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FISCAL IMPACT REPORT

ORIGINAL DATE 01/24/12
 LAST UPDATED 02/14/12 **HB** _____

SPONSOR Rue

SHORT TITLE State Agency Sunshine Portal Requirements **SB** 30/a SJC/aSFI#1

ANALYST Wilson

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY12	FY13	FY14	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Minimal			Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to Appropriation in the General Appropriation Act

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Administrative Office of the Courts (AOC)
- Attorney General’s Office (AGO)
- Department of Finance & Administration (DFA)
- Department of Information Technology (DoIT)
- Secretary of State (SOS)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee Amendment to Senate Bill 30 removes “at a minimum” in the section on requirements for the information to be on the sunshine portal establishing only the information listed is to be provided. It adds a new section stating no categories of information will be added without an act of the Legislature and cannot be added by regulation.

Synopsis of SFI#1 Amendment

Senate Floor Amendment #1 requires the Sunshine Portal to include a directory of all employee positions of every person, corporation or entity with which the state contracts, identified by position title, salary and the name of the individual that holds the position.

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to Senate Bill 30 enlarges the definition of state agency in this bill to include all state educational institutions of higher education, the New

Mexico School for the Deaf, the New Mexico School for the Blind and Visually Impaired and the New Mexico Military Institute.

The amendment adds a new section to protect confidential information. It clarifies that nothing in the Sunshine Portal Transparency Act shall require disclosure of information that is confidential by state or federal law.

The amendment also allows a state agency or local education provider to exclude the name of an employee from its directory of all employee positions if it is determined by the state agency or local education provider that publishing the name would endanger the employee's personal safety or the safety of the public. The state agency shall include in the rules the factors to be used in determining whether to exclude the names of certain employees from the directory.

Synopsis of Original Bill

Senate Bill 30 amends the Sunshine Portal Transparency Act (Act) by expanding the definition of state agency to include any branch of state government and requiring the directory of state employee positions and salaries in the sunshine portal to include identification by name.

SB30 also includes exceptions to identifying by name state employees in the sunshine portal who are undercover peace officers and employees who have filed for an order of protection pursuant to the Family Violence Protection Act or other order of protection.

The Sunshine Portal Transparency Act was signed into law in 2011 and created a free public access web site to be created by the Department of Information Technology (DoIT) and the Department of Finance and Administration (DFA). The web site/portal provides interested parties access to how state government agencies spend their revenues, who they employ and at what cost.

FISCAL IMPLICATIONS

DoIT does not anticipate any additional fiscal impact to DoIT as a result of enacting SB30. Currently the Sunshine Portal provides a directory of state employee names, positions, organization and salary for all branches of state government as called for in the Bill. Funding for these provisions is already incorporated in the operational funds allocated for current operations of the portal.

DoIT also does not anticipate any fiscal implication to maintain the requirements of SB30 that are currently provided on the portal. They state that they have an adequate operations budget in the General Appropriation Act

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes.

SIGNIFICANT ISSUES

The AGO has provided the following:

- SB30 clarifies that the provisions of the Sunshine Portal Transparency Act include the

legislative, judicial and executive branches of government. The inclusion of all branches of government was not apparent in the original Act.

- SB30 provides that state employee positions and salaries in the sunshine portal will be further identified by employee name. There is no legal implication for identifying a public employee name, salary and position in that this information is already available pursuant to the Inspection of Public Records Act (IPRA).
- SB30 excludes the identification by name of undercover police officers to avoid revealing their undercover status. It is not clear that these names would not be otherwise public pursuant to an IPRA request but would somewhat be buffered via the sunshine portal.
- SB30 excludes the identification by name of state employees on the sunshine portal who have sought an order of protection to prevent revealing their work site and other personal information. Again, it is not clear that this information would not otherwise be accessible pursuant to an IPRA inspection.

The AOC states that the Judiciary has participated in the Sunshine Portal from the beginning. The AOC met with the project manager and DoIT staff prior to implementation of the portal to ensure cooperation from the judicial branch of government with the Sunshine Portal Act. At that time the AOC, project management and DoIT staff came up with definitions that complied with all aspects of the current statutory requirements of the Act including how employee name, position title and salaries were being posted. Adding the word branch to the definition of state agency ensures that the judicial and legislative branches are required to comply with the Act.

The other amendment expands the listing of employee's names on the Portal. Originally, only exempt employees had their names, as well as their title and salary on the portal. Non-exempt employees only had their title and salary listed. The amendment would require all state employees' names to be listed next to their title and salary.

In order to address SB30's proposed exceptions, DoIT will manage by improving current process and business rules, in coordination with DFA and SPO. DoIT will work with state agencies to identify qualified exceptions and establish a process to manage them, in accordance with the proposed bill.

ADMINISTRATIVE IMPLICATIONS

The agencies named in this bill can handle the requirements of the bill as part of on-going responsibilities.

TECHNICAL ISSUES

The AGO notes that it is not clear from SB30 how DoIT and DFA would be made aware of which employee names are to be excluded from the Sunshine Portal. Presumably, these agencies would promulgate rules which would provide a mechanism by which undercover peace officers and victims of domestic violence would seek exclusion from the portal.

DW/amm:lj