

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website ([www.nmlegis.gov](http://www.nmlegis.gov)) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

SPONSOR Cervantes ORIGINAL DATE 2/17/15  
LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_  
SHORT TITLE Obstruction of a State Audit SB 478  
ANALYST A. Sánchez

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	NFI	NFI	NFI			

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to SB 210, SB 290

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General's Office (AGO)  
Office of the State Auditor (OSA)

### SUMMARY

#### Synopsis of Bill

Senate Bill 478 proposes to amend the Audit Act to include obstruction of a state audit, making it a fourth degree felony. The effective date of the bill is July 1, 2015.

### SIGNIFICANT ISSUES

The AGO states that criminalizing the obstruction of a state audit conducted by the State Auditor, his or her employees or audit firms approved by the State Auditor would hopefully deter individuals from impeding an audit, special audit, examination or investigation being conducted pursuant to the Audit Act.

The OSA reports there are currently no provisions of state law that criminalize obstruction of a state audit. This legislation is critical to combating fraud, waste and abuse in government by serving as a deterrent against efforts to obstruct auditors from detecting the misuse of public funds.

According to OSA, in recent years, the State Auditor and independent auditors approved by the State Auditor have encountered instances in which 1) persons have threatened an auditor during the course of an audit in order to obstruct the work of auditors; 2) persons have destroyed or altered documents in order to delay and obstruct an audit; and 3) persons have concealed information or provided false information in order to delay or obstruct an audit.

For example, obstruction of an audit occurred when the former Controller of the New Mexico Finance Authority (NMFA) made or caused to be made a false audit report for NMFA's fiscal year 2011 financial audit and represented to NMFA personnel and other parties that the audit was legitimate. The discovery of the false audit report and the Controller's pattern of false representations about the audit resulted in significant costs to the State and to taxpayers.

While conducting its special audit of the Jemez Mountain School District in 2009, the State Auditor discovered that the District's former business manager had impeded the work of auditors by making false representations about the District's finances. Ultimately it was confirmed that she embezzled \$3.4 million from the District over several years. Additionally, while conducting its special audit of the New Mexico Corrections Department (NMCD) in 2011, the State Auditor discovered that the NMCD's former business manager impeded NMCD's financial audit by threatening an auditor who was conducting audit procedures designed to target fraud. The former business manager ultimately pleaded guilty to federal charges of bribery related to her conduct in orchestrating a "price agreement" procedure that allowed her to circumvent a competitive bidding process while selecting a roofing company to perform roofing goods and services for NMCD.

Obstruction of any lawful investigation, whether being conducted by law enforcement agencies or regulatory bodies such as the Office of the State Auditor, increases operational costs to the taxpayer, could prevent the disclosure of material facts, and is designed by the perpetrator to avoid detection of misconduct or unlawful conduct. There should be adverse consequences for any person who improperly obstructs a lawful audit or investigation being conducted by the State Auditor, and that should take the form of criminal sanctions. There is currently no deterrence to many forms of conduct that obstruct a lawful audit or investigation being conducted by the State Auditor. This bill, if passed into law, will provide that deterrence.

## **ADMINISTRATIVE IMPLICATIONS**

The State Auditor and independent auditors approved by the State Auditor will be able to more effectively carry out their duties if state law criminalized obstruction of audits. The State Auditor and independent auditors approved by the State Auditor could request the assistance of law enforcement agencies while conducting and completing audits by referring this type of conduct to those agencies when it occurs.

## **RELATIONSHIP**

Relates to SB 204 (State Inspectors General Act) and SB 290 (Audits of Capital Outlay Projects)

ABS/bb