

LFC Requestor: Self Assigned

2025 LEGISLATIVE SESSION  
AGENCY BILL ANALYSIS

Section I: General

Chamber: House  
Number: HB139

Category: Bill  
Type: Introduced

Date (of THIS analysis): 2/4/2025

Sponsor(s): Kathleen Cates

Short Title: IPRA Changes

Reviewing Agency: Agency 665 - Department of Health

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Section II: Fiscal Impact

APPROPRIATION (dollars in thousands)

Appropriation Contained		Recurring or Nonrecurring	Fund Affected
FY 25	FY 26		
\$0	\$0	N/A	N/A

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY 25	FY 26	FY 27		
\$0	\$0	\$0	N/A	N/A

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY 25	FY 26	FY 27	3 Year Total Cost	Recurring or Non-recurring	Fund Affected
Total	\$0	\$0	\$0	\$0	N/A	N/A

### Section III: Relationship to other legislation

Duplicates: None

Conflicts with: None

Companion to: None

Relates to: Senate Bill 57, which would amend the current IPRA to except from disclosure any record containing personal identifying information or sensitive information related to the practice of a medical provider who performs medical services related to abortion.

Duplicates/Relates to an Appropriation in the General Appropriation Act: None

### Section IV: Narrative

#### 1. BILL SUMMARY

a) Synopsis

HB 139 proposes to make various significant changes to the Inspection of Public Records Act (IPRA), NMSA 14-2-1 *et seq.* The bill would implement the following changes:

- Further define the responsibilities of a records custodian, and the obligation of public bodies to designate a records custodian;
- Require that a records requestor provide their actual name, mail and e-mail addresses, and telephone number, and prohibit anonymous and pseudonymous requests;
- Clarify how electronic records must be produced and managed;
- Authorize public bodies to charge up to \$30 per hour for each hour above the first hour spent locating and redacting records;
- Establish 15-day deadline to respond to requests for records, and a 60-day deadline to respond to requests for records that have been archived by a public body;
- Require requestors to respond within 15 days to a request for clarification of a records request;
- Exempt “attorney work product” and “attorney-client information” from disclosure;
- Authorize public bodies to deny requests for any reason specified in IPRA or applicable law, as well as on the basis of a “reasonable justification, based on a public policy ground”, effectively reinstating the rule of reason that previously existed in NM case law;
- Clarify that departments could withhold records under state and federal laws, and define new exemptions for disclosure, including economic development records, education records, election records, law enforcement records, infrastructure records, library records, procurement records, certain records concerning public employees, security records, social services records, utility records, and records relating to a victim of a crime;

- Institute new provisions concerning “vexatious requesters”, including a process for public bodies to claim relief from a requester the public body deems vexatious, and an appeals process for affected requestors to appeal to the NM Commission of Public Records; and
- Institute a process whereby requestors whose requests are denied give notice of their intention to sue, and provide public bodies an opportunity to produce responsive records before litigation is initiated.

Is this an amendment or substitution?  Yes  No

Is there an emergency clause?  Yes  No

b) Significant Issues

HB139 would adopt provisions to protect public bodies from broad and burdensome records requests. Broad records requests can take many hours of work from public bodies and can sometimes interfere with public bodies’ primary duties. The bill would allow public bodies to assess a reasonable fee for locating, reviewing, redacting, and copying records, and to charge up to \$30 per hour (after the first hour) for location and redaction of records. The bill would allow additional time (up to 60 days) to respond to requests for records that are archived. It would also institute a process for public bodies to seek relief from “vexatious requestors”.

Currently, there is no disincentive in IPRA for requestors making excessively broad requests, apart from the ability of public bodies to request additional time for their response pursuant to NMSA 14-2-10. IPRA does not currently permit public bodies to deny a records request on the basis that it is excessively broad or burdensome. Also, whereas IPRA allows public bodies to charge fees of up to \$1.00 for each *printed* page when copying records, no such fees are allowable for electronic records, and public bodies are limited to charging “actual costs” associated with downloading electronic copies onto storage media or transmitting those copies via e-mail. Those “actual costs” are limited to copying and transmission costs, and do not include the cost of manhours spent collecting and redacting materials. In practice, because most materials are provided in electronic format, no charge is ordinarily assessed for IPRA requests, regardless of the amount of time spent by an agency in gathering responsive records, redacting confidential information from those records, and producing them. At the Department of Health, thousands of man hours are expended each year on collection and redaction of records by staff throughout the agency.

The establishment of a “vexatious requestor” process would help public bodies to address situations in which a requestor abuses the IPRA process. HB139 would also authorize public bodies to decline to again provide inspection of a record to a person who has already been provided inspection of the same record. IPRA requestors sometimes request contact information for agency employees, for purposes of harassing those individuals. HB139 would allow public bodies to redact employee addresses, phone numbers, and e-mail addresses from responsive materials.

SB139 would authorize public bodies to deny a records request if there is a “reasonable justification, based on a public policy ground”, effectively restoring a standard that is known as the “rule of reason”. In 2012, in the case of *Republican Party of New Mexico v. New Mexico Taxation & Revenue Dept.*, 2012-NMSC-026, the NM Supreme Court abolished the rule of reason, which had previously allowed public bodies in New Mexico (as in other states, such as California) to deny records requests for reasonable justification based on public policy grounds. This decision meant that state agencies could no longer establish grounds for denying IPRA requests, and that only those limited IPRA exceptions identified by the Legislature in statute could operate as a basis

for denial of an IPRA request. Given the broad range and diversity of documents held by public bodies, it is impossible for every single reasonable basis for withholding a record to be identified in statute. Reinstating the rule of reason in IPRA would allow public bodies to justify the denial of records requests when there are reasonable public policy grounds to do so.

SB139 would require that any IPRA request that is made by a party to a pending court or administrative adjudicative case in which the responding public body is also a party comply with applicable discovery rules and orders in the case. Very often, when a person sues a public body, they will utilize IPRA to overcome discovery limits on the timing and scope of requests for information. This puts public bodies at a disadvantage in every case against them, and in every administrative adjudicative case that public bodies pursue.

Due to vast changes in records technology, and various changes that have resulted from NM case law, the text of IPRA has become somewhat outdated and unclear over time. HB139 would incorporate many useful provisions into the statute to detail the process of responding to records requests. These changes would bring greater clarity to the IPRA process.

The bill would provide clear guidance on how records are requested and produced, and more importantly, which records are exempt from production. Establishing uniform standards could reduce confusion resulting from varying interpretations adopted by public bodies concerning the same types of records.

HB139 would be helpful in establishing standards for the consistent and fair application of IPRA. The bill provides several useful definitions. The bill would consolidate various legal exceptions to disclosure of records that currently exist outside of IPRA, and it would incorporate various recommended practices and guidance described in the current IPRA Guide published by the NM Department of Justice. It would also create various new exemptions.

## 2. PERFORMANCE IMPLICATIONS

- Does this bill impact the current delivery of NMDOH services or operations?

Yes  No

If yes, describe how.

SB139 would create disincentives within IPRA for the submittal of broad and burdensome IPRA requests. Currently, NM DOH spends thousands of hours a year collecting documents responsive to IPRA requests, and redacting those materials of confidential information. This is a large burden for all employees, who also need to do their dedicated tasks. SB139 would likely reduce the number of broad and burdensome requests received by DOH and other public bodies, and would also create a process for the agency to address vexatious requestors.

- Is this proposal related to the NMDOH Strategic Plan?  Yes  No

**Goal 1:** We expand equitable access to services for all New Mexicans

**Goal 2:** We ensure safety in New Mexico healthcare environments

**Goal 3:** We improve health status for all New Mexicans

**Goal 4:** We support each other by promoting an environment of mutual respect, trust, open communication, and needed resources for staff to serve New Mexicans and to grow and reach their professional goals

### **3. FISCAL IMPLICATIONS**

- If there is an appropriation, is it included in the Executive Budget Request?  
 Yes  No  N/A
- If there is an appropriation, is it included in the LFC Budget Request?  
 Yes  No  N/A
- Does this bill have a fiscal impact on NMDOH?  Yes  No

The fee provisions of HB139 would help to offset expenses associated with responding to broad and burdensome IPRA requests. DOH staff spend thousands of hours yearly gathering and redacting materials responsive to IPRA requests.

### **4. ADMINISTRATIVE IMPLICATIONS**

Will this bill have an administrative impact on NMDOH?  Yes  No

See “Significant Issues”, above.

### **5. DUPLICATION, CONFLICT, COMPANIONSHIP OR RELATIONSHIP**

SB57 proposes to amend IPRA to except from disclosure any record containing personal identifying information or sensitive information related to the practice of a medical provider who performs medical services related to abortion.

### **6. TECHNICAL ISSUES**

Are there technical issues with the bill?  Yes  No

### **7. LEGAL/REGULATORY ISSUES (OTHER SUBSTANTIVE ISSUES)**

- Will administrative rules need to be updated or new rules written?  Yes  No
- Have there been changes in federal/state/local laws and regulations that make this legislation necessary (or unnecessary)?  Yes  No
- Does this bill conflict with federal grant requirements or associated regulations?  
 Yes  No
- Are there any legal problems or conflicts with existing laws, regulations, policies, or programs?  Yes  No

### **8. DISPARITIES ISSUES**

None.

### **9. HEALTH IMPACT(S)**

None.

## **10. ALTERNATIVES**

None.

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

If HB139 is not enacted, the Inspection of Public Records Act will not be amended to incorporate various new material.

## **12. AMENDMENTS**