

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: HB 379a

50th Legislature, 1st Session, 2011

Tracking Number: .183618.3

Short Title: Real Time Sunshine Portal Updates

Sponsor(s): Representative Nathaniel “Nate” Gentry and Senator Timothy M. Keller

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AS AMENDED

The House Consumer and Public Affairs Committee amendments remove from the title and in the body of the bill all of the requirements that the Department of Finance and Administration (DFA) update the Sunshine Portal website in real time.

Original Bill Summary:

HB 379 amends a section of the *Sunshine Portal Transparency Act* to require DFA to update the Sunshine Portal website as new information is received, but at least monthly, and to make every effort to contain real-time information as is reasonably and technically feasible.

HB 379 also enacts a new section of the *Inspection of Public Records Act* (IPRA) to provide a penalty for violation of the act, including that a person who:

- knowingly and in bad faith withholds public records subject to inspection is guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than \$500 for each offense; and
- knowingly and willingly destroys public records in order to circumvent a request for records is guilty of a fourth degree felony, and subject to 18 months imprisonment and fines of up to \$5,000.

Finally, HB 379 contains an effective date of July 1, 2011.

Fiscal Impact:

HB 379 does not contain an appropriation.

Original Fiscal Issues:

The analyses by several state agencies have indicated that implementing HB 379 will involve costs:

According to an analysis by the Department of Information Technology (DoIT), the Sunshine Portal is a pilot project managed by DoIT that includes DFA and other agencies. This analysis also outlines the following fiscal impacts:

- 180 hours per month of additional processing time;
- an average of 60 hours per month of staff resources to monitor the extraction, transfer, and loading of data from the Statewide Human Resources, Accounting and Financial Management Reporting System (SHARE);
- additional employment positions to run a daily data query from SHARE;
- modifications to the Sunshine Portal application and database to accept daily data that will cost an estimated \$40,000; and
- although total expenditures and obligations on the Sunshine Portal thus far are \$343,154, no funding is appropriated to support the changes outlined in HB 379.

According to an analysis by the State Land Office (SLO):

- the current monthly process is automated, in line with the monthly distribution process, and is considered to be in “maintenance mode.” which demands little oversight;
- providing real-time information would increase the processing time on the mainframe and increase SLO’s charges as it performs off-peak weekly data downloads; and
- since the timeframe to download data is shorter, additional SLO resources will be required to meet data submission deadlines.

According to an analysis by the Administrative Office of the Courts:

- due to the potential increase in misdemeanors or fourth degree felonies, there may be an increase in the amount of work that needs to be done by the courts;
- as penalties become more severe, defendants may invoke their right to trial and trial by jury; and
- more trials will require additional judge time, courtroom staff time, courtroom availability, and jury fees.

However, an analysis by the New Mexico Corrections Department (NMCD) indicates that:

- the criminal sanction portion of the bill seems unlikely to increase the number of new felony convictions;
- NMCD estimates that there will be no new felony convictions related to HB 379 in the relevant three year period; and
- the misdemeanor crime created by the bill is for a fine only, and does not appear to require NMCD to provide any probation supervision.

Finally, according to an analysis by the Department of Health (DOH), “in the event that a DOH employee is accused of criminal misconduct under IPRA, [the department] would have a duty to defend the employee until a determination that the conduct was truly criminal. [This] could be costly for both the individual and DOH.”

Original Substantive Issues:

These agency analyses identify other issues with HB 379.

According to an analysis by DoIT:

- Batch processes to extract the SHARE data files for the Sunshine Portal require six hours of system processing time. If the Sunshine Portal extracts were to be run on a nightly basis it would consume approximately 180 hours of processing time per month. Additionally, the batch processes require approximately one to four hours of technical staff involvement. If the Sunshine Portal extracts were to be run on a nightly basis it would consume, on average, 60 hours per month.
- To conclude, the DoIT analysis suggests that it may be possible to update the Sunshine Portal on a weekly basis, “resulting in a cost of one fifth of the price of the daily processing.”

Similarly, the SLO analysis indicates that:

- Oil and Natural Gas Accounting and Revenue Database (ONGARD) information uploads on a monthly basis that matches the business process for revenue collections and distributions;
- more frequent posting of data could present confusing information and might lead to misinterpretation; and
- it is not clear whether the penalties outlined in HB 379 are imposed on the agency or the individual.

According to an analysis by NMCD:

- Criminalizing the act of destroying public records to circumvent an IPRA request is not needed to deter IPRA violations. State agencies already face fines, compensatory damages, and attorney’s fees for violations of IPRA.
- Further, the NMCD analysis states, “subjecting public employees to \$500 misdemeanor fines for an act of withholding public records will have significant negative consequences for the public. Even though [HB 379] requires a willful and bad faith withholding, criminalizing this behavior is likely to chill, if not completely stop, public employees from relying on the twelve statutory exceptions or exemptions listed in IPRA.”
- Moreover, the NMCD analysis continues, public employees may be hesitant to rely on the statutory and case law exemptions or exceptions pertaining to IPRA, and might disclose all documents, even when those documents endanger staff and inmates or contain confidential medical or mental health information. As a result, the state agencies of these employees might be subject to defending lawsuits filed by those individuals damaged by the release of certain documentation.
- Finally, the NMCD analysis concludes, because public employees will face criminal fines and misdemeanor convictions for withholding public records, they may not be entitled to a defense from the Risk Management Division because their acts would constitute criminal, and not civil or tort law, violations.

Original Technical Issues:

The DoIT analysis suggests that HB 379 clarify the term *real time* by incorporating a definition.

Related Bills:

HB 436a *Public School Info on Sunshine Portal*

SB 271a *Inspection of Public Records Act Penalties*

SB 327aa *Certain Public School Info on Sunshine Portal*