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FISCAL IMPACT REPORT

SPONSOR Ely/Nibert ORIGINAL DATE 02/06/22
LAST UPDATED 02/07/22 HB 180/ec
SHORT TITLE Repeal Part of IPRA Law on Notarial Acts SB _____
ANALYST Hitzman

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY22	FY23	FY24	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See Fiscal Implications	See Fiscal Implications			

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

National Notary Association

Responses Received From

Commission of Public Records (CPR)

SUMMARY

Synopsis of Bill

House Bill 180 repeals Section 14-14A-29 NMSA 1978 (the Revised Uniform Law on Notarial Acts) relating to the Inspection of Public Records Act (IPRA). The bill would repeal provisions allowing members of the public to request journal entries and audiovisual recordings related to specified notarial act transactions. This bill contains an emergency clause and would become effective immediately upon signature by the governor.

FISCAL IMPLICATIONS

The bill does not contain an appropriation. The bill repeals a section of the Revised Uniform Law on Notarial Acts related to IPRA requests and is likely to have minimal fiscal impacts to the state because the section being repealed has only been in effect since January 1, 2022.

Under HB180, savings may be realized if the Secretary of State and other agencies no longer have to process IPRA requests for notarial acts. However, the extent of potential savings is unknown given the short amount of time that the law has been in effect, so it is unclear how many IPRA requests would be prevented as a result of HB180. Therefore, savings and other fiscal impacts are difficult to determine but are likely minimal.

ADMINISTRATIVE IMPLICATIONS

The section of the act to be repealed by HB180 allows IPRA requests to be made for notarial acts, effective January 1, 2022. Further, because requests can only apply to notarial acts performed in New Mexico on or after January 1, 2022, it is unclear how many notarial acts have been performed since the beginning of 2022 and would be impacted by the repeal. Therefore, it is difficult to determine the level of potential savings and administrative burden that could be reduced if HB180 is adopted.

OTHER SUBSTANTIVE ISSUES

According to the Secretary of State’s Office, a notarial act “includes taking an acknowledgment, administering an oath or affirmation, taking a verification on oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy and noting a protest of a negotiable instrument.” Notarial journals often contain a subject’s personal information and therefore are commonly protected from privacy breaches through state law. For instance, the National Notary Association notes that some states, such as Arizona, require nonpublic acts be kept in a separate journal. HB180 would limit the ability of the public to inspect such journals and acts, potentially improving the privacy of the subjects of such records. However, repealing provisions that allow inspections of public records may raise concerns over transparency.

ALTERNATIVES

The National Notary Association notes some existing state-specific exemptions for providing public access to notarial journal entries that highlight differences in existing state policies. For instance, Arizona, Colorado, and Pennsylvania have policies in place similar to the existing Section 14-14A-29 NMSA 1978 that requires notaries to provide access to journal entries to individuals who request them. Some states require the requester to provide the name of the signee and the month and year of the act and other states require payment of a fee. Massachusetts, California, and Missouri have policies that require journal entries be made available only to law enforcement in the course of official investigations, whereas other states like Nevada and Hawaii make entries available to any person without restriction.

Alternatives to HB180 could include amendments to, rather than repeal of, the Revised Uniform Law on Notarial Acts in ways similar to that of other states. For instance, the section could be amended to restrict access to notarial acts in some instances but allow for exceptions or qualifications in other instances, such as allowing exemptions for law enforcement or for individuals who can provide certain qualifying information. Currently, Section 14-14A-29 NMSA 1978 allows inspection by individuals who can name the transaction “with particularity,” requiring the name of the document subject. As currently adopted, the section does not require any other qualifying information by the requester such as the month or year of the act as is done in Colorado, for example. These alternatives to HB180 could still result in improved privacy for subjects while allowing some, if not limited, avenues for greater transparency and access.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

If HB180 is not enacted, individuals will maintain the right to submit IPRA requests for notarial acts, provided they can name the transaction and document subject.