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F I S C A L I M P A C T R E P O R T

SPONSOR	HJC	ORIGINAL DATE	2/01/19	LAST UPDATED	3/11/19	HB	141/HJCS/aHFl#1/aHF 1#2
SHORT TITLE	State Disclosure of Sensitive Info				SB		
					ANALYST	Jorgensen	

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Attorney General (NMAG)
Department of Health (DOH)
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of HFl#1 HFl#2 Amendments

House Floor Amendment 1 to House Bill 141 adds language allowing disclosure of sensitive information to comply with a “court in the course of a judicial proceeding or made in a court record.”

House Floor Amendment 2 adds language allowing for disclosure of sensitive information when “made pursuant to the Whistleblower Protection Act.”

Synopsis of Original Bill

The House Judiciary Committee Substitute for House Bill 141 (HB141) amends the Governmental Conduct Act to add a new provision prohibiting state employees from disclosing “sensitive personal information” acquired through the employee’s employment. The only exceptions proposed by the bill would be for situations in which disclosure is necessary to fulfill the state agency’s functions; is necessary to comply with a court order; is required by a subpoena or by the Inspection of Public Records Act; is permitted by Section 66-2-7.1 NMSA 1978 of the motor vehicle code; is required by federal law; or is made with the written consent of the person whose information would be disclosed.

The bill also provides a definition for “sensitive personal information” to include the person's status as a recipient of public assistance or as a crime victim, and the individual's “sexual orientation, gender identity, physical or mental disability, immigration status, national origin or religion”, and a person's social security number or individual tax identification number.

FISCAL IMPLICATIONS

There are no fiscal implications reported as a result of implementation of CS/HB141.

SIGNIFICANT ISSUES

TRD Reports:

The Taxation and Revenue Department (TRD) has a number of memorandums of understanding (MOU) and data sharing agreements with other state agencies that will be in jeopardy if TRD is unable to exchange and receive personally identifiable information (PII). PII is used to match data in the GenTax system, the tax system of record in New Mexico, to reconstruct records for audit, for example. Other TRD administrative processes require receiving data with PII to match tax returns as partner state agencies send income credit certifications or request tax intercepts.

New Mexico Attorney General Reports:

Because Section 10-16-17 of the Governmental Conduct Act provides that “any person who knowingly and willfully violates any of the provisions of that act is guilty of a misdemeanor,” House Bill 141 by implication proposes criminal penalties for knowingly and willfully disclosing sensitive personal information to the public.

Because the Governmental Conduct Act differentiates state agencies from local government agencies, see Section 10-16-2 (defining both “state agency” and “local government agency”), the provisions of House Bill 141 would only apply to employees of state agencies. Were a local government agency employee to disclose sensitive personal information outside of one of the exceptions in the Bill, he or she would not be in violation of the Act.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to Senate Bill 118, which proposes to amend the Inspection of Public Records Act to provide a greater exception to disclosure of portions of law enforcement records revealing victims and witnesses of certain violent crimes.

Relates to Senate Bill 232, which proposes to amend the Inspection of Public Records Act to allow public bodies to withhold records in response to records requests made for commercial purposes, among other provisions.

TECHNICAL ISSUES

Because of the impact this legislation may have on TRD, the agency proposes the following:

TRD suggests adding the following language to Section 1(A)(1) so that it reads:

“necessary to carry out a function of the state agency maintaining the sensitive personal information or any agency entitled to receive the sensitive personal information;”. Agency is left unspecified so as to include both federal and state agencies.

In addition, to cover statutory requirements for TRD to share sensitive personal information related to tax administration, TRD feels it is necessary to add to Section 1(A) of the bill an item stating “permitted by Section 7-1-8 to 7-1-8.11 NMSA 1978.” This section of statute is essential to partnering agencies who rely on TRD tax administration data sharing to perform their state agency responsibilities. This additional statute partners with Section 66-2-7.1 NMSA 1978 already listed in the bill language that covers Motor Vehicle Division (MVD) sensitive data.

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