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FISCAL IMPACT REPORT

ORIGINAL DATE 02/28/11

SPONSOR Gentry LAST UPDATED _____ HB 368

SHORT TITLE Inspection of Public Records SB _____

ANALYST Wilson

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	FY12	FY13		
Unknown*	Unknown*	Unknown*	Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total	Unknown*	Unknown*	Unknown*		Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

*The unknown revenues should cover the estimated additional operating impact for the CPR. Please see below.

Relates to HB 379

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
 Commission on Public Records (CPR)
 Secretary of State (SOS)
 State Auditor (SA)
 State Treasurer (ST)

SUMMARY

Synopsis of Bill

House Bill 368 amends NMSA 1978, Section 14-4-11 to clarify that its provisions allowing state elected and former state elected officials to place their personal records in the state archives do not limit the right to inspect public records under the Inspection of Public Records Act (IPRA).

FISCAL IMPLICATIONS

CPR states that by opening records under moratoria, the bill could have the effect of increasing revenue earned from the production of copies, whether paper or electronic, of records requested pursuant to the IPRA. Such revenue would be deposited in the agency's internal service fund, pursuant to statute. How much additional revenue would be earned is unknown. Likely, it would be somewhat more in the months immediately after records of elected officials are brought in under moratoria, while interest is higher, and taper off through the remainder of the moratoria.

SIGNIFICANT ISSUES

The SOS notes this bill brings the 1967 law governing personal files of state elected officials into conformity with the current Inspection of Public Records Act and creates additional transparency with regard to those records.

The Commission of Public Records has already agreed to honor IPRA requests for records under moratoria. The implications discussed here and in succeeding sections will occur regardless of whether the bill passes.

Because of the seeming conflict between the statutory provisions relating to records under moratoria and those of the IPRA, the State Records Administrator, the head of CPR sought advice from the Attorney General about how to reconcile those provisions. Late Monday, February 7, 2011, the agency received an advisory letter from the Attorney General indicating that access should be provided to records under moratoria pursuant to requests filed under IPRA. The Administrator immediately agreed to honor such IPRA requests.

CPR provided the following:

Until now, the statutory language “personal files, records and documents of elected state officials or of former elected state officials” has been read to encompass all the documentary materials of the given office, with the “personal” modifier only applying to “files.” This follows since, in the language of the archival profession, “personal records” is something of a misnomer. The present language of Section 14-4-1 NMSA 1978 also stipulates that the state records administrator may accept and place in the state archives, the files, records and documents; the language is permissive, not mandatory. Further, the language speaks to the “donor,” implying a gift. And all files, records and documents accepted have been held under moratorium until the prescribed period has elapsed, with access granted only with the permission of the “donor.” That interpretation is supported by CPR, including those in 1972 covering the Governor Cargo papers and records. The purpose of the moratorium provision was to try to secure the papers and records of elected officials, which had until then often been removed by the elected official upon expiration of term. However, pursuant to the AGO's advisory letter of this week, only the truly personal papers of an elected official are shielded, during the moratorium, from IPRA requests. The official records and documents, whatever the format, shall be subject to IPRA, and the CPR is complying.

There have been some suggestions that the bill was intended to ensure that the records of all elected officials were open inspection. The bill does not in any way assure that. The

amendment applies only to records under moratoria. Many records of elected officials are never brought into the state archives. This is also true of many permanent records of the state, under the moratorium provision or otherwise.

The CPR has no power to compel transfer. Many legislators, for example, choose to donate their “personal papers,” which may or may not encompass materials that document their actions and decisions and thus meet the definition of records, to other repositories or keep them themselves. Legislative records covered under Section 2-3-13 NMSA 1978, legislative council records have, what in practice is the equivalent of a 75-year moratorium; they are confidential for 75 years. Until a few years ago, they were confidential in perpetuity. The CPR led an effort to cap the confidentiality of most records designated confidential in statute at 25 years; the bill failed on the application of the 25-year cap to the legislative council records referenced in Section 2-3-13 NMSA 1978. The cap was raised to 75 years in the bill as introduced the following year, which passed. The confidentiality cap and exceptions are in Section 14-3-17.1 NMSA 1978.

ADMINISTRATIVE IMPLICATIONS

Demand on staffing resources will increase with each request. The CPR has 42 authorized positions; of those, 10 are vacant and three of those, including two senior archivist positions, are in the agency’s Archives and Historical Services Division. The records, when brought into the Archives, are not indexed or processed in any way. In order to respond to IPRA requests, the Archives staff will have to go through the materials, locate the records, review them to ensure that they contain no exempt/confidential information and, should they contain exempt information, redact it a way that it cannot be recovered, and make copies when requested. With Governor Richardson’s papers, the volume is enormous – 800 cubic feet of paper records and 771,873 electronic files.

RELATIONSHIP

HB 368 relates to HB 379, Real Time Sunshine Portal Updates which addresses updating the Sunshine Portal as well as providing criminal penalties for knowingly violating IPRA.

DW/svb