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FISCAL IMPACT REPORT

ORIGINAL DATE 2/20/07

SPONSOR Begaye LAST UPDATED _____ HB 1210

SHORT TITLE WEB SITE LEGAL NOTICE PUBLICATION SB _____

ANALYST Propst

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total			unknown	unknown	recurring	Various

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Finance and Administration (DFA)

General Services Department (GSD)

Public Education Department (PED)

SUMMARY

Synopsis of Bill

House Bill 1210 would allow legal notices to be posted on a state-authorized website. The website will be operated by a private contractor selected by the Secretary of the General Services Department, pursuant to a request for proposals issued in accordance with the Procurement Code.

Significantly, HB 1210 would require that the contract between the State and the selected contractor:

- require "that the web site be established and operated at no charge to the state" [HB 1210, Section 3(B)(4)]; and
- provide "for the remission by the operator to the state of at least 20% of the posting fees" [HB 1210, Section 3(B)(8)].

HB 1210 would create a market for the website by mandating that, from July 1, 2008 through June 30, 2011, the legal notices and advertisements of the state and political subdivisions of the state shall be both published in a newspaper . . . and posted on the state-authorized web site". [HB 1210, Section 3(C)(1).] During this time period, notices of other entities must be published in a newspaper and "may, at the option of the poster, also be posted on the state-authorized web site." [HB 1210, Section 3(C)(2).]

Beginning July 1, 2011, posting of a legal notice or advertisement "on the state-authorized web site shall be an alternative method for giving public notice in New Mexico and, for all purposes, shall be given the same legal effect as publication in a newspaper." [HB 1210, Section 3(D).]

FISCAL IMPLICATIONS

DFA notes that HB 1210 has an indeterminate revenue impact. HB-1210 requires that the private contractor selected to run the web site remit to the State a minimum of twenty percent of the posting fees. DFA is unable to estimate the revenue impact of this, since the volume of postings and rates are unknown.

Indeterminate additional operating budget impact. As written, it is unclear whether the State must pay to post notices on the web site or whether the requirement that the web site be "operated at no charge to the state" is meant to absolve the State from any posting fees. In any event, DFA recommends that the statute be amended to clearly require the State to pay the reasonable posting fee everyone else must pay. For FY09 through FY11, that will cause an increase in the legal notice budget of all State agencies, since, during that time, notices must be published in a newspaper and posted on the web site.

SIGNIFICANT ISSUES

DFA reported on the following issues:

Procedural Due Process Issues. Procedural due process typically requires timely notice reasonably calculated to inform the person concerning the subject and issues involved. HB 1210 rests on the assumption that web site posting would satisfy procedural due process notice requirements. This is an issue that, given New Mexico's current newspaper publishing requirements, has not been addressed by New Mexico Courts. So as to allow this important issue to be properly evaluated before this major change in law is implemented, we recommend that HB 1210 be amended to:

- (i) remove Section 3(D), which provides that, on and after July 1, 2011, posting on the state-authorized web site "shall be given the same legal effect as publication in a newspaper";
- (ii) have a delayed repeal date of June 30, 2011; and
- (iii) require that, during the interim between the 2010 and 2011 regular sessions of the Legislature, reports be made to an appropriate interim committee regarding (a) the web site, including, but not limited to, the number of visitors, its features, and comparative advantages and disadvantages in relation to traditional newspaper publishing and (b) whether web site only posting of legal notices and advertisements comports with federal and State procedural due process requirements.

State Paying Posting Fees. As indicated, it is somewhat unclear whether HB 1210 requires the State to pay posting fees. DFA believes that HB 1210 could be amended to clearly require that the State do so, for several reasons. First, if the State is exempt from posting fees, this will cause the posting fees of everyone else to be higher than otherwise would be necessary to make the web site a viable venture for its operator. Second, during FY09 through FY11, HB 1210 mandates that all political subdivisions both publish and post on the web site all legal notices and advertisements. HB 1210, however, provides no appropriation to cover the cost of political subdivisions in doing so. Given this unfunded mandate, it seems only fair that the State ought to

share the burden of creating a market for the web site by also paying posting fees.

State Sharing in Posting Fees of Others. As written, HB 1210 requires the private contractor selected to run the web site to remit to the State a minimum of 20% of the posting fees the contractor receives. Since the web site will be operated at no cost to the State, this may amount to a stealth tax on legal notices that does not currently exist with respect to published notices.

HB-1210 May Not Harness the Full Potential of Internet Posting. Section 3(B)(11) requires the web site operator, among other things, "to make the access user-friendly by use of searches by keywords, by courthouse file numbers, by specific locale or by type of information sought". This requirement should be expanded to require that users of the web site be able to sign up for email notifications of notices that fit criteria they select. Such a requirement would vastly improve the effectiveness of legal notices beyond that which currently exists with traditional newspaper publishing. Instead of being required to read notices each day to avoid missing something, notices would arrive instantaneously in the user's email in-box.

ALTERNATIVES

DFA suggests that rather than providing that, on and after July 1, 2011, web posted notices will be given the same legal effect as publication in a newspaper, HB 1210 could be amended to remove this change in existing law and have a delayed repeal of June 30, 2010. During the interim between the 2010 and 2011 regular session, an appropriate committee could study the procedural due process and other issues surrounding implementing this significant change to existing law.

WEP/mt