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FISCAL IMPACT REPORT

ORIGINAL DATE 02/22/11

SPONSOR Jennings LAST UPDATED _____ HB _____

SHORT TITLE Webcasting of Cabinet & Other Meetings SB 456

ANALYST Archuleta

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
DoIT	NA	*\$1.7 - \$100.4	*\$1.7 - \$100.4	*\$3.4 - \$200.8	Recurring	General Fund/Other State Funds
Other Agencies	NA	** Indeterminate - See Fiscal Impact	** Indeterminate - See Fiscal Impact	** Indeterminate - See Fiscal Impact	Recurring	General Fund/Other State Funds

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
 Department of Information Technology (DoIT)
 Commission on Public Records (CPR)
 Public Education Department (PED)

No Responses Received From

Governor's Office (GOV)
 Lieutenant Governor's Office (LtGOV)

SUMMARY

Synopsis of Bill

Senate Bill 456 amends the Executive Reorganization Act by requiring the Governor to:

- (1) provide twenty-four hours notice of executive cabinet meetings on the Governor's internet web site, unless the meeting is called to address an emergency less than 24 hours before the meeting,
- (2) to provide live video and audio transmissions of executive cabinet meetings on the Governor's internet web site, and
- (3) to make a copy of the live transmission, which shall be a public record.

Senate Bill 456 also amends the Open Meetings Act by requiring public bodies to provide for

live video and audio transmission of their public meetings, unless the DoIT determines in writing that live transmission of a particular public meeting is technically or logistically impracticable. The public bodies must produce an electronic media exact copy of the transmission, which would be a public record. In addition, the bill would also require public bodies to post their meeting agenda at least seven consecutive days (instead of the current 24 hours) prior to the meeting.

FISCAL IMPLICATIONS

DoIT submits the following:

The bill requires DoIT (when requested) to provide technical assistance to a board, commission administrative adjudicatory body or other policymaking body to implement the live video and audio transmission. DoIT would be required to create a robust environment to host and/or facilitate a technology called “Webcasting”, on a very large scale. Webcasting is a method of broadcasting events live over the internet. Webcasting entails capturing audio/video signals, encoding these signals, and then making them available as a live “stream” on an internet website for public access.

The following paragraphs will illustrate points of consideration for various scenarios:

1.) A very basic webcast of a small commission hearing for example:

- At the very basic level, a webcast and recording can be accomplished with a laptop/pc equipped with a camera and microphone. The webcasting operator can utilize free software for encoding and utilize a free hosting platform.
 - Non-recurring costs: \$1,700 and Recurring Costs \$50 per month.

2.) A higher quality webcast using a commercial hosting provider:

- In this scenario a meeting room is equipped with audio and/or visual equipment such as microphones and cameras. Keep in mind a meeting room setup with microphones, cameras, a mixer, and cabling can cost upwards of \$5,000 – \$10,000. The signals are fed through a mixing device to a laptop/pc for encoding. The signal is then pushed to a commercial hosting provider with dedicated purchased capacity.
 - Non-recurring costs: \$1,950 (audio only) and Recurring Costs \$350 per month

3.) A higher quality webcast using DoIT as a hosting provider:

- In this scenario, the DoIT is the hosting provider of the webcasts for scenarios 1 and 2 above. In effect this scenario introduces the greatest fiscal impact. The DoIT would be required to build an infrastructure suitable for hosting events for 300 plus boards and commissions. At this point it is difficult to estimate a proper capacity plan for such an endeavor.
- An unofficial estimate for monthly cost for bandwidth alone for 1 sixty minute hearing with 100 viewers, per month, for 300 entities with the assumption that 2 in 10 happen at the same time is approximately: \$75,000/month to 150,000/month.

- An unofficial estimate of the number of web-servers to provide a hosting platform is approximately 5 – 10 servers at \$2500/server totaling \$12,500 to \$25,000.
- An unofficial estimate of the number of FTE's to operate the webcasting environment and provide training and support is 5 at minimum.
 - Non-Recurring Costs - \$125,000 and Recurring Costs - \$100,400 per month

According to the Commission on Public Records the bill will have fiscal implications for the agency; however, it is not possible to determine what those costs will be with any specificity. The procurement of hardware and software to provide live audio and video streaming capability will be required. Staff will require training in the operation of the audio and video equipment and software applications. Staff will also be required to support meetings held by the Commission of Public Records and the New Mexico Historical Records Advisory Board, approximately eight meetings per year. Adding additional language to the meeting notices will slightly increase the advertising cost as well. The electronic recorded media will require the agency to purchase additional electronic storage capacity to manage and provide access to large video and audio files. Typically recorded streaming media is very large in file size.

PED also indicates that there will be fiscal implications for the New Mexico Public Education Commission. The Commission would have to work with the Public Education Department IT division and with the New Mexico Department of Information Technology to have their meetings broadcast and placed as a webcast for the internet. If the intent of the bill is to have broadcast-quality audio and video of these meetings, at a minimum, a significant investment in equipment capable of such broadcast, and adequate internet bandwidth to broadcast without interfering with normal business operation, would need to be secured by PED.

SIGNIFICANT ISSUES

The Attorney General's Office submitted that:

Section 10-15-1(B) of the Open Meetings Act declares that all meetings of a quorum of members of any board, commission, administrative adjudicatory body or other policy-making body of any state agency or other political subdivision of the state held for the purpose of formulating public policy are public meetings open to the public at all times, except as otherwise provided by law. Requiring executive cabinet meetings to be broadcast live via the internet raises the question whether the "executive cabinet" created by Section 9-1-3 is a "public body" for purposes of and subject to the Open Meetings Act. Neither Section 9-1-3 nor Senate Bill 456 specifies what constitutes a quorum of the executive cabinet.

The Commission on Public Records cites the following concerns:

1. The first significant issue with implementing this bill is the current availability of audio and video hardware to accommodate live video and audio transmission via the internet and the recording and storage of large video and audio files
2. The second significant issue is determining if sufficient internet service exists to accommodate live video and audio transmission via the internet.

3. The DoIT is required to supply technical support and provide written exemptions; however, technical support is not defined in any detail.

4. New Subsection D of Section 9-1-3 NMSA 1978 and new Subsection F of 10-15-1 require that an electronic copy of the video and audio transmissions of public meetings be produced. The Subsections further stipulate that the copies be retained and disposed of in accordance with records retention and disposition schedules adopted by the Commission of Public Records. Records retention requirements for minutes of meetings of boards, commissions or other policy making bodies, as defined in Section 10-15-1 NMSA 1978 are permanent records; however, tapes or recordings of meetings may be disposed after minutes have been transcribed and accepted at the next meeting but no longer than two years after meeting date. Recorded transmissions of public meetings are not the official copy of record but are produced only for the benefit of the public. Members of the public may confuse the transmission as an official record of a meeting.

The Public Education Department also notes the following:

The Public Education Commission meets six times a year. Many of the meetings are held in Mabry Hall in the Jerry Apodaca Education Building in Santa Fe, but the Commission has the option to hold their meetings throughout the state. In the past few years, the Commission has met in schools and other locations throughout the state. In August, the Commission holds public input hearings throughout the state to get local community input on new charter school applications. These hearings have been held in community centers, auditoriums, and university rooms. Live video and transmission may not be practical for these meetings, requiring either 1) significant investment in technology equipment and internet capability or 2) holding the meetings in a limited number of sites which have such capabilities.

While the bill would promote greater transparency and the ability of the public to become involved in public meetings of government agencies, the bill would also require agencies, commissions, school boards and other public bodies to plan well ahead of meetings to meet the agenda-posting requirement.

PERFORMANCE IMPLICATIONS

DoIT indicates the quality of webcasts will vary among entities. Variable factors include meeting room equipment and webcast operator personnel. The quality of streaming will also vary depending on the providers chosen to host the webcast, where cost can quickly become a significant factor depending on viewership requirements.

CPR suggests that if the bill is enacted it will be necessary to add these electronic video and audio files to the general records retention and disposition schedule and make clear that the video and audio streams are not the official copy of record but are produced only for the benefit of the public. In the interest of fiscal responsibility, the electronic files should be given shorter retention periods (two yrs) similar to tapes or recordings of meetings. To store these materials any longer would require storage space that can be costly to an agency.

PED indicates this bill would not impair the performance of the New Mexico Public Education Commission. (Note: if holding meetings in remote locations is a measure of PEC performance,

then this could limit the Commission's performance). Agendas for the Commission meetings are posted approximately ten days before each meeting now.

ADMINISTRATIVE IMPLICATIONS

The Commission of Public Records indicates that Administrative implications are unknown; however, management will be required to schedule personnel to support meetings not normally staffed. Additionally, staff will be required to store the recorded proceeding.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to House Bill's 367 and 147.

OTHER SUBSTANTIVE ISSUES

The Attorney General's Office cites concern with requiring public bodies to post their agenda seven days before their meetings, which may hamper the public body's ability to address time-sensitive matters in a timely manner without having to call a special meeting.

DoIT also notes that boards, commissions, et cetera affected by this bill may require training and meeting room upgrades to enable quality webcasting. Typically a quality webcast requires a meeting room to be outfitted with quality microphones and a quality mixing device for audio/video. The cost of this equipment can vary greatly but typically ranges from \$5000 to \$10,000 dollars.

The Commission of Public Records notes the following concerns:

One of the significant issues within Senate Bill 456 is the availability of audio and video hardware and software to accommodate live video and audio transmission via the internet. At present, the SRCA does not have the audio and video hardware or software necessary to provide this service. Additional funds will be needed to procure these items and to train staff on its usage. Storage of video and audio recorded files will require large storage devices.

The second significant issue is determining if sufficient internet service exists to accommodate live video and audio transmission via the internet. The DoIT will need to assess the current internet infrastructure to determine if sufficient bandwidth exists to accommodate streaming audio and video. If the current infrastructure is insufficient, additional costs will be incurred. Who will incur these costs, the requesting agency, the DoIT, or the General Services Department?

DoIT is required to supply technical support; however, technical support is not defined in any detail. Is DoIT staff required to set up equipment at the meetings or is this the function of the agency's IT staff. In providing technical support, is DoIT responsible for troubleshooting problems as they occur or, again, is this a function of agency IT staff? Who is responsible for setting up software applications? Who is responsible for purchasing the software applications? Will DoIT require that all entities use uniform hardware and software applications? This will facilitate providing technical support to all of its customers.

PED indicates that under the Open Meetings Act, any person violating the provisions of the law is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than five hundred dollars for each offense. Presumably, holding a meeting without live video or audio on the internet would be a violation of the Open Meetings Act, subject to such penalty unless DoIT provides a written exemption. The bill is unclear if failure to broadcast live due to unforeseen technical problems would provide a defense to any claim of violation under the Open Meetings Act, or whether members of a board must halt their meeting when technical difficulties arise, stopping a live meeting because they are unable to broadcast.

ALTERNATIVES

DoIT suggests an alternative to “live” streaming would be to encode and record a meeting, post the recording for download viewing on a website or multiple websites. Using this approach would greatly reduce the price of viewing a public meeting. An operator at the meeting would simply record the hearing using the equipment located on site. The operator would not need to push the signal to a provider for live streaming.

DA/bym