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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/09/11  
 LAST UPDATED 03/03/11    HB \_\_\_\_\_

SPONSOR SCORC

SHORT TITLE Publish Legal Notices on Websites    SB 147/SCORCS

ANALYST Aubel

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	FY12	FY13		
	Indeterminate		Recurring	GRT

(Parenthesis ( ) Indicate Revenue Decreases)

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

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		Indeterminate				All State Funds

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Office of the Attorney General (AG)  
 Commission for Public Records (CPR)

### SUMMARY

#### Synopsis of SCORC Substitute for Senate Bill 147

The Senate Corporations and Transportation Committee Substitute for Senate Bill 147 amends Sections 14-11-1 NMSA 1978 and 14-11-2 NMSA 1978 to allow publishing legal notices via an authorized website in addition to printed versions.

CPR provides the more detail:

Section 1 of the substitute bill amends Section 14-11-1 NMSA 1978, *Legal Notices and Advertisements Defined*, by adding “an authorized web site” as an option for publishing legal notices and advertisements. Other minor clean up is done in the section.

Section 2 of the substitute bill is new material that provides two additional definitions:

“authorized web site” and “qualified radio or television stations.”

The authorized web site is defined as a web site “that is controlled and maintained by a nonprofit association of qualified radio and television stations that maintains its principal place of business in New Mexico.”

The qualified radio or television station is defined as “radio and television stations that have commercial licenses issued by the Federal Communications Commission and are full-power stations.”

Section 3 of the substitute bill amends Section 14-11-2 NMSA 1978 by adding language providing for an alternative method of satisfying the publication requirements. The new language provides that legal notices could be published on “an authorized web site” and mandates that qualified radio and television stations announce the availability of “an authorized web site” at least once a day (between 5:00 am and 10:00 pm) without charge. It also provides that a qualified radio or television station would not be in violation of the requirements if it failed to announce the availability of the authorized web site by reason of fire, flood, accidental or other casualty beyond the control of the station.

Section C mandates that the authorized web site shall archive its published legal notices and advertisements for at least seven years and make the archive available to the public.

## **FISCAL IMPLICATIONS**

The Purchasing Department of GSD sets the rate with newspapers for state agencies to print legal notices. Allowing state agencies to forgo the cost of buying newspaper space would save an indeterminate amount because it is not clear how entities would be charged for publishing legal notices on the authorized web site. Unless GSD sets the rates with the providers for website publication, the cost could be higher than for the current print publication. Or, it could be lower or the same.

As noted by CPR, newspapers would lose a significant revenue stream from publishing all legal notices required by law. In addition, the taxing governmental entities, including the state, would lose the accompanying gross receipts tax. According to the New Mexico Press Association, the annual revenue earned per paper for legal notices ranges from \$250 thousand to \$350 thousand. As an example, a weekly newspaper states it would lose about \$600,000 for its two papers, which the newspaper equates to about \$50 thousand GRT. Depending on the revenue going to the electronic website publisher, if any, GRT could be more or less. The fiscal impact is indeterminate.

The CPR states that the bill poses no fiscal impact for that agency, as follows:

It does not appear that SCORC substitute for Senate Bill 147 would have any fiscal implications on the Commission of Public Records. Although, pursuant to the State Rules Act, notices of rulemaking must be published in the New Mexico Register, they are generally published in a newspaper of general circulation as well. There would be no direct impact on the production of the New Mexico Register if agencies were to publish on the authorized web site instead of in a newspaper.

## SIGNIFICANT ISSUES

CPR notes the following concerns:

- There might possible be state constitutional issues involved. Although the substitute does not name a specific entity to maintain an authorized web site, the requirements for who can maintain the web site may be so limiting that only one entity in the state may qualify. If only one entity in the state qualifies, then the bill may possibly conflict with portions of Article IV, Section 24 dealing with local or special laws as well as with the prohibition of grant or franchise established by Article IV, Section 26, which reads:  
*The legislature shall not grant to any corporation or person, any rights, franchises, privileges, immunities or exemptions, which shall not, upon the same terms and under like conditions, inure equally to all persons or corporations; no exclusive right, franchise, privilege or immunity shall be granted by the legislature or any municipality in this state.*
- The seven-year retention is troublesome. If the web site constitutes basically a publication, the retention should be permanent. The record in a newspaper is permanent.
- Section 14-11-5 NMSA 1978 mandates that newspapers provide sworn affidavits of publication and proof copies of the published materials (just as the Commission does with the NM Register) that can be used to document publication years afterwards. Will the organization that runs the authorized web site provide affidavits and proof copies?
- What about communities without radio stations or people without access to computers or those that don't have access to broadband internet and must use a phone modem (especially a problem if the user wants to download significant materials)?

On this last point, the OAG adds additional insight:

- There may be due process concerns when legal notice publication is allowed on a computer website because a large majority of New Mexico's population does not have access to computers, thereby depriving citizens of important information regarding public notices of government action. Further, there are legitimate concerns about manipulation and authentication of such data.

In a prior analysis related to the original bill, the OGA noted that “a taxpayer challenge could allege that this act restricts access formerly guaranteed to the citizenry and violates due process requirements for public notice of government actions.”

In addition, the OAG makes the following points:

- The “authorized website” is not named in this bill... there may be problems with the state's ability to control website's compliance with this law.
- Further, there is some concern that the requirement that a broadcast station publishes notice every day regarding the website without compensation could constitute a “taking,” although such notice may simply constitute a public service requirement is met under FCC law.

**TECHNICAL ISSUES**

CPR wonders if the bill could lead to more than one authorized web site.

**OTHER SUBSTANTIVE ISSUES**

Legal notices are already available via electronic format as a free service at the following Internet address: <http://www.publicnoticeads.com/nm/>.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Legal notices and advertisements will continue being published in newspapers.

MA/mew:bym