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## FISCAL IMPACT REPORT

ORIGINAL DATE 1/27/09

SPONSOR Trujillo, J. LAST UPDATED \_\_\_\_\_ HB 88

SHORT TITLE Human Services Department Document Subpoenas SB \_\_\_\_\_

ANALYST Earnest

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	None		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Human Services Department (HSD)  
Office of the Attorney General (AGO)  
Administrative Office of the Courts (AOC)

### SUMMARY

#### Synopsis of Bill

House Bill 88 gives to the Secretary of HSD the power to issue administrative subpoenas for production of records or tangible items that the secretary reasonably believes are relevant to HSD investigations related to enforcement of the laws and programs administered by HSD.

The subpoena will be served and proof of service shall be made in the same procedural manner as provided for service of process in the Rules of Civil Procedure for the District Courts.

If the person, state agency, or political subdivision served with the subpoena does not comply with the administrative subpoena, the HSD may apply to a state district court for enforcement of the subpoena. Failure to comply with the district court's order enforcing the subpoena shall be punishable by the court as contempt.

## FISCAL IMPLICATIONS

None identified. See Administrative Implications section for operational impacts.

## SIGNIFICANT ISSUES

According to HSD, the intent of the legislation is to provide additional authority to HSD's Office of Inspector General (OIG) to obtain documents it deems necessary in carrying out investigations. HSD notes that the bill is similar to existing legislation relating only to HSD's child support enforcement division and would make give HSD subpoena authority for enforcement of HSD's public benefit and other programs. When OIG works joint investigations with another investigative agency, the OIG tries to use their subpoena authority if available. Otherwise, OIG attempts to use "customer consent" authorization if possible. When neither are available, HSD finds their ability to carry out the investigation is hampered by the lack of subpoena power.

Specifically, HSD states:

The OIG is responsible for public assistance fraud investigations, which include internal audits, investigations and financial recovery operations in areas such as Food Stamp fraud; Electronic Benefit Transfer (EBT) card fraud; LIHEAP fraud; identity theft; General Assistance fraud; Temporary Assistance for Needy Families fraud; Medicaid client fraud; employee integrity/internal personnel investigations and participation in any subsequent personnel actions or hearings; allegations of violations of laws and standard of conduct applicable to HSD; allegations of improper use of state funds and theft or forgery of child support checks; cases resulting in administrative sanctions through the HSD fair hearings process, investigations conducted for referral to district attorneys or U.S. Attorney for prosecution in accordance with N.M. Public Assistance statutes and applicable federal laws, and cases brought for administrative recovery of funds through HSD claims process.

During OIG's conduct of the various administrative, personnel, civil, or investigations noted above, organizations possessing records pertinent to an investigation will usually request or require a subpoena prior to release of records related to the investigations. Examples of documents that may be required for an OIG investigation include the employment records of private businesses; store surveillance films needed to investigate possible cases of EBT card fraud and identity theft; client information held by public utilities; and account information, loan transactions, identification of account information and other such information held by financial institutions in order to investigate allegations of stolen or forged checks. The lack of administrative subpoena power has hampered OIG's ability to obtain and review documents and tangible evidence that is relevant to proper resolution of the many investigations within its purview.

The AGO notes that the subpoena authority presumably only applies during department investigations; however, the bill prefaces its grant of administrative subpoena power with the phrase "to ensure or enforce compliance with the laws and programs administered by the department." The Human Services Department is required to perform duties under many state laws. See NMSA Chapter 27, Articles 1-15. The bill does not define the term "investigation" or describe the specific state law the Department's subpoena authority would apply to.

Moreover, AGO states “It is possible that some of the documents or objects over which subpoena power is granted would be confidential under other state or federal laws. The bill does not contain any confidentiality provisions, or provide for the return of “tangible objects” subject to subpoena. The bill does not provide for the award of costs against the department if its request for court enforcement of a subpoena is denied.”

### **ADMINISTRATIVE IMPLICATIONS**

According to the AOC, there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the number of times parties turn to the courts to enforce, quash, or limit these subpoenas. Increased penalties cases take up a considerable amount of judicial time. By providing that failure to comply with a court order enforcing a subpoena is punishable as contempt, this bill may increase the amount of work that needs to be done by the courts, thus requiring additional resources to handle the increased workload.

There would be a minor administrative impact on HSD to generate, track and enforce any issued subpoenas. The administrative aspects of the bill, if passed, would be handled by HSD’s OIG, Office of the Secretary and Office of General Counsel.

### **TECHNICAL ISSUES**

AGO finds that Section D of the bill allows the secretary to apply to the District Court if a subpoena is not complied with; however, the section does not include language designating the type of relief which may be applied for, (e.g. “for an order of compliance”).

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

HSD will not have new administrative subpoena power for investigation by the HSD inspector general. According to HSD, if OIG is unable to obtain needed records, the case is in jeopardy of being dropped, because of the inability to substantiate the allegations of fraud or employee misconduct, for example.

BE/mc