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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/16/11

SPONSOR Park LAST UPDATED \_\_\_\_\_ HB 416

SHORT TITLE Crime of Obstructing and Audit SB \_\_\_\_\_

ANALYST Archuleta

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

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		*See Fiscal Impact	*See Fiscal Impact			

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General's Office (AGO)

State Auditor's Office (SAO)

Public Education Department (PED)

### SUMMARY

#### Synopsis of Bill

House Bill 416 amends the Audit Act by making it a misdemeanor crime for a person to obstruct an audit, examination or investigation by the state auditor or designated agent pursuant to the Audit Act. The bill requires the state auditor to refer such matters to the Attorney General or district attorney; and providing civil enforcement by permanent or temporary injunction, restraining order, or any other appropriate order and civil penalty of \$250 for each violation not to exceed \$5,000.

### FISCAL IMPLICATIONS

Depending upon the number of cases referred to a district attorney or the Attorney General's Office, additional resources may be needed to investigate and prosecute each case.

### SIGNIFICANT ISSUES

The State Auditor's Office indicates the bill is a targeted measure that is critical to protect against fraud, waste and abuse in government. In recent years, the State Auditor and his designated agents have encountered instances when conducting audits of 1) persons who have threatened an auditor during the course of an audit; and 2) persons who have employed tactics of

concealing documents, altering documents or concealing information in order to delay and obstruct audits. This legislation should provide a deterrent against efforts to prevent the government from detecting fraud. Acts covered by the statute include intentionally lying to an auditor, threatening an auditor, concealing records, or refusing to allow the State Auditor access to financial records when the State Auditor is conducting an audit special audit, examination or investigation pursuant to the Audit Act.

The Attorney General's Offices cites section 2(A)(1) of the bill, which states one form of obstruction as "making or causing to be made"...a false or misleading report with the intent of deceiving or misleading..." However, Section 2(A)(2) only provides that another form of obstruction is "intentionally obstructing..." This second statement does not substantively add anything to the crime of obstruction. Perhaps additional forms of obstruction to compliment and expand Section 2(A)(1) could involve intentionally denying or delaying access to or hiding or destroying documents or information; altering or forging original documents or information, etc.

PED noted that it is not clear if the term "designated agent" of the state auditor would include an independent auditor approved by the state auditor to be under contract to audit a political subdivision of the state or local public body. If so, then the bill would apply to individuals who have contact or dealings with contract auditors of state agencies or school districts.

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

It would not be a misdemeanor to obstruct a state audit.

DA/bym