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## FISCAL IMPACT REPORT

**SPONSOR** Gentry **ORIGINAL DATE** 02/18/11  
**LAST UPDATED** 03/11/11 **HB** 379/aHCPAC  
**SHORT TITLE** Real Time Sunshine Portal Updates **SB** \_\_\_\_\_  
**ANALYST** Sánchez, A.

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>	NFI	NFI	NFI			

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
Department of Information Technology (DOIT)  
Department of Health (DOH)  
Commissioner of Public Lands (CPL)  
Corrections Department (DOC)

### SUMMARY

#### Synopsis of HCPAC Amendment

The House Consumer and Public Affairs Committee amendment removes all mention of the Sunshine Portal Transparency Act. Removal of the amendment to the Sunshine Portal Transparency Act also removes any budgetary impact. The amendment retains the addition of criminal penalties to the Inspection of Public Records Act if an individual knowingly and in bad faith withholds or destroys public records.

#### Synopsis of Original Bill

House Bill 379 amends the Sunshine Portal Transparency Act (Chapter 10, Article 16D NMSA 1978) to require updates to the information to be real time or as soon as reasonably and technically feasible.

The bill also adds a new section to the Inspection of Public Records Act (Chapter 14, Article 2 NMSA 1978) that provides for criminal penalties for knowingly and in bad faith withholding

public records and for knowingly and willfully destroying public records. The misdemeanor penalty is a fine up to \$500 and the fourth degree felony penalty is subject to the provisions in Section 31-18-15 NMSA 1978 (18 months in prison).

The effective date of the bill is July 1, 2011.

### **FISCAL IMPLICATIONS**

According to the Administrative office of the Courts it is not possible to estimate the number of misdemeanors or fourth degree felonies that might be filed in the magistrate or district courts due to violations of the Inspection of Public Records Act (IPRA). Impact on the judiciary would be proportional to the number of cases filed. In the case of fourth degree felonies, defendants have the right to a trial and a trial by jury. Increased trials and trials by jury require additional judge time, courtroom staff time, availability of a courtroom and increased juror payments.

More frequent updates of data currently on the sunshine portal should not pose a significant fiscal implication since the majority of the data comes from the statewide human resources, accounting and management reporting (SHARE) system, the accounting and personnel system of record that is updated as agencies process transactions.

According to the Department of Health (DOH), if an employee willfully fails to comply with an IPRA request the consequences could be costly to both DOH and the employee.

According to the Department of Information Technology (DoIT), it will take 60 hours per month of staff resources to monitor the extraction, transfer and load the data from the SHARE system, and \$40 thousand of professional services to modify the Sunshine Portal application.

According to the State Land Office (SLO), the current monthly updates are automated and aligned with the SLO monthly distribution process and requires little oversight. However, if the window to provide updated information is shortened, processing time on the mainframe may increase causing an increase in DoIT charges.

According to the Corrections Department, it estimates that there will be no increase in felony convictions related to this bill. Additionally, the misdemeanor penalty is a fine and the bill does not specifically require CD to provide probation supervision.

### **SIGNIFICANT ISSUES**

According to DOH, there are no performance implications regarding the criminal penalties if DOH employees properly process IPRA requests.

According to CD, additional penalties are not necessary since state agencies already face fines, compensatory damages and attorney's fees for violations of IPRA. CD also states that criminalizing this behavior is likely to chill if not completely stop public employees from relying on the twelve statutory exceptions or exemptions listed in IPRA and the countervailing public policy exception contained in *State ex rel Newsome v. Alarid*, 90 N.M. 790 (1977).

According to SLO, information in the oil and natural gas administration and reporting database (ONGARD) is uploaded monthly and includes daily collections and adjustments and monthly

distributions. More frequent updates to the portal may present confusing information that could be misinterpreted.

Uploading SLO's numerous contracts more frequently than monthly may prove difficult. SLO currently has 31,922 active leases that have varying expiration dates and options to renew.

### **PERFORMANCE IMPLICATIONS**

According to CD, public employees may disclose all documents in their possession instead of facing a \$500 fine even when the documents disclosed may endanger staff and inmates or disclose confidential medical and mental health information.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

House Bill 379 relates to Senate Bill 327 which clarifies and amends the Sunshine Portal Transparency Act.

Senate Bill 392 which creates the Local Government Transparency Act.

Senate Bill 49 would require the PRC to create a process for posting information about its proposed rules and its cases at DoIT's Sunshine Portal.

House Bill 186 - Proposes a new section of the Procurement Code to require that documents used by state agencies and local bodies to evaluate bids and proposals for contracts over \$50,000 shall be signed by each individual evaluator on the selection committee and retained for the length of the contract. Evaluation documents shall be maintained as a public record subject to the Inspection of Public Records Act.

House Bill 368 which requires access to the personal files, records and documents of elected state officials or of former elected state officials that have been placed in the State Archives. Notwithstanding restrictions, moratoriums and requirements made by the donor, the bill provides that nothing in Section 14-4-11 NMSA 1978 shall be construed to limit the right to inspect public records under provisions of the Inspection of Public Records Act

Senate Bill 52 requires custodians of public records to provide public records in electronic format upon request, provided it can be done with existing equipment and the record already exists electronically.

Senate Bill 187 establishes a Program Evaluation Division of the Legislative Finance Committee to conduct program and information technology evaluations and special reviews of agencies. The division is required to establish objective performance measures for evaluating each program. It reports its findings and recommendations to the LFC. Background material that the division uses, including working papers and notes, are not public records for the purpose of the Inspection of Public Records Act.

House Bill 386 creates the Transparency in Private Attorney Contingency Contracts Act placing limitation on a state political subdivision's ability to enter into contingency fee contracts with private attorneys and requires the state attorney general or the executive of a political subdivision to post contracts to its website.

House Bill 379 duplicates Senate Bill 369 and Senate 271.

Senate Bill 369 adds a new definition for “protected personal identifier information” to the Inspection of Public Records Act; meaning a taxpayer identification number, financial account number, driver’s license number, all but the last four digits of a social security number, and anything related to the date of birth other than the year of birth. Provides that “protected personal identifier information” contained in public records is exempt from public inspection, and only records with the information redacted shall be made available or posted on a public body website.

Senate Bill 271 creates a misdemeanor punishable by not more than \$500 for knowingly and in bad faith withholding public records subject to inspection under the Inspection of Public Records Act. Knowingly and willfully destroying public records in order to circumvent a request pursuant to the act is a fourth degree felony

### **TECHNICAL ISSUES**

There is not enough time, an additional six hours, in the nightly SHARE batch processing window to update the SHARE data and to extract data for the Sunshine Portal.

### **OTHER SUBSTANTIVE ISSUES**

According to CD, the likelihood of criminal fines and misdemeanor convictions for withholding public records may cause employees to resign or potential employees to consider not working for a state agency.

Consideration should be given to defining real time as it relates to a nightly batch process.

### **ALTERNATIVES**

Updating the financial and human resource data weekly would be less costly, more feasible and reasonable.

Delete lines 4 through 16 on page 5 since IPRA already provides for civil consequences for not complying with the law.

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

The Department of Finance and Administration and DoIT will be required to update the portal more frequently.

ABS/bym