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FISCAL IMPACT REPORT

ORIGINAL DATE 2/11/19

SPONSOR Woods LAST UPDATED _____ HB _____

SHORT TITLE Public Record Requests Costs and Procedures SB 232

ANALYST Jorgensen

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Commission for Public Records (CPR)

Department of Health (DOH)

Department of Transportation (DOT)

SUMMARY

Synopsis of Bill

Senate Bill 232 (SB 232) amends the New Mexico Inspection of Public Records Act (IPRA). The changes require public records requests made for commercial purposes state those purposes and allow public bodies to charge additional costs and fees for public records requests that require “extensive use” of technology or personnel, and additional reasonable fees associated with public records requests made for commercial purposes. SB232 gives public bodies the ability to recover costs and attorney fees related to legal actions under IPRA if the public body prevails or the legal action is deemed frivolous. Additionally, the bill would allow a public records custodian to acquire an executive order from the Governor that rejects a public records request made for commercial purpose when that purpose is determined to be a misuse or abuse of the public records. Finally, SB232 allows a public body to obtain an injunction against a request for records from a person serving a sentence in a correctional facility if the public body can show that the request was made to harass or intimidate the public body, was in retaliation for an action by the public body, or requests that are deemed burdensome.

FISCAL IMPLICATIONS

While SB232 authorizes public bodies to charge additional fees for records requested for commercial purposes, it is unknown how many records would be eligible for this fee or what the fee would be. SB232 may allow public bodies to recoup some costs related to IPRA requests should the public body chose to assess fees for commercial records use. However, because there is no requirement that agencies impose such fees, and it is unknown how much revenue these fees may generate, this bill has no fiscal impact.

SIGNIFICANT ISSUES

The Department of Health notes:

IPRA already contains provisions for the public body to recover costs associated with the production of large documents requests, however, the additional language in SB232 would allow for a broader definition of the actual costs of producing large records requests and allow for an additional “service fee” to cover these costs. Some DOH programs have received requests that have taken months to compile data and redact personal health identifiers and other information that should be withheld under IPRA. Many programs must utilize extensive staff time to compile requested records and some programs have had to hire temporary staff to assist with the scanning and redaction of documents. Having the ability to recover fees for staff time and technology use has the potential to relieve the financial burden to public bodies in the production of larger requests.

ADMINISTRATIVE IMPLICATIONS

Should SB232 pass, state agencies would need to develop a procedure to track, calculate, and collect fees related to IPRA requests.

OTHER SUBSTANTIVE ISSUES

The Department of Transportation notes:

The total number of IPRA requests received by DOT in 2017 was 271, and in 2018 the total number increased to 422. The average number of hours invested by NMDOT personnel to respond to IPRA requests is five hours... If SB 232 becomes law, it may deter requestors from submitting frivolous requests, thus benefitting DOT by reducing employee time spent on these requests. Moreover, IPRA requests regularly divert DOT’s personnel from regular duties and responsibilities associated with their positions. SB 232 may allow DOT to recover additional costs that can offset this diversion from those employees’ regular assigned duties.

DOH reports that the bill does not identify how uniformity and standardized processes between various public bodies would be implemented to ensure consistency among all public bodies.