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FISCAL IMPACT REPORT

ORIGINAL DATE 2/05/18

SPONSOR Fajardo LAST UPDATED _____ HB 218

SHORT TITLE Additional & Withheld Sunshine Portal Info SB _____

ANALYST Sánchez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY18	FY19	FY20	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Minimal to None	Minimal to None	Minimal to None	Recurring	General Fund Other State Funds

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB52, SAB83, SB98 and SB244

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Information Technology (DoIT)
 State Land Office (SLO)
 Office of the State Auditor (OSA)
 New Mexico Attorney General’s Office (NMAG)

SUMMARY

Synopsis of Bill

House Bill 218 proposes to amend the Sunshine Portal Transparency Act. It adds definitions for electronic public information, financial information, sunshine portal, and transparency website, makes technical corrections. Additionally, the bill requires

- the Sunshine Portal to be linked to state agency transparency websites and to other electronic public information,
- the Department of Information Technology to promulgate rules to create an architecture and information exchange process for collecting and electronic publication of public information, and
- State agencies to post on the Sunshine Portal or on its transparency website public information that is not confidential or that poses a safety concern.

The effective date of this bill is July 1, 2018

FISCAL IMPLICATIONS

The Department of Information Technology (DoIT) reports minimal impact to comply with the provision of this bill.

The State Land Office (SLO) reports that it is not clear whether an additional appropriation would need to be made out of the lands maintenance fund for personnel or equipment to comply with the Act. However, much of the information that the state land office is required to provide for the Sunshine Portal is already provided. The information that no longer would be required to be provided for the Sunshine Portal is not significantly burdensome to provide, so that no fiscal benefit would result from eliminating the requirement.

SIGNIFICANT ISSUES

The Office of the State Auditor (OSA) believes that the bill addresses issues with the posting of information to the Sunshine Portal by providing increased authority for DoIT to establish rules for the architecture and information exchange process for collecting and publishing public information on the Portal. It points out that the bill does not require that all public information be updated monthly. The changes to the specific information required to be posted may result in increased compliance by state agencies with the provisions of the Sunshine Portal.

The New Mexico Attorney General's Office (NMAG) point out the following issues with the bill:

- Section 2(D)(3) of the bill requires “a directory of all employee positions identified by state agency, position title, salary and the name of the individual that holds the position.” However, there is no exception for employees that are undercover peace officers, employees who have filed for a protection order under FVPA, any other circumstances where publishing an employee's name would endanger the employee. *See* 40-13-12 (Limits on internet publication).
- Section 2 removes the department of finance and administration's responsibility under the act and makes DoIT the sole agency in charge of the Sunshine Portal. However, Section 3(B) gives the department of finance administration rulemaking authority under the Sunshine Portal Transparency Act. The **new** Section 3(C) then gives DoIT the responsibility to promulgate certain rules.
- Section 4(A) states: “Nothing in the Sunshine Portal Transparency Act shall require disclosure of information that is confidential by state or federal law, **rule or regulation.**” Under *Republican Party of New Mexico v. New Mexico Taxation and Revenue Department*, 2012-NMSC-026, 283 P.3d 853, the Court's decision makes it clear that a public body in most cases may not withhold a public record based on a claim of confidentiality based on a regulation in the administrative code, i.e., a regulation.
- Section 4(B) may be correct that an agency is not required to post electronic information because of confidentiality, however the *Republican Party* case abolished the rule of reason exception in IPRA, and DoIT may not rely on such an argument to withhold information subject to an IPRA request.

According to the Department of Information Technology (DoIT), HB218 allows for the state to have a central location to post public information for public consumption, and allows for one more tool for transparency that state agencies can use. DoIT would be able to potentially expand

the capabilities of the Sunshine Portal to provide any type of public information online in one centrally located place, not just those exclusively listed in the bill. Additionally, there are potential cost savings in centralizing online transparency websites, and potentially expanding the capabilities of the Sunshine Portal.

This legislation clarifies the purpose of the Sunshine Portal, and allows for strategic growth and use of the Portal to provide electronic public record to citizens while also protecting privacy and security concerns uniquely associated with posting information to a website.

There have already been several large inspection of public records requests for electronic records, where both the requestor and the State agreed that 1) this information was useful information that should be provided to the public, 2) should be updated regularly and 3) online would be the best method of providing this information. Yet, because of the current structure of the legislation, DoIT did not post this information on the Sunshine Portal, but rather had to find other means of providing the requested information. Allowing for the expansion of the Sunshine portal saves resources and gives the public one place to search for information.

RELATIONSHIP

Relates to:

Senate Bill 52 Create Governor’s Contingency Fund

Senate Bill 83 Sunshine Portal Audit & Compliance

Senate Bill 244 Public Disclosure of Cybersecurity Information

Senate Bill 98 Commercial Aerospace Protection Act

TECHNICAL ISSUES

Consider removing the Department of Finance and Administration from promulgating rules for the Sunshine Portal since DoIT is the agency responsible for the portal.

OTHER SUBSTANTIVE ISSUES

SLO believes the bill appears to create an ambiguity across a wide range of information that might result in disputes and perhaps litigation in exempting information “because of confidentiality, safety or privacy concerns, there is a public interest in not publishing that information on a public website”.

ABS/sb/al