

<b>LFC Requester:</b>	
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**AGENCY BILL ANALYSIS  
2017 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

**[LFC@NMLEGIS.GOV](mailto:LFC@NMLEGIS.GOV)**

*and*

**[DFA@STATE.NM.US](mailto:DFA@STATE.NM.US)**

*{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}*

**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: Date 2-7-17  
**Original**     **Amendment**        **Bill No:** SB255  
**Correction**     **Substitute**   

**Sponsor:** Joseph Cervantes    **Agency Code:** 264  
**Short**    Crime of Audit    **Person Writing**    Gail MacQuesten  
**Title:**    Obstruction    **Phone:** 466-0532    **Email** gailmacquesten@gmail.com

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY17	FY18		
0	0	n/a	n/a

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY17	FY18	FY19		
0	0	0	n/a	n/a

(Parenthesis ( ) Indicate Expenditure Decreases)

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

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

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
Duplicates/Relates to Appropriation in the General Appropriation Act

### **SECTION III: NARRATIVE**

#### **BILL SUMMARY**

##### Synopsis:

SB255 adds a new section to the Audit Act, NMSA 1978, Sections 4-31-1 *et seq.*, adding the new fourth degree felony of audit obstruction.

The crime applies to a person who, with intent to deceive, mislead or interfere, obstructs the performance of an audit, special audit, examination or investigation being conducted pursuant to the Audit Act by:

- Destroying, concealing or altering any document or record;
- Making or causing to be made a false or misleading report; or
- Impeding the state auditor, personnel of the state auditor's office or independent auditors approved by the state auditor.

#### **FISCAL IMPLICATIONS**

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.

SB255 should save some money by making audits under the Audit Act easier to conduct by deterring the obstruction of the audit process. As when any new crime is created, costs may increase for law enforcement agencies, the district attorneys, the attorney general, the judiciary and the corrections department.

#### **SIGNIFICANT ISSUES**

SB255 creates the crime of obstructing an audit conducted under the Audit Act, making the crime a fourth degree felony. Current criminal provisions, such as the statute prohibiting tampering with public records (NMSA 1978, Section 30-26-1) and refusal to surrender public records (NMSA 1978, Section 30-26-2), do not cover all the acts described in SB255 and are not designed to address the more serious issue of intentional interference with an audit. Although the provision that criminalizes any act that impedes an audit appears broad, the criminal intent required for the crime narrows its scope: the action must not only impede the audit, it must be done with the intent to deceive, mislead or interfere.

## **PERFORMANCE IMPLICATIONS**

The district attorneys and the attorney general will have a new crime to prosecute. Because other statutes, such as those mentioned above, may cover some acts covered by the new crime, the prosecutors will need to determine which charges to bring.

## **ADMINISTRATIVE IMPLICATIONS**

New jury instructions will be needed for the new crime.

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

None found.

## **TECHNICAL ISSUES**

None found.

## **OTHER SUBSTANTIVE ISSUES**

None found.

## **ALTERNATIVES**

None proposed.

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

Depending on the facts of a specific case, it will be difficult or impossible to prosecute a person for intentionally impeding an audit conducted under the Audit Act.

## **AMENDMENTS**

None proposed.