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FISCAL IMPACT REPORT

SPONSOR Varela **ORIGINAL DATE** 3/2/09 729/aHHGA/aHFL#1
LAST UPDATED 3/16/09 **HB** /aSJC
SHORT TITLE Information Technology Commission and Duties **SB** _____
ANALYST A Sánchez/Archuleta

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	None		

(Parenthesis () Indicate Expenditure Decreases)

Relates to Appropriation in the General Appropriation Act
 Companion to SB65 Information Technology and Telecommunication Oversight Committee
 Conflicts with SB674 Department of Information Technology Broadband Services

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Department of Information Technology (DoIT)
- Department of Health (DOH)
- State Personnel Office (SPO)
- Higher Education Department (HED)
- Economic Development Department (EDD)
- Taxation and Revenue Department (TRD)
- General Services Department (GSD)
- Public Education Department (PED)
- Department of Environment (NMED)
- Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of SJC#1

Senate Judiciary Committee amendment number 1 reduces the size of the IT commission voting members of from seventeen to fifteen by removing the House of Representatives and Senate members. The amendment restores staff members from the legislative finance committee and legislative council service to non-voting member status.

Synopsis of HFL#1

House floor amendment number 1 increases the size of the Information Technology (IT) commission back to its original size in the current law. The bill reinstates the two members from local government as voting members that were removed in the House Health and Government Affairs amendment.

Synopsis of HHGA Amendment

House Health and Government Affairs amendment to House Bill 729 provides for technical clean-up or clarification of the original bill, allows for DoIT to employ improved administrative processes to contract approval and changes the size of the IT commission to a more manageable size.

Synopsis of Original Bill

House Bill 729 removes references to the General Services Department where the agency currently providing the services is the Department of Information Technology (DoIT) and it removes the reference to the non-existent information system council.

House Bill 729 amends the rate-setting provision to be in line with federal guidelines. It also allows DoIT to reduce rates without rate committee approval.

The bill amends the duties of the secretary to include

- Providing written information technology (IT) recommendations by November 14th of each year to the Department of Finance and Administration (DFA) and by November 21st of each year to the Legislative Finance Committee (LFC).
- Conducting reviews of IT projects and providing written reports to the IT Commission and legislative oversight bodies;
- Conducting background checks on DoIT employees and prospective employees that have or will have access to sensitive, confidential, or private information.
- Reporting certified projects in compliance with contingencies to the IT Commission.
- Updating the state IT strategic plan every three years.
- Removing the ability to use the contractor vendor request as a contracting method, thus requiring compliance with the Procurement Code.

House Bill 729 requires agencies to conduct background checks on current and prospective staff with access to networks or other IT hardware and software. It requires state agencies to promptly pay their invoices, provides a resolution process for disputed invoices, and allows DFA to transfer payments for invoice thirty days old. The change in the process allows DoIT to have revenue to operate and the agencies to have a fair and transparent process to dispute invoices.

House Bill 729 removes the nonvoting members representing local government since two are included as voting members. It adds one member from the House of Representatives and one from the Senate as voting members appointed by the Speaker of the House and the Senate's committees' committee, respectively, and eliminates two non-voting members - one from the LFC and one from the Legislative Council Service. The bill also prohibits a registered lobbyist from serving on the commission, in compliance with the Lobbyist Regulation Act. Additionally, it requires the IT commission to appoint a voting member to the project certification committee.

House Bill 729 changes the date to submit the reconciliation report for equipment replacement funds to September 1 from December 1 to be in line with budget submissions.

House Bill 729 adds a new section allowing for the treatment of the statewide human resource, accounting and management reporting system as an enterprise system and operation. It requires a joint powers agreement; and a per-employee assessment to operate, maintain, and upgrade software; to replace equipment; and to set aside funds for equipment replacement and software upgrades.

FISCAL IMPLICATIONS

House Bill 729 contains no direct appropriation. However, the increase to the per-employee assessment contained in the General Appropriation Act has the effect of increasing the transfer from agencies to DoIT by \$78 per FTE from FY09 levels.

House Bill 729 recompiles the telecommunications bureau and communications division as part of the DoIT Act and does not amend in any way the existing law regarding use of telecommunication services within state government.

According to the Administrative Office of the Courts, the requirement for background checks would be prudent, and such actions could ultimately avert expensive security and data breaches. Background checks would also likely increase ongoing DoIT and state agency personnel costs. However, costs associated with conducting background may well offset much higher costs associated with security and data breaches.

According to DoIT, the fiscal impact to the agency to conduct background checks on employees with administrative access and authority ranges from \$28.25 for a simple check and will impact the ability to hire timely. DoIT does not include the cost of hiring or keeping staff that compromise or breach security in its analysis. It is not clear why a Department of Defense-level check would be required.

According to LFC records, the latest security breach has cost the state over \$1.3 million.

According to NMED, the increase to the per FTE assessment will cost NMED \$56.2 thousand in FY10.

Based on an average \$40.25 per background check, it will cost PED \$805 to conduct background checks on its IT employees and might delay hiring.

SIGNIFICANT ISSUES

According to DoIT, removing the requirement for IT maintenance contracts to be reviewed by DoIT staff will allow over \$21.7 million in maintenance contracts to go through without review. DoIT's analysis does not include the number of days it takes to review each contract for new systems, and new and ongoing maintenance. Moreover, the analysis does not include the fiscal implications to state agencies in delaying the approval of ongoing maintenance contracts that have been previously approved. DoIT also requests that the new language on page 5, lines 14 through 16 be stricken because they have resolved the issue administratively in coordination with state agency chief information officers.

According to DoIT, the process for disputing invoices is unclear. They would prefer to have paragraph (E) on page 8 line 9 be divided into two paragraphs to make it more clear and to renumber all succeeding paragraphs. The suggested language is presented below.

E. A state agency that receives an invoice from the department for services rendered to the agency shall have thirty days from receipt of the invoice to pay the department in full. If the agency has not paid the department, the department shall notify the department of finance and administration and request that the department of finance and administration transfer funds from the agency to the department of information technology to satisfy the agency's obligation.

F. If the amount of the invoice is disputed, the agency shall notify the department of the dispute within fifteen days of receipt of the invoice and present its reason in writing and request an adjustment. The department shall have fifteen days from receipt of the reasons to notify the agency of its decision. If the agencies do not agree on a resolution, the secretary of finance and administration shall make a determination within fifteen days on the amount owed by the agency to the department.

According to NMED, the current process to have DoIT adjust an invoice takes months. Unless DoIT's process changes, it is highly unlikely that DoIT will be able to respond to a dispute within 15 days.

PERFORMANCE IMPLICATIONS

According to the Department of Health, it will have to allocate sufficient resources to identify discrepancies in DoIT invoices within thirty days.

ADMINISTRATIVE IMPLICATIONS

According to DoIT, it is unclear what is meant by “administrative access or authority” since the terms are not defined and would subject all computer users to a background check.

If the terms “administrative access and authority” are used in the technical sense, the meaning is clear and all computer users at DoIT will not be subject to background checks. The limitation is on personnel that have “administrator” access to the various systems and hardware.

DoIT also states that the Act as written does not grant statutory authority to take personnel action if a background check or an existing employee is negative. DoIT's analysis fails to include action that can be taken pursuant to the existing Personnel Act. The DoIT Act is not intended to supersede the Personnel Act.

DoIT prefers to have the language changed to working with the Department of Public Safety on policies and procedures for background checks. DoIT's suggestion changes the intent from a mandatory requirement to conduct background checks on employees that have or will have access to systems and technical infrastructure that, if compromised, could have a statewide impact to simply writing policies and procedures. The policies and procedures are necessary and can clarify which positions are subject to background checks, the frequency of the checks and the type of background check.

According to GSD, the bill places an added level of accountability and responsibility on agencies to closely monitor invoices from DoIT.

RELATIONSHIP

The assessment of a per employee fee to support SHARE relates to appropriations in the General Appropriation Act.

TECHNICAL ISSUES

Amortization and depreciation are both included in equipment replacement; therefore, the word “amortization” needs to be inserted on page 17, line 22 between the words depreciation and application.

Insufficient funds for the equipment replacement and software upgrade necessitates striking the language on page 18, line 21 after the word “least” through line 22 up to the word “are” and inserting “an amount equal to the annual depreciation and amortization”. Without the language change, DoIT will not be able to comply with the law.

DoIT recommends changing the word “propose” on page 12, line 2 to “approve” since it is the DoIT Secretary that proposes the rates and the Rate Committee that will approve the rate.

DoIT recommends striking the word “departments” on page 6, line 25 and inserting “the Department of Information Technology and the Department of Finance and Administration” to clarify what departments are to agree on the recommendations.

DoIT recommends inclusion of “and associated software” to Section 5, Paragraph B on page 17, line 18 after the word “equipment” and before the word “used” to allow the department to keep the software up-to-date.

DoIT prefers to use a memorandum of understanding instead of the joint powers agreement required in Section 6, Paragraph A on page 18, line 12. Both instruments achieve the same purpose. Memoranda of understanding are most often used between agencies versus joint power agreements that are used between governments. At the end of line 15 on page 18 before the period, to clarify which agency DoIT will enter into a memorandum of understanding it is necessary to add “the department of finance and administration.”

Senate Bill 674 amends Section 15-2-1 NMSA 1978 to allow DoIT to provide broadband services to the supercomputer and to sublease excess broadband capacity. The DoIT Act is being compiled as part of House Bill 729. If SB774 and HB729 are enacted, then the contents of SB674 will have to be recompiled as part of the DoIT Act.

OTHER SUBSTANTIVE ISSUES

The number of voting members of the IT Commission is increasing to 19. A reduction to the number of the voting members may be warranted because the Governor has not appointed all members to the current IT Commission. Section 4, Paragraph (A), Subparagraph (1) of the bill calls for five members from state agencies of which only three have been appointed. Moreover, Section 4, Paragraph (A), Subparagraph (9) calls for three public members, one from each of the congressional districts. These positions have not been consistently filled. If possible, the commission could be reduced by four to five members to make it more manageable.

DoIT recommends that Section 4, Paragraph C on page 15, line 6 the following language is included: “Such designation can not be below the Deputy Cabinet Secretary level.”

The AOC is concerned that the bill will allow one branch of government to dictate the use of funds of another branch. Moreover, it is concerned that the rate committee does not have judicial representation.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

DoIT will not have a legal basis for assessing a per FTE fee to state agencies to support an enterprise system, and no money will be required to be set aside for equipment replacement and software replacement.

DoIT’s ability to reduce rates without Rate Committee approval to reflect reductions on renegotiated contracts will be hampered.

Agencies will continue to refuse to pay invoices from DoIT, thus affecting DoIT’s revenue stream, which it uses to pay contracts and employees.

DoIT will not be able to collect revenue owed in a timely manner.

New statutory requirements regarding the statewide human resources accounting and management reporting system (SHARE) will not be enacted.

Certain deadline will remain out of sync with budget submissions.

DoIT will have to pursue other means to meet the intent of the proposed legislation.

ABS/mt:mc