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FISCAL IMPACT REPORT

ORIGINAL DATE 01/31/12

SPONSOR Griego, P. LAST UPDATED _____ HB _____

SHORT TITLE Crime of State Audit Obstruction SB 201

ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY12	FY13	FY14	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)

Office of the State Auditor (OSA)

New Mexico Corrections Department (NMCD)

SUMMARY

Synopsis of Bill

Senate Bill 201 adds a section to the Audit Act making it a misdemeanor to give false information to or obstruct the State Auditor or his agent. It requires the State Auditor to refer to the Attorney General or a district attorney any person the auditor reasonably believes has committed or is about to commit the offense of obstructing a state audit. The bill also authorizes the prosecuting entity to seek a civil injunction or restraining order to prevent obstruction of a state audit, as well as a civil penalty of \$250 for each violation, not to exceed \$5,000.

FISCAL IMPLICATIONS

The NMCD normally does not incarcerate misdemeanor offenders (who serve 364 days or less, which sentence would be served in a county jail), and normally does not supervise them on probation. Misdemeanor offenders do not serve a parole term. Additionally, NMCD does not anticipate a large number of individuals convicted of this type of offense since it requires intentional rather than reckless or negligent conduct. Thus, the bill is not likely to have any fiscal or other impact on NMCD.

SIGNIFICANT ISSUES

The OSA explains the importance of SB 201:

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. Furthermore, in recent years, the State Auditor and his designated agents have encountered instances when conducting audits of 1) persons who have threatened an auditor during the course of an audit; and 2) persons who have employed tactics of concealing documents, altering documents or concealing information in order to delay and obstruct audits. Notably, this conduct occurred in the OSA's audits of entities such as the Jemez Mountain School District (\$3.4 million embezzlement case) and the OSA's recent special audit of the New Mexico Corrections Department.

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.

The AGO comments:

The bill does not address law enforcement obstruction or interference issues, as do the various provisions of the Criminal Code, under the heading "Interference with Law Enforcement" in NMSA Sections 30-22-1, et seq. Notably, there is no similar criminal prohibition against interference with a criminal investigation. The bill does not address the effect, if any, it would have on the provision of the Audit Act which requires the State Auditor to immediately refer to law enforcement any violation of a criminal statute. NMSA 1978 §12-6-6. The requirement that the State Auditor refer any person he "reasonably believes ... is about to commit" a violation is a standard which may prove difficult to enforce.

Additionally, the AGO is concerned that the definition of "obstructing" in Section 2(A)(2) is circular. It suggests the use of examples might be warranted. The AGO has provided some sample language which is set forth below in the Amendments section.

PERFORMANCE IMPLICATIONS

The OSA notes that having an effective deterrent to obstructing a state audit will assist that office and its designated agents in better performing their jobs.

AMENDMENTS

The AGO suggests that, in order to eliminate the confusion as to what constitutes "obstructing a state audit", Section 2(A) be amended as follows:

- A. Obstruction of a state audit consists of a person:
 - (~~1~~) making or causing to be made to the state auditor or the state auditor's designated agent a false or misleading report hiding or destroying any document or thing;

or otherwise taking any action with the intent of deceiving or misleading the state auditor or the state auditor's designated agent in the performance of an audit, special audit, examination or investigation being conducted pursuant to the Audit Act; ~~or~~
~~— (2) intentionally obstructing the state auditor or the state auditor's designated agent in the performance of an audit, special audit, examination or investigation being conducted pursuant to the Audit Act.~~

MD/svb