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## FISCAL IMPACT REPORT

SPONSOR HAFC DATE TYPED 2/16/04 HB CS/291/HAFCS

SHORT TITLE Electronic Government Act SB \_\_\_\_\_

ANALYST Paz/Patel

### REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY04	FY05			
	\$1,000.0 - \$1,500.0		Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

Relates to Senate Bill 314

#### Responses Received From

Office of the Chief Information Officer  
 Department of Health  
 Environment Department  
 Department of Transportation  
 Children, Youth & Families Department  
 General Services Department  
 New Mexico Commission of Public Records  
 Administrative Office of the Courts  
 Human Services Department

### SUMMARY

#### Synopsis of Bill

The bill creates an electronic government act and grants electronic government oversight and governance power and duties to the information technology commission. The bill includes the following provisions:

- Establishes an electronic government and management structure to provide oversight, fiscal monitoring, strategic planning and policy development for the state's electronic government initiatives.
- Establishes an electronic government lead agency.
- Establishes a basis for allocating revenues generated by electronic government initiatives.
- Promotes a mechanism for delivering information, government services and financial

transactions to constituents, businesses and other government entities electronically.

- Provides to promote and protect the privacy of nonpublic data distributed through the state's portal as provided by law, and promote the security of the state's data records and electronic information and services.

The information technology commission is granted the following additional duties:

- Adopt and promulgate rules necessary for the administration of the Electronic Government Act;
- Adopt and promulgate rules for state agencies to conduct business by electronic means over the internet or intranet, including financial transactions;
- Adopt and promulgate rules governing internal and external electronic transactions;
- Adopt and promulgate rules authorizing the collection of fees, including portal, transaction, subscription and convenience fees and establish pricing structures for data records provided through the portal;
- Audit data records released to the public over the internet to ascertain compliance with state and federal privacy and security laws and rules and report violations to the office of the attorney general;
- Provide oversight and direction to the lead agency regarding the management of any portal developers or operators retained by the state;
- Adopt and promulgate rules for prioritizing the rollout for portal access for state services and information;
- Establish and opt-out provision for the release of information defined by federal or state law as "private" or "confidential"; etc.

### Electronic Government Fees

Section 8 of this bill provides that money collected from providing data records, services or information through the state's portal shall be distributed to the general fund, unless otherwise provided by law. This bill provide for the following fee structure:

- commercial entities that obtain data for in business use but not for resell the records the fees shall be capped at no more than \$2.00;
- commercial entities that obtain data records from the motor vehicle that resell the data records or reports the fees shall be set at \$3.00 first year, \$4.0 after twelve months, and at \$5.0 per record after twenty-four months;
- commercial entities that obtain data for monthly monitoring and status changes regarding the driving records of specific individuals shall pay a monthly fee of not more than twenty-five cents (\$0.25) per name plus cost of one baseline motor vehicle record per individual per year;
- media ( print publication, radio or television stations or news organization) and nonprofit entities may be charged portal and transaction fees to cover the actual cost of reproduction and delivery of data records, information or services;

This bill authorizes the governor to designate a state agency as the lead agency for state electronic government activities.

**Sale or resale of electronic data records, information and services.** This bill includes a provision that a person or entity that obtains state data records, information or services provided through the state's portal is permitted to sell or resell the data records, information or services only under the terms of a legal and valid contract between the state and the purchasing entity. The bill also provides that the media entities and nonprofit entities shall not sell, resell or deliver the data records to any other person or entity for sale or resale. This prohibition does not apply to publication or use of the data records in the ordinary course of business of a media entity.

### Significant Issues

A few issues the electronic government commission will need to address include:

- **Lack of legislative appropriation process for transaction fees that are authorized by the commission.** The bill provides that the money collected from providing electronic data records, services or information through the state's portal shall be distributed to the general fund, unless otherwise provided by law. This bill also provides for the transaction fees that are authorized by the commission for the sale of electronic data records, services or information through the state's portal and specified in the contract with contract portal developers or operators shall be retained according to contract terms by the contract portal developers or operators unless otherwise authorized in law. According to the later provision, the contractor will be retaining the transaction fee authorized by the contract which will not be going through the legislative appropriation process. Legislators need to be assured that development costs incurred by a vendor paid from an electronic government fund are managed in a cost-effectively. By keeping costs paid to the contractor off the books, the state cannot track the amounts they receive and expend for the development and maintenance of the portal.
- **Elected official within the executive branch of government.** According to the Public Regulation Commission this act does not make distinction between the executive agencies over which the governor has control and those under the governance of other elected officials. The power given to the lead executive agency is unreasonable to all agencies, but especially to those agencies belonging to other branches of government or to agencies with elected officials if commission does not fully involve with the portal governance. The lead agency role should be part of an oversight agency function, such as the chief information officer.

### **PERFORMANCE IMPLICATIONS**

A digital infrastructure provides capabilities for substantially reducing the cost of government operations and increasing the number of constituents served. Metrics to measure these and other performance objectives should be gathered and reported to the legislature as part of information technology metrics published by the information technology commission.

According to the Department of Health, the bill could be beneficial to state government by establishing rules, guidelines and a state portal for state agencies.

According to the Office of the CIO, the bill should improve the state's ability to serve their constituents securely and privately over the Internet and the state's Intranet. The state portal should improve constituent convenience and access to government services 24/7 which may relieve staff from tedious and time-consuming administrative activities and make them available for mission critical work.

## ADMINISTRATIVE IMPLICATIONS

The lead agency is given responsibilities to manage and provide oversight of the portal project; however, there is no funding provided for the lead agency. This can only be expected to increase the lead agency's responsibilities as other agencies are added. The bill appears to target the motor vehicle fees as the first application of the portal. As other agency applications are added, such as Medicaid claims and payment transactions, or child support collections, the complexity of managing the portal would increase, and selection of the lead agency would be critical. (See concerns below about architecture and long-term funding.)

## FISCAL IMPLICATIONS

This bill defines "transaction fee" as ad fee charged to a consumer upon the purchase of certain data records to help defray the costs of providing the record electronically; the fee is charged by and retained by the contract portal developers or operators. Subsection ( C ) of Section 8 further indicate that transaction fees that are authorized by the commission for the sale of data records, services or information through the state's portal and specified in the contract with the contract portal developers or operators shall be retained according to contract terms by the contract portal developers or operators unless otherwise authorized in law. The bill does not include provisions to ensure that the transaction fees that are included in the portal developer's contract will go through the legislative appropriation process.

## RELATIONSHIP

The bill relates to Senate Bill 314.

House Bill 2, General Appropriation Act provides \$150 thousand to develop a strategic plan for electronic government based on a self-funded model.

## TECHNICAL ISSUES

- **High-level architecture.** The state lacks a detailed working document that outlines very specifically the desired functionality, the underlying data sources (and agency participation) and the associated costs and benefits of an infrastructure for electronic government. This infrastructure is also referred to as a statewide portal.
- **Long-term funding.** A funding source is needed to build and maintain an infrastructure to support electronic government. One approach gaining acceptance is a "self-funded" model concept. This model relies upon high volume recurring transactions that citizens or businesses are willing to pay for on a per transaction basis. Fees derived from these transactions are utilized to pay for development costs to build, maintain and provide future enhancements.
- **Fee structure.** Several types of fees are being collected nationwide through portals. Three distinct types of fees include a statutory fee, a transaction fee, and a convenience fee. A statutory fee is a state authorized fee such as permits and license fees. A transaction fee can either be an add-on fee paid by the constituent or business, or deducted from the statutory fee; in effect the state agency receives less than the full statutory fee. A

convenience fee is an add-on non-state authorized fee for transactions not required for a business to operate within the state. A self-funded model collects both transaction fees and convenience fees into a fund established to pay for infrastructure development.

## **ALTERNATIVES**

According to the Office of the CIO, this bill represents the most cost effective, efficient approach for the state to pursue electronic government.

According to the Department of Health, the Environment Department and the Children, Youth and Families Department, an alternative solution would be to designate the IT Commission as the responsible authority for the establishment of electronic government and a management structure.

According to the Administrative Office of the Courts, the bill could be tailored to the management of the state's portal. A task force could be formed to work with the Commission on Public Records and the Information Technology Commission to develop appropriate oversight.

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