

- confidential personal identification information shall remain confidential for 100 years after date of creation, unless a shorter duration is otherwise provided by law;
- records that are confidential pursuant to Section 2-3-13 NMSA 1978, legislative council service records, shall remain confidential for 75 years after creation;
- records that are confidential pursuant to Section 18-6-11.1 NMSA 1978, archaeological sites; and
- the disclosure of records of which is prohibited by federal law.

Significant Issues

Senate Bill 92 is similar to the 2004 session, House Bill 309 that passed the House but died in the Senate. Both bills were drafted and introduced in response to HJM54, passed during the first session of the 46th legislature (2003). That memorial recognized that the unlimited confidentiality provisions tied to some public records mean that those records, often of great value to researchers, remain inaccessible long after the need for confidentiality has passed. The memorial called on the CPR to establish a multi-agency task force to study confidentiality and open access in the management of the state's permanent public records and develop recommendations regarding any needed modifications. The 75-year provision is included in this bill in response to concerns in 2004 that the 25-year limit in the 2004 was insufficient given that legislative service can exceed 25 years.

Currently, there is no time limit on confidentiality for many of state's permanent records that are designated in law as confidential. Consequently, state agencies, and especially the State Records Center bear the costs of preserving these records indefinitely, yet they will never be accessible.

Many of these records have significant historical and informational value to social scientists, scholarly researchers and genealogists, among others. Yet because of their "permanent" but "confidential" designation, they are forever exempt from public disclosure.

The bill attempts to address the issues of open government on one hand and the rights of privacy on the other.

PERFORMANCE IMPLICATIONS

One important component of the mission of the CPR is facilitating, within legal limits, access to public records. In the 2003 update to its strategic plan, the agency identified as one of its five strategic initiatives the promotion of *open access to public records*. Under that initiative was a strategy to *identify and remove unnecessary impediments to open access*, and a specific action step that called for *analyzing laws restricting access to public records and the effect of unlimited restricted access to government records*. In the 2004 update, the strategic initiative and strategy remained the same but the action step was revised to reflect the work of the task force. It then read, *prepare and submit the multi-agency task force recommendations to the legislature pursuant to the memorial*. The new 2005 Plan, once again, includes the strategy to *promote increased, open access to public records* and the action step to *prepare legislation setting limits on the length of time that access to permanent confidential records may be restricted*.

FISCAL IMPLICATIONS

The appropriation of \$25 thousand contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of fiscal year 2006 shall revert to the general fund.

The CPR currently receives permanent, confidential records from well over 100 state agencies. These records require processing, storage under controlled conditions and conservation, with the attendant costs, yet they will never be available to the public. The CPR, alone, presently maintains over 40,000 linear feet of permanent, confidential records, and the CPR receives only a portion of such records created by agencies. Many agencies around the state also store permanent, confidential records. The CPR is by no means suggesting that these records not be retained. Indeed, it believes that many provide important documentation of governmental processes and decisions that would be of considerable value to researchers and others interested in the history of New Mexico state government. However, under present provisions, the CPR must continue to incur the costs associated with preservation of these records with no expectation that they will ever be opened to the public, even after any reasonable basis for their confidentiality is gone.

The bill will require that the many agencies holding what are now permanent records with unlimited confidentiality receive training in the new retention requirements and how to identify and track retention on affected records. Without such training it is likely that many agencies will be unable to respond appropriately to requests for access.

As the agency charged in law with the responsibility of establishing and maintaining a records management program for the efficient and economical management of the state's public records, the CPR has extensive experience in providing records and archival management training.

The \$25 thousand appropriation in the bill will be used for the development and printing of training manuals, the employment of a temporary employee to help conduct the training sessions, and travel expenses associated with providing the training.

ADMINISTRATIVE IMPLICATIONS

The CPR has sufficient resources to administer SB 92 with the \$25 thousand appropriation..

OTHER SUBSTANTIVE ISSUES

While the CPR promotes access to the state's public records, it also recognizes and respects the privacy concerns the confidentiality provisions now in law are intended to address. The agency understands that a delicate balance must be maintained between privacy and open access. The task force created pursuant to the HJM54 (2003 session) also recognized the same need for balance. Many states and the federal government have limited confidentiality of most records, lifting it when the reason for the confidentiality is no longer valid. If New Mexico followed a similar path, likely most of the records now forever barred from public view could be opened at some point, adding to the accountability public access provides and contributing to the understanding of New Mexico's governmental processes and decision-making.