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**AGENCY BILL ANALYSIS
2025 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

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{Analysis must be uploaded as a PDF}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:
Original **Amendment**
Correction **Substitute**

Date 2/21/2025
Bill No: HB 497

Sponsor: Brown
Short Title: INSPECTION OF PUBLIC RECORDS ACT CHANGES

Agency Name and Code Number: Commission of Public Records 36900
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
NFI	NFI	n/a	
0	0		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
NFI	NFI	NFI	n/a	

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI	NFI	n/a	

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

Inspection of Public Records Act, Section 14-2-1 et seq., NMSA 1978 (“IPRA”).

Public Records Act, Section 14-3-1 et seq., NMSA 1978.

HB 139, Cates, IPRA Changes

SB 036, A. Sedillo-Lopez, Sensitive Personal Information Non-Disclosure

SB 171, L. Trujillo, Redaction of Personal Info in Public Records

Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

HB 497 (“bill”) substantively amends IPRA and effectively puts in its place, a vastly different version of definitions, exceptions from records production, requirements, procedure for requesting written and electronic records, cost recovery allowed and provide new enforcement actions available to requestors and agencies to cure enforcement actions.

Section 1 expands exceptions to include: medical records (not records pertaining to physical and mental examinations), letters of reference for procurement, reports notes and evidence generated by internal investigations of personnel or students, person’s person email address and telephone number provided to public body for purpose of communication in connection with person’s application for permit or license, security system records of agency’s facility, cybersecurity records, security system plan regarding disaster mitigation, security codes and passwords and electronic information for agency’s computer, computer and telecommunication systems, acquisition of real property by agency information (until valid option to buy or sell has been executed then exception expires), records submitted by public body by bidder on public contract, materials submitted in response to sealed bid or request for proposals, customer records for utility services, records that may lead to disclosure of identity of person who made report of alleged abuse, neglect or exploitation of child or protected adult, records concerning applicant or recipient of unemployment or economic assistance, and criminal records received from a convict that may pertain to a victim or a victim’s family.

Section 2 amends law enforcement exception to toll time a law enforcement agency to 45 days from time that an agency becomes award of a crime to which records relate. Personal information and other identifying information are exempt from inspection. The number of crimes for which there is an exception from inspection is expanded to include the crimes of: kidnapping, abandonment and abuse of child, abandonment of dependent, enticement of child, voyeurism, incest, child solicitation by electronic communication device, criminal sexual communication with child, unauthorized distribution of sensitive images, adult abuse, and human trafficking. The following categories of people and any records related to them are also exempt

from inspection: juveniles and juvenile parents or guardians personal protected identifier information; information that would identify or could provide identity of a confidential informant; work schedule of law enforcement or correctional agency employee; records that could or would reveal the identity or endanger the life or safety of undercover law enforcement officer; and, audio and video recordings and images taken with law enforcement officers body-worn camera if recordings or images taken in private place (except where they depict commission of crimes, encounter between officer and person that results in death or bodily injury, record encounter involved in legal proceeding against an officer); .

Section 3 adds definitions that have been added to buttress the exceptions expansion. There are definitions for the terms: broad or burdensome, critical infrastructure, current records, cybersecurity information, good faith (as it relates to conducting a records search and denying an inspection), law enforcement records, medical records, private place, added elements to protected personal identifier information (to include employee's personal address, phone, email, payroll, contact information for employee dependents and contacts), reasonable denial (as it relates to denied inspection request), reasonable particularity (as it relates to records request), and utility services.

Section 4 amends the process of requesting records to require a written request only. The time for responding to request is tolled if request is made to any agency person other than the custodian. Agency employees or agents must promptly forward to custodian any misdirected inspection requests. An agency does not have to compile or summarize or package or tailor information or provide a record in a particular format. An agency would not have to produce a record that is within a report or document that's been printed or published or available on internet. Agency does not have to answer questions, conduct research or provide advice or issue legal opinions in response to request. Anonymous or pseudonymous requests are not allowed, and a public body would not be required to respond to any such request. If a request is made by an agent for a person, the agent must disclose the name of person on whose behalf the agent is making request. The time to respond to a written request would be expanded from 15 days to 21 business days in case of current records or 60 days in case of non-current records or audio or visual records. A request submitted outside of regular business hours shall be considered submitted on the following business day, for purpose of calculating deadlines. A public body may ask a requestor for clarification on any request and may ask for narrowing the scope of a voluminous request. For electronic records, there is nothing that requires a public body to recover or restore deleted or overwritten records, browser histories, caches, cookies, file metadata, system logs, login histories, or internet protocols addresses of visitors to public body websites. For records related to elections, the time-period for responding shall be tolled during period from the 56th day prior to an election until canvass board has been certified by county or state canvassing board, whichever is later.

Section 5 amends the procedure for inspection by allowing up to two dollars per printed page to be charged and allows a public body to charge up to \$30 per hour per request, excluding the first three hours needed to locate and redact records. For any requestor who makes five or more requests within a 45 day period, such requests can be treated as one request for purposes of assessing labor charges. Allow a requestor to use own devices for duplication of records, with reasonable procedures to protect the records. A public body may decline a duplicative request to inspect the same records.

Section 6 amends the procedure for denied requests by requiring a requestor to give written notice of violation. The public body would then have a 21 calendar day to respond to such a

written notice of violation and 21 calendar days to remedy the violation. Only after those two 21 day periods have elapsed, would the judicial enforcement provisions apply as a remedy.

Section 7 adds a new section specify that enforcement only occurs after written notice of claimed isolation has been received and failed to respond. Actions to enforce IPRA violations must be brought to the district court where public body has its principal office. individual employees of public body would not be named parties. Public bodies shall be held civilly liable for actions of their employees and individuals acting on their behalf. Damages may be awarded against a public body only in cases where a public body has been found to not act in good faith or failed to provide a reasonable denial.

FISCAL IMPLICATIONS

NFI for the agency.

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

From a bird's eye view, there is question whether the substantive revisions to IPRA detract from the original declaration of IPRA public policy in Section 14-2-5 NMSA 1978:

Recognizing that a representative government is dependent upon an informed electorate, the intent of the legislature in enacting the Inspection of Public Records Act is to ensure, and it is declared to be the public policy of this state, that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of public officers and employees. It is the further intent of the legislature, and it is declared to be the public policy of this state, that to provide persons with such information is an essential function of a representative government and an integral part of the routine duties of public officers and employees.

All the specified exceptions, and the expansion of whole categories of records would all narrow the scope of IPRA. The philosophical, political, and practical arguments in favor of and against these exceptions are beyond the scope and concern for this agency.

As mentioned above, definitions have been added or expanded in Section 3 of the bill. Those definitions that categorize records are beyond the expertise of the agency to determine if the categorization is over-broad or too narrow.

However, other definitions raise issues that need highlighting. These definitions include:

“broad or burdensome” would be defined as any research over three hours to locate a public record and redact information. Three hour time limit seems arbitrarily chosen to be the time limit to determine what is or is not burdensome.

“current records” means public records created or received within 12 months preceding receipt and does not include archival records. Public Records

Act and the records retention schedule (See, 1.21.2 NMAC) do not categorize whether a record is current or not based on a yearly schedule. Also, some records are deemed worthy of being kept permanently by an agency, while other documents may be subject to destruction depending upon the schedule. No consideration seems to be given to any records retention period when determining what is or is not currently accessible when it comes to responding to a request.

“person” is defined to exclude incarcerated persons. Except for limiting rights of incarcerated persons, there is no rationale for limiting inmate requests under IPRA.

“private place” means inside a residence, health care or social services facility or any other interior place that is not open to the public where a person has a reasonable expectation of privacy. Such a definition folds into the exception that no law enforcement officer body-cam equipment audio and video recordings and images taken are excluded from being produced. Such an exception could have a chilling effect on obtaining incriminating or exonerating evidence in law enforcement cases.

“reasonable denial” means a denied request for a record can be based upon a reason supported by IPRA, another state, federal, or local law or rule, or court order justifying a record is exempt, regardless of legal citation or a reasonable justification based on public policy for refusing to release the records. These definitions are so overly broad and vague to withstand challenge. It is contrary to established rules of legal construction to allow a public body to rely upon another jurisdiction’s body of law to justify denial of public record. Stating that a public body could rely upon some local ordinance or rule to justify record request denial would turn IPRA completely upside-down and make IPRA largely unenforceable.

“reasonable particularity” definition requires a request to set out sufficient parameters used by a public body to index, organize, or file. For non-audio or non-video records, a request must include at least two of : record title or subject line, author, or applicable date or date range with reasonable specificity. In case of audio or visual records, a request must have at least one of: computer-aided dispatch record number, police report number, or applicable date or date range with reasonable specificity with at least one of : name of law enforcement officers, approximate time or location, or other criteria established and published by public body. Given the strictures of this definition, a public body would be able to deny a request that falls outside this definition.

Like the notice requirement under the Tort Claims Act, Sections 6 & 7 of the bill that require a 21 day written notice of violation and then a second 21 day public body response in advance of filing an enforcement action in district court. This notice period allows a public body a last effort to cure any alleged IPRA violations. This notice period may prevent enforcement actions in courts if agencies take serious action to cure the alleged violations.

PERFORMANCE IMPLICATIONS

See, Significant Issues above.

ADMINISTRATIVE IMPLICATIONS

See, Significant Issues above.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

See, Significant Issues above.

TECHNICAL ISSUES

See, Significant Issues above.

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS