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FISCAL IMPACT REPORT

SPONSOR Pope **ORIGINAL DATE** 02/23/21 **LAST UPDATED** _____ **HB** _____
SHORT TITLE Change Audit Reporting Requirements **SB** 268
ANALYST Glenn

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI			

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

State Auditor's Office (OSA)

Department of Finance & Administration (DFA)

SUMMARY

Synopsis of Bill

Senate Bill 268 amends the Audit Act to provide that confidential audit documentation, including working papers, are not public records subject to the Inspection of Public Records Act; deletes a provision authorizing an agency to notify the state auditor of errors in the agency's audit report within 30 days of receiving the report; and provides that any revision of a report that is a public record shall comply with the state auditor's regulations and other applicable professional standards.

There is no effective date of this bill. It is assumed that the effective date is 90 days following adjournment of the Legislature.

FISCAL IMPLICATIONS

No fiscal implications of SB268 were reported for agency operating budgets.

SIGNIFICANT ISSUES

OSA states that SB268 revisions are necessary so that the Audit Act accurately reflects laws, regulations, and professional standards governing OSA and the profession of public accountancy, and so OSA can accomplish its purpose as an independent, executive branch agency with financial oversight for New Mexico agencies and local public bodies.

In particular, OSA states that New Mexico law prohibits a certified public accountant or public accountant from disclosing information obtained in the conduct of any examination, audit or other investigation made in a professional capacity, including in the courts of the state. *See* Section 38-6-6(C) NMSA 1978. Audit documentation, including working papers, is the property of the responsible certificate holder, and therefore cannot be considered public records. *See* Section 61-28B-25. Beyond the laws governing the OSA and public accountancy requiring confidentiality, there are very strong policy reasons audit documentation should not be considered public records, including preventing the spread of inaccurate or incomplete information where conclusory inferences could be reached. OSA promotes and facilitates accountability and transparency through its reports, which are public and are based on completed test work and procedures with thorough review.

Similarly, OSA states that Section 12-6-5(C) of the Audit Act, which allows an agency to notify OSA of errors in an audit report, conflicts with professional standards related to an audit of financial statements. Specifically, AU-C 560 addresses auditor's responsibilities related to subsequent events and subsequently discovered facts in an audit of financial statements. AU-C 560 requires auditors to perform specific audit procedures and apply requirements related to the date of the auditor's report when management revises financial statements.

OSA notes that because the Audit Act does not expressly protect audit documentation, including working papers, from public disclosure, OSA currently must defend the ownership and confidentiality of audit documentation any time it is challenged (with the exception of a subpoena), to ensure compliance with applicable professional standards.

DFA suggests that reasons for amending Section 12-6-5(C) NMSA 1978, which allows an agency to notify the state auditor of errors in an audit report and requires the state auditor to correct erroneous reports, are unclear. According to DFA, there have been situations where DFA has requested that errors in reports be corrected to ensure that certain information in the Comprehensive Annual Financial Report (CAFR), the reporting of which is the responsibility of DFA, was correctly reconciled and stated.

BG/al