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FISCAL IMPACT REPORT

ORIGINAL DATE 02/21/11
 LAST UPDATED 02/27/11 **HB** 367/aHHGAC/aHJC

SPONSOR Smith, J. E.

SHORT TITLE Live Webcasting of Public Meetings **SB** _____

ANALYST Wilson

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$3,000.0- \$5,000.0	\$1,000.0- \$3,000.0*	\$4,000.0- \$8,000.0	Recurring	General Fund, et al

(Parenthesis () Indicate Expenditure Decreases)

* Hopefully by the second year the expensive equipment will have already been purchased

Conflicts with HB 147 and relates to SR 1

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Commission of Public Records (CPR)
- Educational Retirement Board (ERB)
- Energy Minerals and Natural Resources Department (EMNRD)
- Environmental Department (ED)
- Finance Authority (FA)
- Higher Education Department (HED)
- Judicial Standards Commission (JSC)
- Mortgage Finance Authority (MFA)
- New Mexico Municipal League (NMML) Public Education Department (PED)
- Public Employees Retirement Association (PERA)
- Public Regulation Commission (PRC)
- Public School Insurance Authority (PSIA)
- Regulation & Licensing (RLD)
- Retiree Health Care Authority (RHCA)
- Sentencing Authority (SA)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment to House Bill 367 strikes HHGAC amendment #3 and reinstates the requirement that meeting notices shall include an agenda which shall be available to the public at least seven consecutive days immediately prior to the meeting in lieu of three business days.

The amendment also states that a board, commission, administrative adjudicatory body or other policymaking body conducting a meeting required to be a public meeting open to the public may allow a member of a public body to participate in a meeting of the public body by means of a conference telephone or other similar communications equipment when it is otherwise difficult or impossible for the member to attend the meeting in person.

The amendment also states that the provisions of the bill requiring a live video and audio transmission of a public meeting, or a live audio transmission of a public as well as producing an electronic media exact copy of the transmission will not apply to any board, commission, administrative adjudicatory body or other policymaking body of a:

- (1) a municipality with a population, as shown by the most recent federal decennial census, of less than 15,000
- (2) a county other than a class A county; or
- (3) a political subdivision of the state other than a county or municipality.

Synopsis of HHGAC Amendment

The House Health and Government Affairs Committee amendment to House Bill 367 changes the original bill which states that a board, commission, administrative adjudicatory body or other policymaking body shall receive no more than two exemptions in a twelve-month period from having to use audio or video transmission. The amendment allows a twelve month extension.

In addition, the amendment changes the requirement that meeting notices shall include an agenda which shall be available to the public at least three business days prior to the meeting from the original bill which required seven consecutive days notice.

Synopsis of Original Bill

House Bill 367 amends NMSA 1978, Section 10-15-1 to require that a board, commission, administrative adjudicatory body or other policymaking body, which is conducting a meeting required to be a public meeting open to the public, must provide for live video and audio transmission of the meeting via the Internet beginning no later than January 1, 2012. The location of the Internet site where the transmission can be viewed shall be included in the notice of the public meeting. The Internet site must be a public access site or a site available without cost or subscription. When requested, the Department of Information Technology (DoIT) shall provide technical assistance to implement the live video and audio transmission.

If after a request for technical assistance, DoIT determines that providing live video and audio transmission of a particular public meeting in a particular location and at a particular time is technically or logistically impracticable, DoIT shall issue the written determination to the public body. If audio transmission is practicable but not video, the determination shall so indicate. The written determination exempts the entity from providing the live video and audio transmission or from providing a live video transmission for that meeting. The public body may receive no more than two exemptions in a 12 month period.

The public body shall also produce an electronic media exact copy of the transmission and the copy shall be public record. The copy shall be retained and disposed of in accordance with a records retention and disposition schedule adopted by the State Commission of Public Records.

HB 367 amends NMSA 1978, Section 10-15-1(F) to require that an agenda shall be available to the public at least seven consecutive days prior to the meeting rather than the current 24 hours.

HB 367 amends NMSA 1978, Section 10-15-2 to require that no later than the second session of the 50th Legislature, the Legislature shall provide to the public on its Internet web site a live audio and video stream of its sessions and public meeting unless the Legislative Council Service determines in writing that providing a live video and audio transmission of a particular public meeting in a particular location and at a particular time is technically or logistically impracticable. The written determination shall exempt the Legislature from providing a live video and audio transmission or from providing a live video transmission for the particular public meeting. The Legislature shall produce an electronic media exact copy of the transmission, which shall be a public record. Section 10-15-2(E) is amended to provide that meeting means a gathering of a quorum of the members of a standing or interim committee or a policymaking body or conference committee held for the purpose of discussing public business.

FISCAL IMPLICATIONS

Almost all of the responding agencies claimed they do not currently have the equipment needed to transmit public meetings via the Internet. The costs to provide this service vary greatly depending on the quality requirements of the broadcast quality as well as the infrastructure support that will be provided by DoIT or by a contracted webcast company. Several of the larger agencies stated that they will need to hire one or more FTEs to handle the provisions in this bill.

SIGNIFICANT ISSUES

The PRC provided the following:

It is the custom of the PRC to hold at least one open meeting each year in each of the five PRC districts. These meetings, other than the ones in Santa Fe, are often held in remote locations that lack the capability to provide video or audio transmissions to the internet. With only two exemptions per year, the PRC will be unable to hold a meeting in at least two of the districts. This will result in harm to the public and to the PRC. For those reasons, if the bill is passed, it should be amended to provide that the PRC should have at least four exemptions per year.

The PRC, by its own policy, has open meetings every Tuesday and Thursday. Posting agendas one week instead of one day before the meeting will change internal operations and likely substantially decrease the PRC's ability to act on cases and other matters pending before the PRC in a timely manner. Accordingly, the PRC should be exempted from this provision.

Issues or cases will have to be noticed at least a week before the meeting at which they will be discussed or acted upon. The "last minute" will no longer be a day or two before the meeting, but seven or eight days before the meeting.

Currently, the PRC provides a streaming audio transmission at its website of its regular twice-weekly open meetings held in Santa Fe. This audio only transmission was chosen because it did not require an operator. Adding video to these transmissions will mean added costs for equipment and internet services and for a camera operator during meetings.

The NMML noted the following:

For many policy-making boards reasonable notice of a regular meeting is seven days while reasonable notice of a special meeting is three days. Under this notice requirement, current law permits the body to make adjustments to its agenda up to the day before the meeting. This is important to accommodate last minute items that crop up between the time when the notice is published and the meeting occurs. This bill will eliminate that flexibility and require that the agenda be established, available and unchangeable seven days prior to the meeting.

Adoption of this bill will result in municipalities having to expand the notice requirement of special meetings to at least seven days, and to have an agenda that is not subject to change at that time. The flexibility of dealing with an issue that crops up suddenly, but that does not rise to the level of an emergency will be limited. Many smaller boards only meet once a month and this requirement could catch them in a situation where an urgent issue will have to be put off for an entire month.

Providing a live audio and video transmission of the public meeting could require a significant expenditure of money in order to purchase the hardware and computer software required to accomplish the task. Many small municipalities are currently operating on a very tight budget and this added requirement will be a substantial burden to many. Additionally, many public meetings take place outside of the city hall chambers, e.g. some planning and zoning meetings take place at the site where the zone change is requested. It is impracticable to require the zoning commission to provide a live audio and video broadcast, and the “two exemption” limit is far too strict.

ADMINISTRATIVE IMPLICATIONS

An agency staff person will have to be trained to operate the equipment or IT staff will have to be at the meetings. Meetings currently held in Albuquerque will likely have to be moved to Santa Fe because of the lack of video and audio streaming capability at the locations those meetings are using held. This will increase per diem costs and make the location less convenient for many of those attending the meetings. It may also make it more difficult to find suitable locations for hearings required to be held outside of Santa Fe, particularly in rural areas.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Conflicts with HB 147, which also amends NMSA 1978, Section 10-15-1 but only to require agendas to be available seven days prior to the meeting.

Relates to SR 1, which requires only live audio streaming of senate standing committee proceedings, does not require archiving of the media and the stream is not an official record of the senate’s proceedings.

ALTERNATIVES

ERB suggests DoIT could be required to provide access to live webcasting as a service to state agencies. Verizon does have a service that host live webcasting, however that service is not included in the company’s current price agreement with the state, so state agencies are prohibited from using the service. If this service is included in the contract, there still may be occasions where it is not available is some locations.