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FISCAL IMPACT REPORT

	ORIGINAL DATE	02/18/11	
SPONSOR Garcia, M.J.	LAST UPDATED		HB
SHORT TITLE Enact Local Government Transparency Act			SB 392
			ANALYST A. Sánchez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total			\$100.0	\$100.0	Nonrecurring	DFA-LGD Operating

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files
Sunshine Review

Responses Received From

Department of Information Technology
New Mexico Municipal League
Commission of Public Records
Department of Finance and Administration

SUMMARY

Senate Bill 392 creates the Local Government Transparency Act requiring the Department of Finance and Administration, Local Government Division (DFA-LGD) to work with local governments and the Department of Information Technology (DoIT) to create a portal for local governments and link it to the state sunshine portal. Local government is defined as a Class A county and municipalities with the most recent federal decennial census greater than 15,000, including home rule municipalities.

The DFA-LGD is required to have the architecture created no later than October 1, 2012 and public access no later than July 1, 2013. The local government transparency portal is to contain cash balances, annual operating budgets with monthly expenditures, contracts greater than \$20 thousand and monthly revenue received from any source, capital project expenditures, an employee directory, including name, position title and salary, an annual summary of the local government's fiscal health and links to an open meetings tracker and local governments' ordinances and charters. The local governments are required to provide financial information as frequently as possible but at least quarterly. If the local government already has a website with the required information, the local government can simply provide a link from the portal to its website.

The bill also requires DFA-LGD to promulgate rules to carry out the provisions of the Local Government Transparency Act.

FISCAL IMPLICATIONS

DoIT estimates that it will cost about \$100 thousand to develop the Local Government Portal plus other unforeseen costs. It is unclear how DoIT developed its estimate. Although it estimates it will cost DoIT this amount of money, nothing in the bill requires DoIT to be responsible for the development. The responsibility resides with DFA-LGD therefore the budget impact would be to DFA-LGD and not DoIT. The nonrecurring cost to design and develop would be in FY13 with ongoing maintenance and hosting starting in FY14.

According to DFA-LGD, the cost to define database software and hardware that could accommodate the manipulation of this voluminous budget data for web application is significant. Additionally, the single information technology (IT) person that works for DFA-LGD would not have time to develop the website and links by the mandated deadlines.

SIGNIFICANT ISSUES

The non-profit organization, Sunshine Review, gave all New Mexico counties a failing grade for transparency. The city of Albuquerque received an A+ and the city of Santa Fe received a B- (www.sunshinereview.org).

PERFORMANCE IMPLICATIONS

DFA-LGD states that a web-accessible database would increase its efficiency and provide a powerful updated research tool, and allow the public access to information without having to submit a public information request.

According to Municipal League the information requested in the bill is already accumulated and maintained; however quarterly or more frequent reporting could place an added burden on already short-staffed municipal finance departments. There may also be some computer or data incompatibility issues to work through as many municipalities use customized software programs to generate much of their information.

According to the Commission on Public Records, there are no records management performance implications since the financial information on the portal is for the purpose of transparency and does not override the legal retention periods for financial records established by the local government records retention and disposition schedules adopted by the Commission of Public Records.

ADMINISTRATIVE IMPLICATIONS

The bill applies only to Class A counties: Bernalillo, Dona Ana, Sandoval, San Juan and Santa Fe and municipalities with a population greater than 15,000: Alamogordo, Albuquerque, Carlsbad, Clovis, Deming, Farmington, Gallup, Hobs, Las Cruces, Los Lunas, Rio Rancho, Roswell, and Santa Fe, if their 2010 population census does not show a decline. The city of Albuquerque recently unveiled its sunshine site (www.ABQview).

DFA-LGD currently maintains the information required by the bill in hardcopy spreadsheets so customized reports are cumbersome to create.

With regard to the bill's requirement to establish rules, it will take about one year of staff time including an attorney to work with the counties and municipalities and DoIT to set up the administrative system to meet all the requirements.

DoIT cannot use any of the revenue it earns from services to state agencies to maintain a Local Government Portal. It can however provide the assistance to DFA-LGD and maintenance for the portal on an hourly fee basis.

According to the Municipal League, DFA-LGD will have additional responsibilities including receiving and properly uploading information from the municipalities and the maintenance and updating of the portal.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to House Bill 386 which 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.

Relates to Senate Bill 327 that clarifies the Sunshine Transparency Portal Act and adds public school districts, links to the Regulation and Licensing Department licensure system, quarterly consensus revenue estimates, and information on investments for all investing state agencies.

TECHNICAL ISSUES

The bill has contradictory requirement. On page 3 lines 18 – 19 and lines 24-25 require expenditures and revenue to be reported monthly, yet on page 5 lines 3 -5 requires financial information to be updated as frequently as possible but at least quarterly.

Another contradiction is on page 2 lines 18-20 which requires DFA-LGD to maintain the portal with the assistance of DoIT yet on page 3 lines 1-2, the bill requires DoIT to maintain the portal.

DFA-LGD states that if an open meetings tracker is not available that additional time and resources will be needed to develop it.

DFA-LGD suggests the following changes:

Section 3 D (9) line 18 add the word "expenditure" before the word "fiscal".

In its response, DoIT claims that the bill will require new functionality to be added to the existing sunshine portal when in fact the bill requires a separate stand-alone web site linked to the sunshine portal.

ALTERNATIVES

Amend the reporting requirements on page 3 line 18 to quarterly or the requirement on page 5 line 5 to monthly.

DFA-LGD suggests providing a \$50 thousand general fund appropriation to DFA to contract for a study to determine the program requirements, necessary software application and hardware, which would then provide a basis for an additional general fund request in the 2012 legislative session for implementation in FY13.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Members of the public will have to contact each local government to obtain access to financial information.

The state will continue to be behind the times for providing current budget and fiscal data to interested parties.

ABS/bym