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FISCAL IMPACT REPORT

SPONSOR	Ulibarri & Strickler	ORIGINAL DATE	02/21/11	
		LAST UPDATED	03/11/11	HB
SHORT TITLE	Public Records Provisions Reorganization			369/a SPAC/ SB aSJC/SFL#1
		ANALYST	Wilson	

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	FY12	FY13		
	(Insignificant) See Below	(Insignificant) See Below	Recurring	County General Funds
	(Insignificant) See Below	(Insignificant) See Below	Recurring	County Clerks Recording And Filing Funds

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
		\$0.0-\$2,000.0	\$0.0-\$2,000.0	\$0.0-\$2,000.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 160, HB 368, HB 379, HB 406, SB 52, SB 128 & SB 271

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Attorney General's Office (AGO)
 New Mexico County Clerks Affiliates (NMCCA)
 Public Education Department (PED)
 Secretary of State (SOS)
 Taxation & Revenue Department (TRD)

SUMMARY

Synopsis of SFL Amendment #1

The Senate Floor amendment #1 reads that if a document being filed or recorded contains fewer than ten entries to the county recording index and is filed or recorded in person in the office of the county clerk

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by one of the interested persons named on the document, the county clerk shall collect a fee of \$10.00 instead of a fee of \$25.00

For each fee of \$10.00 collected by the county clerk \$3.00 shall be deposited in the county general fund and \$7.00 shall be deposited in the county clerk recording and filing fund. A representative of the County Clerks Affiliate of the Association of Counties expects the revenues losses will be insignificant.

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment makes an entire social security number protected personal identifier information.

The amendment changes the definition of homestead to read that the full value of the property as assessed for property taxation may not exceed \$500,000.

The amendment removes the entire section on validations and compensates by not repealing current statutes related to validation.

Synopsis of SPAC Amendment

The Senate Public Affairs Committee Amendment to Senate Bill 369 allows a public body to redact protected personal identifier information contained in public records before the inspection or copying of a record.

Furthermore, the amendment states that the presence of protected personal identifier information on a record does not exempt the record from inspection.

Synopsis of Original Bill

Senate Bill 369 amends and repeals several different statutes relating to public records and to their inspection and recording. SB 369 updates county clerk duties regarding recording documents, allowable recording fees, redaction requirements and protection of personal information.

SB 369 removes statutory exemptions relating to college president applicants and veterans discharge papers from the Inspection of Public Records Act (IPRA), and moves the provisions to statutes governing higher education institutions and county clerks.

This bill adds a new definition for “protected personal identifier information” to the IPRA. It is defined as a taxpayer identification number, financial account number, driver’s license number, all but the last four digits of a social security number, and anything related to the date of birth, other than the year of birth. The bill provides that “protected personal identifier information” contained in public records is exempt from public inspection, and only records with the information redacted can be made available or posted on a website.

The NMCCA has prepared a detailed summary of SB 369 See attachment.

FISCAL IMPLICATIONS

The AOC states that courts throughout New Mexico are dealing with significant, long-term budget and personnel shortfalls. Preparation of files to satisfy the proposed bill will be a

resource intensive matter. It is difficult to estimate the additional resources required to comply with the bill, but conservatively speaking, at least an additional 20 FTEs will be required for the judiciary statewide at a cost of \$1, 200,000.

The NMCCA claims they will not need additional funding.

SIGNIFICANT ISSUES

TRD stated the bill uses the term “publicly-accessible web site” but does not define it. If any of the Motor Vehicle Division (MVD) databases used by our “agents” or others could be considered to fall within the ambit of this term, the “personal identifier information” provisions would be problematic for MVD. The bill lists things that can be recorded by county clerks without a fee. A TRD Notice of Lien is not included on the list, but it should be.

The bill creates a new subsection B to NMSA 1978, Section 14-2-1 that exempts “protected personal identifier information” from inspection and that prohibits unredacted records containing this information from being posted on public websites. Section 2 does not address the fact that Section 14-2-9(A) mandates a records custodian to redact exempt from non-exempt information in public records before making the redacted record available for inspection. There is an inconsistency in the proposed new language in that it appears redaction of “protected personal identifier information” may no longer be required, if that information happens to be contained in a public record.

The AOC provided the following

It is the bill’s proposed amendments to IPRA concerning protecting personal identifying information to which this FIR responds. Only the impact on the judiciary is discussed. While the merits of protecting personal identifying information from public disclosure are significant, the proposed bill introduces unanticipated consequences in the form of significant reductions in public/media access, increased chance of litigant misidentification, interference in court operations, and increased costs. In fiscal year 2010, the Metropolitan Court and magistrate courts statewide opened more than 300,000 new criminal and traffic case files. These cases were replete with personal identifier information proposed to be protected under this bill. Accurately identifying the individual who is charged with a crime is of paramount importance not only for the courts, incarceration facilities, law enforcement, prosecutors, private attorneys, and public defenders, but also for the press, employers, landlords, and other members of the public. For this reason, protected personal identifying information is included on nearly all pleadings filed in a criminal case, including, criminal complaints and citations, arrest warrants, bench warrants, criminal summonses, judgments and sentences, plea and disposition agreements, and orders setting conditions of release or conditions of probation. The alternative of arresting and incarcerating the wrong individual, of failing to set an appropriate level of bond or conditions of release, of failing to enhance a sentence, or of ascribing the crime of one individual to another is untenable.

The proposed amendments to IPRA concerning protecting personal identifying information invite a number of problems already encountered in the application of the New Mexico Supreme Court’s Rules on Public Inspection and Sealing of Court Records, collectively known as the Sealing Rules. The Sealing Rules were created in response to concerns that there needed to be an established and consistent process for the sealing and

unsealing of court records and to concerns of providing better protection against identity theft for litigants. Under the Sealing Rules as originally adopted, protected personal identifying information could not be contained in court records except as ordered by the court or as allowed by the Sealing Rules. (The definition of protected personal identifying information proposed by SB 369 is identical to the definition contained in the Sealing Rules.)

To accommodate the need for such information to be included in court records, the Sealing Rules required that the parties or the court file both redacted and unredacted copies of pleadings with the expectation that the redacted version will be made available to the public for viewing. Although well-intentioned, problems arose from the implementation of the protected personal identifier portion of the Sealing Rules – particularly with regard to the criminal cases pending in the court. Courts were faced with receiving voluminous records – with the duplicate redacted copies of pleadings being filed. Conversely, many litigants continued to file unredacted pleadings, which significantly increased workloads for court staff in redacting protected identifier information from pleadings before making them accessible to the press and the public. The Sealing Rules had only been in effect for just over a month when on August 11, 2011; the application of the protected personal identifier portion of the rules was suspended. Eventually, on February 7, 2011, the Sealing Rules were amended so that they no longer prohibited protected personal identifier information from being included in court records and instead the Rules admonish the courts and the parties to “avoid including protected personal identifier information in court records unless deemed necessary for the effective operation of the court’s judicial function.” The revised Sealing Rules also prohibit the public display of protected personal identifier information in the courthouse or on publically accessible court web sites.

The NMCCA disagrees with the AOC’s interpretation of this bill. The AOC believes that the bill requires them to redact the personal identifier information. The NMCCA believes the bill is merely permissive.

ADMINISTRATIVE IMPLICATIONS

The AOC claims the judiciary will require at least 20 FTEs.

The NMCCA claims that the county clerks are already doing most of the provisions in this bill and will not require additional staff.

RELATIONSHIP

SB 369 relates to HB 160, HB 368, HB 379, HB 406, SB 52, SB 128 & SB 271 each of which concerns an amendment to IPRA.

DW/mew:svb