an audit special audit, examination or investigation pursuant to the Audit Act; and
- not providing records or information to the State Auditor in a timely manner or otherwise stalling or delaying an audit, special audit, examination or investigation conducted pursuant to the Audit Act.

However, the Department of Finance and Administration notes the following:

There are two conflicting sides to this bill: it should help prevent false reports to the State Auditor; however, it may prevent legitimate reports to the State Auditor, as people may be afraid of making a mistake that could be interpreted as intent to mislead or deceive. Also, without further definition in the bill, legitimate differences of opinion, different interpretation of facts, etc.— between those being audited or investigated and the State Auditor’s designee— could easily be labeled as intent to mislead or deceive by those being audited and investigated.

Furthermore, the bill does not define “report.” Consequently, verbal communication as well as written communication could be construed as being a “report.” This means that any communication with a designee of the State Auditor could be construed as misleading or deceiving, if it turns out that the communication is not factually correct. This is very good, but it is not conducive to communication. I was an independent auditor for approximately ten years and did a significant amount of governmental audits. As an auditor, you do not want people to be afraid to talk to you, even if it means that you then have to cull the truth from the hyperbole, opinion, and misperceptions.

PERFORMANCE IMPLICATIONS

If it negatively impacts communication between the auditors and those being audited, this bill could hinder audits, examinations, and investigations.

TECHNICAL ISSUES

DFA indicates that the bill uses the word “obstruction” and defines it. However, it then uses the phrase “hindering or obstructing,” without defining the word hindering. This appear to be a technical flaw, as “hindering” could be construed to mean just about anything (e.g., rescheduling an audit entrance conference, allowing a key employee to take a day off during an audit, etc.)

ALTERNATIVES

Except for the criminal penalty, this could be made part of the State Auditor's rules. However, it is only the criminal penalty that will give it any enforcement power.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Without this bill, if a person intentionally makes a false report, there are no criminal penalties.

DA/mew:mt