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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/07/17

SPONSOR Cervantes LAST UPDATED 02/22/17 HB \_\_\_\_\_

SHORT TITLE Crime of Audit Obstruction SB 255/aSPAC

ANALYST Sánchez

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

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		NFI	NFI	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates HB149  
Relates to HB140

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Office of the State Auditor (OSA)  
Department of Finance and Administration (DFA)  
New Mexico Attorney General’s Office (OAG)  
Administrative Office of the Courts (AOC)

### SUMMARY

#### Synopsis of SPAC Amendment

Senate Public Affairs Committee Amendment to Senate Bill 255 provides protection to persons who deceive, mislead or interfere with an audit if the person’s supervisor or manager has expressly and provably required the person to deceive, mislead or interfere.

#### Synopsis of Original Bill

Senate Bill 255 proposes to amend the Audit Act to include obstruction of a state audit with the intent to deceive, mislead, or interfere if a person destroys, conceals or alters any record or document, makes or causes to make a false or misleading report, or impedes the state auditor from meeting its audit requirements. The bill makes such obstruction a fourth degree felony.

### SIGNIFICANT ISSUES

The protection to employees offered in the SPAC amendment could encourage individuals to come forward with critical information knowing that following their supervisor’s or manager’s instructions would not make them criminally liable.

The Office of the State Auditor (OSA) reports that it has faced repeated instances of attempted audit obstruction over the past two years. It provides its investigation (audit) of the Taxation and Revenue Department under former secretary Padilla. OSA suggests that obstruction of an audit results in wasting taxpayer dollars, as government agencies use taxpayer dollars to fight the work of another government agency. It further opines that agencies being audited are encouraged to employ these tactics in part because there are no consequences for obstructive actions.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Duplicates to HB149 Obstruction of an Audit  
Relates to HB140 Capital Outlay Projects and Audits

### **TECHNICAL ISSUES**

Consider correcting the grammatical error on Page 1, lines 23-24 where obstruction of an audit is described as a person.

### **OTHER SUBSTANTIVE ISSUES**

OSA anticipates that the proposed legislation would positively impact its mission of bringing transparency and accountability to government finances.

The Department of Finance and Administration (DFA) Audit states that the effectiveness and thoroughness of an audit is dependent on the full and accurate disclosure of information. Audits are heavily influenced by the representations made by the audited entity. Inaccurate, incomplete, or false representations by an agency could cause the auditor to expend unnecessary effort or could cause a material fraud or error to go undetected. Audit firms explicitly shield themselves from audit failure that results from misrepresentations made to the audit firm by the client. In an effort to ensure proper conduct between an audited party and its auditor, this bill makes obstructive acts a fourth degree felony.

DFA points out that the prohibitions described in the bill are not consistent with the requirements in audit engagement letters agencies are currently required to sign at the beginning of each audit. The purpose of an audit engagement letter is to document the client's responsibilities for ensuring access to all information that is relevant to the preparation and fair presentation of its financial statements, and ensuring the accuracy and completeness of that information.

Government Auditing Standards state "Audits provide essential accountability and transparency over government programs. Given the current challenges facing governments and their programs, the oversight provided through auditing is more critical than ever. Government auditing provides objective analysis and information needed to make the decisions necessary to help create a better future."

### **ALTERNATIVES**

Consider adding misleading statements to the prohibited acts.

ABS/sb/jle