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FISCAL IMPACT REPORT

ORIGINAL DATE 01/28/10
 LAST UPDATED 02/15/10 HB _____

SPONSOR Rue

SHORT TITLE Sunshine Portal Transparency Act SB 195/aSfI#1/aHJC

ANALYST Sanchez, A.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY10	FY11	FY12	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total	Indeterminate	Insignificant				

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB42 Transparency Act

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the District Attorneys (AODA)
 Attorney General’s Office (AGO)
 Taxation and Revenue Department (TRD)
 Department of Finance and Administration (DFA)
 State Personnel Office (SPO)
 State Treasurer’s Office (STO)
 Public Education Department (PED)

No Response

Department of Information Technology (DoIT)
 State Investment Council (SIC)
 Secretary of State (SOS)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee Amendments strikes “that” and inserts “thereof for lease, sale, or development of state land if they” on line 18, page 3. The amendment also removes the change made by the Senate Floor Amendment requiring that the name of the employees be included in the directory of state employees.

Synopsis of SFl Amendment #1

The Senate Floor Amendment inserts “by name” on line 9, page 4, which requires the directory of state employees to include the name of the employee.

Synopsis of Original Bill

Senate Bill 195 creates the Sunshine Portal Transparency Act to provide for the development of a free public access web site by the Department of Information Technology (DoIT) and the Department of Finance and Administration (DFA) no later than July 1, 2011. The web site would provide interested parties access to how state government agencies spend their revenues, who state agencies employ and at what cost, what loans the state board of finance makes and what capital projects the legislature funds and how much has been spent. It also requires links New Mexico statutes, and the Administrative Code, the Secretary of State’s web site for lobbyist, open meetings tracker. DoIT would be required to post an annual summary of the state’s fiscal health three months after the end of the state fiscal year. The act does not require disclosure of information that is confidential under state or federal law.

FISCAL IMPLICATIONS

According to LFC research on other state portals and data gathered by the Center for Fiscal Accountability, Missouri spent about \$293 thousand of internal resources for its portal and did not require additional appropriations. South Carolina and Texas reallocated resources and built their sites. Oklahoma purchased software for \$8 thousand and the site was built and loaded using existing staff. It is highly likely that New Mexico and DoIT can do the same. Moreover, Oklahoma uses the same PeopleSoft application for financials and human resources as does New Mexico and has offered the extract programs they developed to New Mexico at no cost.

Making public information available through electronic means has proven to be a money saver in other states. Three of the states that have had a transparency portal/website (Texas, Missouri and Kansas) report savings from consolidating purchases, revising their business model, avoiding duplicate studies and contracts, renegotiating existing contracts or subscriptions and not having to respond to freedom of information requests because the information is readily available and free.

- There is no appropriation for the development or implementation of the website, DoIT is required to develop the site using existing internal resources.
- No new information is being created so there should be no significant impact to any agency.
- Agencies may recognize a savings from not having to take time to fulfill public records requests that requestors can simply get from the web site themselves.

According to SPO, it and DFA will have to re-assign staff and computer resources to comply with the requirements of the act.

SIGNIFICANT ISSUES

The House Judiciary Amendment adding “for lease, sale or development of state land” changes the intent of having all contract information available on the transparency portal for public access

and requires only contracts concerning state land. Although contracts \$20 thousand and over are on the General Services website, those are only posted annually after the end of the fiscal year and are not easy for the public to find if they do not know where to look. The intent of a transparency portal is to make public information available and easily accessible without knowing much about the structure of state government. Before the House Judiciary Amendment, Senate Bill 195 required all state contracts to be made available not just those dealing with state land.

According to STO, additional employee hours would need to be dedicated to generate required reports.

SPO currently publishes the “Roster of State Employees” which contains the name, job title, agency, date hired, hourly rate and the employment status code (classified or exempt (authorized and unauthorized), temporary, etc.). Moreover, from a reasonable person standpoint, a directory includes a name.

PERFORMANCE IMPLICATIONS

The bill is a mechanism to make state government more transparent.

Three of the states that have had a transparency portal/website (Texas, Missouri and Kansas) report savings from consolidating purchases, revising their business model, avoiding duplicate studies and contracts, renegotiating existing contracts or subscriptions and not having to respond to freedom of information requests because the information is readily available and free. Additionally, the portal provided lawmakers information about spending that they could then use to ask agencies probing questions.

Requiring an annual summary of the state’s financial health within three months after the end of the fiscal year may be overly ambitious. The DFA Financial Control Division allows state agencies two months after the end of the fiscal to pay for goods and services received by June 30th of each year. Accounts Payable journal entries are due no later than September 18th. All prior year payables must be paid no later than February 10th following the end of the prior fiscal year. The deadlines established by DFA allow agencies sufficient time to ensure that transactions are properly posted, but will not allow for a summary of the state’s financial health unless it is a preliminary look at the potential health.

DoIT has already created a mock up of the web site envisioned by this bill that was demonstrated at the Lt. Governor’s press conference the week of January 25, 2010.

Some of the agencies that submitted responses indicate that they will have to create or prepare reports to submit to DoIT or DFA; however the bill does not require creation or preparation of new reports. It does require querying the SHARE financial and human resource data to present to the public in a format that is easy to understand.

According to DFA, the website would improve access to public information, and may alleviate some of the workload associated with responding to requests for records under the Inspection of Public Records Act.

ADMINISTRATIVE IMPLICATIONS

DoIT and DFA will have to work together and with SPO to define the fields within the statewide human resource, accounting and management reporting (SHARE) system will be extracted for the Sunshine Portal. The three agencies will also need to work together to develop and promulgate rules that state agencies will be required to follow, especially for information that is not contained in the SHARE system. Additionally, DoIT will have to work with other agencies to ensure that the links to other information required in the bill are built properly. SPO states it will be available to work with DoIT to promulgate rules.

According to TRD, currently posts some of the reports that are described in Section 2, Subsection E of the bill. Additional work would be required to automate new reports or to format those currently available that contain confidential taxpayer information.

DFA anticipates that the majority of the financial and budgeting information required by this bill could be easily produced by posting existing SHARE reports or writing new SHARE queries.

DFA identified two potential issues with having a directory of state employees on the website because employees may compare salaries.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

The Sunshine Portal incorporates the contracts database created under Laws 2009, Chapter 107.

TECHNICAL ISSUES

According to DFA, the term “category” on line 16 page 3 should be changed to “appropriation unit”. DFA also notes that the requirement for cash balances on line 10; page 3 does not have a time phase although it could be presumed that the requirement is monthly. Since all other items have a stated time for making them available, DFA suggests adding one to the cash balances as well.

According to SPO, the definition of “exempt employee” in Subsection B of Section 2 starting on line 24 should be changed to “means an employee of the legislative, judicial or executive branches of state government who is exempted from coverage of the Personnel Act Section 10-9-4 NMSA 1978.

OTHER SUBSTANTATIVE ISSUES

In 2006 the federal government enacted the Federal Funding Accountability and Transparency Act. Since then, states have created their own transparency websites through legislation or executive order. The table below shows the 31 states that have initiated transparency through laws or executive order and the ones with associated transparency portals.

State Transparency Created by Executive Order or Legislation

State	Executive Order	Law	Year	Legislative Mandated Portals
AK	✓		2008	✓
AL	✓	✓	2009	✓
AZ		✓	2009	
CO		✓	2009	
DE		✓	2009	
FL		✓	2009	
GA		✓	2009	✓
HI		✓	2009	
IL		✓	2010	
KS		✓	2008	✓
KY	✓		2009	✓
LA	✓	✓	2008	✓
MD		✓	2009	✓
MN		✓	2009	✓
MO	✓		2008	✓
MS		✓	2008	✓
NC	✓		2009	✓
ND		✓	2009	
NE		✓	2009	
NV	✓		2009	✓
OH		✓	2008	
OK		✓	2008	✓
OR		✓	2009	
SC	✓	✓	2008/2009	✓
SD	✓		2008	✓
TN	✓		2009	✓
TX		✓	2007	✓
UT		✓	2008	✓
VA	✓	✓	2005/2009	✓
WA		✓	2008	✓
WY		✓	2009	

Source: www.fiscalaccountability.org

According to DFA, as the state works to improve the accessibility of public information, the state will need to strengthen controls to prevent the misuse of information.

The bill should also include language that clarifies that outstanding warrant information is a not public record. With the provision in Section 5, the information on warrants would not be public. However, the rules promulgated as part of this Act could easily exclude warrant information from the public domain.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The public would continue to use a slow paper-based request process to access public information. State agencies would continue to incur costs to fulfill public records requests.

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According to the AGO, there would be no central convenient access to government financial information.

According to DFA, the mandates of the bill can be accomplished without legislation. All information is now being disseminated to the public upon request.

ABS/svb:mew