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FISCAL IMPACT REPORT

ORIGINAL DATE
SPONSOR HGEIC **LAST UPDATED** 03/16/15 **HB** 392/HGEICS

SHORT TITLE Audio & Video Stream of Public Body Meetings **SB** _____

ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		>\$500.0*	>\$500.0*	>\$500.0*	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with HB 378.

Relates to HR 2 and HJM 11.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Finance & Administration (DFA)

Department of Information Technology (DoIT)

Regulation & Licensing Department (RLD)

Energy, Minerals & Natural Resources (EMNRD)

Human Services Department (HSD)

Department of Health (DOH)

New Mexico Department of Transportation (NMDOT)

SUMMARY

Synopsis of Bill

The House Government, Elections and Indian Affairs Committee substitute for House Bill 392 requires, on or after January 1, 2016, all boards, commissions, administrative adjudicatory bodies, and policy making bodies of state agencies or any agency or authority of any county, municipality, district, or political subdivision conducting a meeting required to be a public meeting open to the public to provide live video and audio transmission of its public meetings via the internet, unless exempted. Subsection H provides that the requirements for live transmission do not apply to any board, commission, administrative adjudicatory body, or other policymaking body.

The presiding officer of the board, commission, administrative adjudicatory body, or other policymaking body shall determine whether providing a live video and audio transmission of a particular public meeting in a particular location at a particular time is financially, technically, or logistically practicable. If the presiding officer determines that live audio transmission is practicable but video transmission is not, a live audio transmission shall be provided via the internet. If the presiding officer determines that transmission is impracticable, the entity shall be exempt from providing the live video and audio transmission for that meeting.

DoIT shall develop, operate, and maintain an internet web site that is free and accessible where the public can access live video and audio transmission of meetings of executive state agencies. The web site shall be part of or linked to the sunshine portal. Agencies using the website shall be charged an equitable share of the yearly costs associated with the operation. Non-executive state agencies shall use another web site, and the meeting notice shall provide the location or uniform resource locator of internet web site where the live video and audio transmission is or will be available.

The entity shall take reasonable and necessary actions to schedule its public meetings at times and places where live video and audio transmission of the meeting can occur.

Transmissions must be archived as public records and disposed of in accordance with a records retention and disposition schedule adopted pursuant to the Public Records Act (PRA).

Additionally, no later than the 2016 session, the Legislature shall provide to the public on its internet web site a live audio and video stream of its sessions and public meetings unless, pursuant to policies adopted by the New Mexico Legislative Council, the Legislative Council Service (LCS) determines that providing a live video and audio transmission, or either, of a particular public meeting in a particular location and at a particular time is financially, technically or logistically impracticable. The Legislature also must archive the transmissions as public records in accordance with a records retention and disposition schedule adopted pursuant to PRA.

The effective date of this bill is July 1, 2015.

FISCAL IMPLICATIONS

This bill will require infrastructure technology improvements statewide to allow public bodies newly required to provide a video and audio transmission of public meetings to do so with adequate quality of video and audio, and with reliable hardware, software and networking capabilities.

The costs to the state alone include DoIT's costs to develop, operate and maintain the internet web site for transmission of executive state agencies' public meetings required in Subsection E. In its analysis of the earlier version of this bill, DoIT estimated a web-streaming enterprise service available via a central website that would cover all branches of government at the state level would cost approximately \$500 thousand per year. Consistent with DOIT's report that its budget is over 98 percent enterprise-funded, the bill requires agencies using that site would be charged an equitable share of the costs associated with operation. The operating budget impact table above reflects DoIT's estimated cost. Because it is unclear whether those costs include

each agency's responsibility to archive its transmission, the ">" sign includes that possible cost, and other costs, including those associated with the legislature's responsibilities under the bill, such as those related to archiving and costs for rental of facilities for meetings of legislative interim committees that occur away from the capitol.

SIGNIFICANT ISSUES

Live audio and video streaming will allow greater access by the public to see and hear public meetings that they are unable to attend in person. In their analyses of the earlier version of this bill, many responding agencies express concern not as to the greater transparency these processes will afford, but rather with the logistics and potential impacts of doing so. Some related their experiences in attempting to provide the type of public access that the bill envisions as well as the anticipated impact they foresee if the technology fails. For example, the staff of State Board of Finance of DFA provided this analysis based on its experiences:

Beginning in 2011 and in the interest of transparency, the SBOF and have attempted to provide a live webcast of each of their public meetings, which are held in the Governor's Cabinet Room. The SBOF estimates that it has been successful in transmitting a live audio and video feed for about 90 percent of its meetings since 2011. However, staff of the SBOF has experienced many technical difficulties in this endeavor and would not be comfortable with the provisions of this bill, requiring guaranteed success of audio and video transmission as a prerequisite of holding a public meeting.

On occasion, the video recording equipment, software, or network connectivity were not operating correctly for unknown reasons on the day of a SBOF meeting. There have also been occasions where the live video and audio feed were transmitted, but ending the feed at the meeting's conclusion the file was lost or corrupted, so it could not be saved as a public record. There has been at least one occasion when the SBOF staff believed the video and audio were transmitting but found out after the meeting they had not transmitted.

Given the experienced unpredictable nature of hardware, software, and networks, SBOF staff would be concerned that they could not comply with the requirements of this bill in all instances. On the day of a meeting, if one of the technical aspects of transmission failed, the bill would require the public body to cancel its meeting. Cancellation of a meeting on only moments' notice would have dramatic repercussions for public bodies as well as entities that require time-sensitive action from the board. If the SBOF cancelled a meeting just moments before its scheduled start time, board members and presenters would have travelled far distances to attend. Some presenters structure real estate transaction and bond issuance timelines around the Board's meeting date, and another meeting could not be scheduled for at least three days to comply with notice requirements of OMA.

Regarding quality, the SBOF's webcasts from the Office of the Governor are often difficult to hear and see due to limited technical infrastructure in the meeting room and back lit lighting caused by large windows. If video and audio were required for open meeting by statute, it is assumed a certain quality of video and audio could be enforced. Guaranteeing a higher quality of audio and video would require significant and potentially costly infrastructure technology improvements in the Governor's cabinet room

and many other locations statewide.

DOH echoed the concern as to the impact of a technology failure in its analysis of the earlier version of this bill when it commented:

If a live video or audio transmission were to be interrupted or were to crash during a public hearing due to the volume of persons accessing the transmission (or otherwise), it is unclear whether such technical problems could invalidate all or a portion of actions taken during the public hearing. It has generally been the position of AGO that the failure to comply with any portion of OMA may have the effect of invalidating an action taken by a public body. Due to the range of potential technical and logistical difficulties that may arise during a live video or audio transmission, it would be preferable that the bill provide that a public body that makes reasonable efforts to provide for such transmission shall not have its actions taken at a public meeting invalidated or otherwise impaired based on technical difficulties or capacity issues that arose during such transmissions.

RLD reported in its analysis of the earlier version of this bill that its boards and commissions conduct an average of 95 board meetings throughout the State per calendar year. In rural areas, meetings may be held in various buildings and rooms that cannot accommodate or do not have equipment to stream live video and audio transmission of that public meeting. Those locations may be required by law: for those boards governed by the Uniform Licensing Act, hearings related to contemplated actions on existing licenses must be conducted in the county in which the licensee resides, or any county in which the act or acts complained of occurred. See Section 61-1-6, NMSA 1978.

As to the archiving requirement, DOH comments that public bodies may have a combination of video and audio conferencing solutions that will require multiple procedures for how to accomplish this. It currently has four types of solutions. One of the solutions is outsourced to a third party vendor which, while having the ability to save a copy of transmissions, does not guarantee that copy will be created. In such cases, public bodies may need to seek alternative solutions to ensure compliance with the bill, which may also require renegotiations of contracts currently in place.

Further, DOH points out that there is no provision in the bill that ensures that audio and video transmissions, both live and posted on websites, follow standards for people with disabilities.

EMNRD notes that these new requirements may cause public bodies to restrict the locations of their meetings. Providing webcasting may well limit in-person attendance at those meetings. Similarly, DOT reported in its analysis of the earlier version of this bill that the State Transportation Commission (STC) meets on a monthly basis and has historically scheduled its meetings in various cities, towns or villages within the six NMDOT transportation districts. This allows persons in remote areas who may be impacted by transportation projects to attend and participate in the public meetings that address those projects. The provisions of CS/HB 392 may end up requiring the STC hold its public meetings away from those areas in order to ensure video and/or audio transmission capability. As NMDOT notes, even the use of cell phone modems pose a potential problem in remote locations where cell bandwidth is limited. Such a change in location could diminish the ability of persons most affected to participate in meetings.

CS/HB 392 allows each public body to determine for itself whether live video or audio transmission of a particular meeting in a particular location at a particular time is financially, technically or logistically feasible, which provision may address or at least alleviate these concerns, but may also, as noted by DOH, lead to abuses. Over time, this self-policing may lead to the exceptions swallowing the rule.

The bill also requires the Legislature, no later than the 2016 session, to provide live audio and video streaming over its web site of its sessions and public meetings, unless LCS determines, pursuant to policies adopted by the Legislative Council that it is technologically or logistically impractical for a particular public meeting in a particular location and at a particular time. Both chambers and most committee rooms in the capitol are equipped for webcasting. However, during the interim, committees routinely meet outside of Santa Fe to see and hear firsthand the issues facing New Mexico. While travelling the state, the number of facilities with web streaming capabilities may be limited to locations such as institutions of higher education. Further, recent experience with webcasting some interim meetings has resulted in some quality issues, such as the person speaking not being clearly recognizable in the video picture being streamed.

Additionally, the Legislature must archive its transmissions, which is a public record that must be retained and disposed of in compliance with a CPR schedule. Currently, the Legislature by rule does not archive the webcasts of its proceedings.

PERFORMANCE IMPLICATIONS

RLD reported it has a large number of board, commission, and committee meetings to manage, and the requirements to stream live and on demand to a variety of mobile devices that the public use will require a more complex system that can provide certain capabilities such as the ability to provide multilingual audio along with closed captions.

ADMINISTRATIVE IMPLICATIONS

DFA/SBOF noted that requiring audio and video feed as a prerequisite to public meetings would also require staff training and data storage solutions. Further, it is not clear what format will be required for an audio and video recording to be archived as a permanent record of the State.

CONFLICT, RELATIONSHIP

This bill conflicts with HB 378, which requires public bodies to allow the opportunity for public oral comment at public meetings, since the audio and video streaming required in CS/HB 392 may not permit those observing the meeting through web streaming to provide oral comments.

This bill is related to HR 2, which amends a House rule to require, subject to the financial capability of the House, all standing committee proceedings that are currently webcast to be archived. CS/HB 392 also relates to HJM 11, which requests LCS to allow interim committee members to participate in meetings by real-time videoconference when practicable.

TECHNICAL ISSUES

Subsection H appears to make the requirements for live transmission and archiving inapplicable.

It provides that the provisions of Subsections C, D, F, and G do not apply to any board, commission, administrative adjudicatory body, or other policymaking body.

Additionally, requiring webcasting of public meetings “on or after January 1, 2016” may be ambiguous as to the intended time period in which that action must occur.

OTHER SUBSTANTIVE ISSUES

DoIT advised that the provisions of the earlier version of this bill that are similar to the substitute are in line with the strategic goals of the department. It recognized the increased need to leverage technology to engage citizens in their government, and the desire to shift towards e-Government. It believes the Sunshine Portal has been a success in doing just this, and those gains should be leveraged to implement this bill if passed. Part of the success of the portal has been the fact that it is a single and authoritative place for citizens to find information about state government.

ALTERNATIVES

NMDOT proposed that meetings be recorded and subsequently posted on agencies’ websites for viewing or reference. Similarly, DoIT suggested encoding and recording a meeting, then posting the recording for download viewing on a website or multiple websites. This approach would greatly reduce the price of viewing a public meeting. According to DoIT, an operator at the meeting would simply record the hearing using the equipment located on site and would not need to push the signal to a provider for live streaming.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

As RLD noted, the majority of its boards and commissions already have audio recordings and written meeting minutes that are available to the public. More generally, OMA requires all minutes are open to public inspection and draft minutes are prepared within ten working days and posted on the department’s website for review. The minutes contain all pertinent information relating to date, time and place of the meeting, the names of members in attendance and those absent, the substance of the proposals considered and a record of any decisions and votes taken that show how each member voted.

AMENDMENTS

MD/je