

LFC Requester:

**AGENCY BILL ANALYSIS
2020 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

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:
Original **Amendment**
Correction **Substitute**

Date February 7, 2020
Bill No: SB 270-264

Sponsor: Ivey-Soto, Chasey
Short Title: Electronic Communications Privacy

Agency Name and Code Number: Administrative Office of the District Attorneys 264
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY20	FY21		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY20	FY21	FY22		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY20	FY21	FY22	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(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:

SB 270 makes changes to the Electronic Communications Privacy Act (§10-16 F-3) as follows:

1. On page 3, lines 20 to 25, deletes the language contained in subparagraph (2) that required the destruction of information unrelated to the objective of the warrant.
2. Adds language contained on page 4, lines 1-9 required that information unrelated to the objective of a warrant be sealed unless a court orders disclosure. An order issued by the court shall be upon a finding that there is probable cause to believe that the information is relevant to an active investigation or review, use or disclosure required by state or federal law.
3. Adds language to paragraph G (page 4, lines 22-25 and page 5, lines 1) providing that information be destroyed as soon as feasible after the termination of the investigation and related investigations or proceedings.
4. Adds language to paragraph H (page 5, lines 4-10) providing that a government entity seal information and said information shall not be subject to further review except pursuant to a court order.
5. Makes changes to paragraph L (1), (page 7, lines 8-14) providing that instead of destroying information, information shall be sealed and shall not be subject to further review, use or disclosure except pursuant to a court order.
6. Makes changes to paragraph P (page 8, lines 17-20) by providing that the provisions not be construed to alter the authority of a government entity that owns an electronic device to compel an employee who is authorized to possess a device to return the device to the government entity's possession. In other words, the government entity is the owner of said device and even though the employee was authorized to possess the device they cannot claim the protections of the Electronic Communications Privacy Act.
6. The rest of the changes deal with reporting requirements and the duties of the Attorney General regarding the electronic Communications Privacy Act.

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.

SIGNIFICANT ISSUES

The most significant changes made by the amendments are changing the provisions that information obtained pursuant to the Electronic Communications Privacy Act be sealed instead of destroyed. (Pages 3 and 4). This seems to be for those situations where the information may be relevant at a later date or if an emergency arises.

The only provision related to destruction of information obtained through the execution of a warrant or order is contained in paragraph G that requires that said information be destroyed as soon as feasible after the termination of the current investigation and related investigations or proceedings (page 4, lines 22-25, and page 5, line 1).

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

On page 4, line 3, the word “not” should be deleted before the word “exculpatory.” Without the language change, inculpatory information will be subject to being sealed and not be available to law enforcement. That appears to be against the purpose of the Act and the proposed amendments.

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Information that may possibly be relevant or useful to investigations and/or emergency situations will be destroyed and not be available to government entities. (Status quo)

AMENDMENTS