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FISCAL IMPACT REPORT

ORIGINAL DATE 2/10/17

SPONSOR SPAC LAST UPDATED _____ HB _____

SHORT TITLE Exempt Unpaid Warrants for IPRA SB 158/SPACS

ANALYST Sánchez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI	NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB10, SB72 and SB133

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Finance and Administration (DFA)
 Administrative Office of the Courts (AOC)
 New Mexico Attorney General’s Office (NMAG)
 State Commission of Public Records (CPR)

SUMMARY

Synopsis of SPAC Substitute

Senate Public Affairs Substitute for Senate Bill 158 proposes to add a new section to Chapter 6, Public Finances, requiring outstanding warrants that have not been cleared by the agency’s or public body’s fiscal agent bank not be made available for public inspection.

Synopsis of Bill

Senate Bill 158 proposes to exempt outstanding unpaid warrants (a government’s promise to pay) issued by a public body but not cleared by its fiscal agent bank from the Inspection of Public Records Act (IPRA).

FISCAL IMPLICATIONS

No fiscal impact reported by responding agencies.

SIGNIFICANT ISSUES

The Department of Finance and Administration (DFA) receives numerous IPRA requests each year seeking information on "uncashed checks" (outstanding unpaid warrants) from individuals working for companies that sell their services to assist people in finding unclaimed property in their name.

The State Commission of Public Records (SCPR) notes that this exception would allow public bodies to release issued warrants only after it is cleared by the fiscal agent bank. As drafted, the exception is unlike the other exceptions enumerated in this statute. This exception does not categorically exclude certain public records ("outstanding unpaid warrants"). Instead, this exception merely addresses the timing of the production of public records (i.e., "not cleared by its fiscal agent bank"). Once the warrant clears the fiscal agent bank, the warrant would presumably have to be produced.

The Attorney General's Office (OAG) opines that if anything, the unpaid warrants SB158 is aimed at exempting are similar to "drafts" of public records, pending the clearing by its fiscal (agent) bank. The exemption, as written, does not exempt outstanding unpaid warrants, just outstanding unpaid warrants issued by a public body but not cleared by its fiscal agent bank. Though the NM Courts have not ruled on whether unpaid warrants are exempt under IPRA, the NM Courts have ruled that, there is no statute or court rule that allows a public body to deny inspection of a record simply because it is a draft. See *Edenburn v. New Mexico Department of Health*, 2013 NMCA 045, ¶ 23 (holding that draft documents are public records under IPRA).

ADMINISTRATIVE IMPLICATIONS

The OAG Open Government Division provides assistance and training to public employees, media, and the general public regarding the Inspection of Public Records Act. Changes to the law are likely to result in the division receiving additional questions from different groups across the state.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to HB10 and SB72 Public Accountability Act, SB133 Wrongful Drawings of State Warrants

TECHNICAL ISSUES

DFA states that it is not clear if records such as reports containing "information" about unpaid warrants would be included in the exemption. . Similarly, if DFA employees communicated about certain unpaid warrants via email, it is not clear whether those emails would be exempt from inspection.

OTHER SUBSTANTIVE ISSUES

The OAG= reports that the underlying policy of IPRA is, "that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of public officers and employees." NMSA 1978, Section 14-2-5. There is a presumption which favors disclosure of public records. See *State ex rel. Newsome v. Alarid*, 1977-NMSC-076, ¶ 34, 568

P.2d 1236 (“We hold that a citizen has a fundamental right to have access to public records. The citizen’s right to know is the rule and secrecy is the exception”). Though the presumption is to allow for inspection of records, IPRA does exempt certain records from production.

ALTERNATIVES

DFA suggests adding “*or any records containing information on outstanding unpaid warrants issued by a public body but not cleared by its fiscal agent bank; and*”

ABS/al/jle