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FISCAL IMPACT REPORT

ORIGINAL DATE 02/06/13
 SPONSOR Ivey-Soto LAST UPDATED 03/15/13 HB _____
 SHORT TITLE Public Records Changes SB 307/aHJC
 ANALYST Cerny

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Minimal	Minimal	Minimal	Minimal		

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB 353

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General’s Office (AGO)
 Association of County Clerks (ACC)
 Secretary of State (SOS)
 Commission of Public Records (CPR)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment would amend language in Senate Bill 307 as follows:

On page 1, line 14, after the semicolon, strikes the remainder of the line; and strikes line 15 through the semicolon.

On page 6, line 14 through page 8, line 24, strikes Section 4 in its entirety and the renumbers the succeeding sections accordingly.

The amendment first corrects the bill subtitle to accommodate deletion of Section 4, now no longer part of the bill. Section 4 would have required county clerks to digitize records as the technology becomes available. It further would have eliminated the requirement to redact protected personal identifier information on records that are more than fifty-years old, eliminated

redaction of cause of death and other medical information contained on death certificates filed with the county clerk and allowed for copying, digitizing or purchase by third parties fifty-years after the death certificate is filed with the county clerk.

The amendment is consistent with the recommendation of the Attorney General's Office (AGO).

Synopsis of Original Bill

Senate Bill 307 (SB 307) amends laws relating to public records. It reconciles multiple amendments to Section 14-2-6 of the Inspection of Public Records Act enacted in 2011; amends the list of documents that may be filed and recorded with the county clerk without being acknowledged; amends provisions that make documents filed and recorded with the county clerk public records; amends provisions governing the form and requirements for county recording indices for instruments of record affecting real property; updates the filing and recording requirements for levies on real estate; and subjects all governmental agencies to the provisions of the Uniform Electronic Transactions Act.

Section 1 amends 7-1-39 NMSA 1978 to remove the requirement for a county clerk to include the notice "canceled by act of legislature" when a period of ten-years has passed from the date a lien was filed and the lien is recorded as extinguished.

Section 2 amends the Inspection of Public Records Act to correct identical amendments enacted in 2011 with conflicting lettering in the definition.

Section 3 amends 14-8-4 NMSA 1978 to expand recognition and right to file for instruments not duly acknowledged, which for this section of law means notarized, if provided for in Section 14-8-4 NMSA 1978. However, it removes mining location notices from the list of exceptions and adds provisional orders creating improvement districts, notices of levy on real estate when filed by a peace officer and surveys of land that don't create a division of land, but show existing tracts when filed by a professional surveyor.

Section 4 amends 14-8-9.1 NMSA 1978 to require county clerks to digitize records as the technology becomes available. It further eliminates the requirement to redact protected personal identifier information on records that are more than fifty-years old, eliminates redaction of cause of death and other medical information contained on death certificates filed with the county clerk and allows copying, digitizing or purchase by third parties fifty-years after the death certificate is filed with the county clerk.

Sections 5-10 and 12-15 amends 14-8-17 NMSA 1978, and 14-10-1 through 14-10-5 NMSA 1978, and 39-4-4 NMSA 1978, 39-5-23 NMSA 1978, 55-9-525 NMSA 1978 to update cross-references in the law, require standardization of county recording indexes, and repeal a requirement that county commission minutes be published in a newspaper.

Section 11 amends the Uniform Electronic Transactions Act, 14-16-18 NMSA 1978 (UETA) to require the state records administrator to issue model rules that would apply to all governmental agencies for the implementation of the UETA. It also authorizes a governmental agency to issue its own rules. More notable, it eliminates language that authorizes agencies to determine the extent they will permit the use of electronic records or electronic signatures, which would require agencies to either adhere to the rules issued by the state records administrator or issue their own agency specific rules that adhere to the requirements of UETA.

FISCAL IMPLICATIONS

The Commission of Public Records (CPR) says impact will be minimal at SRCA: “The fiscal implications to the SRCA are minimal. The state records administrator would be required to draft, adopt and publish new rules for model implementation of the UEDA. This would take minimal staff time to accomplish initially and likewise for would need to be reviewed for updates annually with possible amendments.”

Both the Secretary of State (SOS) and Association of County Clerks (ACC) state no fiscal impact.

SIGNIFICANT ISSUES

The CPR states that the most significant would be the new requirement for all government agencies to follow model rules, or adopt rules, for the implementation of accepting electronic documents and electronic signatures.

The ACC states that this is a County Clerk Affiliate Bill. They note that it standardizes county recording indexes across the state, making public access and searches easier, while protecting personal information on recorded documents.

AMENDMENTS

The AGO points out that Section 4 of SB 307 amends NMSA 1978, Section 14-8-9.1, which makes documents filed and recorded with the county clerk public records. “The amendment first makes documents filed and **not** recorded with the county clerk’s office public records and then goes on to make recorded documents public records, with certain exceptions. The reason for making this distinction is unclear. Under the New Mexico Inspection of Public Records Act (IPRA), all records of a county clerk’s office are public unless covered by an applicable exception, so the distinction made in SB 307 between filed documents and recorded documents may not be necessary. If the intent of SB 307 is to limit the exceptions to recorded documents only, this could be accomplished by taking out the provision addressing documents that are filed and not recorded. Those documents would be covered by IPRA anyway, and if the provision remains, it might be interpreted to make **all** documents filed and not recorded public, regardless of whether an exception under IPRA would otherwise apply.”

The CPR states: “14-3-15.2 requires the Commission of Public Records to promulgate rules defining the standards necessary for signatures on a document and 14-15-3 NMSA 1978 requires the “information technology commission” to adopt rules and standards to accomplish the purposes of the Electronic Authentication of Documents Act (EADA).”

Therefore it is recommended that SB 307 be amended to reconcile these conflicts.

CC/svb