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## FISCAL IMPACT REPORT

**SPONSOR** Candelaria                      **ORIGINAL DATE** 1/28/21  
**LAST UPDATED** 2/05/21                      **HB** \_\_\_\_\_  
**SHORT TITLE** No Retaliation for IPRA                      **SB** 87  
**ANALYST** Glenn

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

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	NFI	NFI	NFI			

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Office of the Attorney General (NMAG)

### SUMMARY

#### Synopsis of Bill

Senate Bill 87 prohibits a public body from taking retaliatory action against a person who has submitted a request for public records under the Inspection of Public Records Act or requested information on the process of submitting a public records request. “Retaliatory action” includes any action or conduct that would discourage a reasonable person from submitting a records request or enforcing a request under the Act. A lawful objection to or denial of a request or a request for additional time to comply with a records request is not a “retaliatory action.”

SB87 provides that a person who prevails in a court action against a public body for violation of the prohibition against retaliation is entitled an award of compensatory damages, punitive damages, costs and reasonable attorney fees.

There is no effective date of this bill. It is assumed that the effective date is 90 days following adjournment of the Legislature.

### FISCAL IMPLICATIONS

A successful lawsuit for violating SB87's prohibition against retaliation could result in a substantial award of damages against a public body. Otherwise, SB87 has no apparent fiscal implications for agency revenues or budgets.

### **SIGNIFICANT ISSUES**

SB87 provides for an award of punitive damages, in addition to compensatory damages, to the prevailing party in a court action involving a claim of retaliation. This is a harsher penalty than is imposed for IPRA violations under current law. See Section 14-2-12(D) (awarding damages, costs and reasonable attorney fees to a person whose written request for public records is denied and prevails in a court action).

NMAG states that the definition of "retaliatory action" (pages 2-3, lines 22-3) is very broad insofar as it includes "any action or conduct" which would "discourage a reasonable person from submitting a request or pursuing the enforcement of a request." It does not include a requirement that the action or conduct be deliberate or malicious, meaning that it is at least possible that a public body acting in good faith might accidentally "discourage" someone from submitting a request and thereby become subject to a lawsuit and resulting damages and costs.

Similarly, according to NMAG, the bill provides that a denial or objection to an IPRA request is not a "retaliatory action" when it is "lawful." This would likely mean that many denials of requests that courts later deem unlawful could also thereby constitute retaliatory acts, even if the public body denied the request in good faith, to the extent that they would discourage a reasonable requestor from submitting a request.

### **OTHER SUBSTANTIVE ISSUES**

NMAG notes it appears that, as drafted, a public body's failure to respond to an oral request would not constitute a retaliatory action. Although the bill provides that a public body may not "take any retaliatory action" against an individual who has submitted an oral request, IPRA's existing Section 14-2-8(A) provides that a public body's failure to respond to an oral request "shall not subject the custodian to any penalty." The bill does not propose to amend Section 14-2-8(A), so NMAG believes the best interpretation of these two provisions (one currently in law, the other proposed by the bill) in harmony with one another would likely be that the failure to respond to an oral request would not constitute a retaliatory action.

BG/sb