

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 2/22/2007

SPONSOR Ortiz y Pino LAST UPDATED _____ HB _____

SHORT TITLE Permission for Student Info to Recruiters SB 1163

ANALYST Schuss

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB 556, HB 789

SOURCES OF INFORMATION

LFC Files

Responses Received From

Higher Education Department (HED)
 Department of Finance and Administration (DFA)
 Attorney General's Office (AGO)

SUMMARY

Synopsis of Bill

Senate Bill 1163 enacts new sections of the Public School Code to place restrictions and requirements on public secondary schools with respect to "post-secondary recruiters", or anyone who is "recruiting" students to enroll in any school, college or university; to join any business, firm or other employment; or to join any branch of the armed services.

SB 1163 requires public secondary school personnel to announce to parents and students their rights to withhold student information from post-secondary recruiters; set limits on the number of visits and total hours of access postsecondary recruiters have; restrict postsecondary recruiters to designated locations; limit postsecondary recruiters access to minors; and requires that public schools not release student results from the Armed Services Vocational Aptitude Battery Test (ASVABT) to recruiters.

SIGNIFICANT ISSUES

SB 1163 seeks to establish within the Public School Code protections on privacy and choice on the release of student information and place limits on post-secondary recruiters' access to this information and public school facilities, as follows:

- Section 1-A: defines “post-secondary recruiter” as anyone who is recruiting students to enroll in any school, college or university, to join any business, firm or other employment; or to join any branch of the armed services.
- Section 1-B: Requires each public secondary school to provide information annually to its students and parents explaining that they have the choice to withhold student personal information from post-secondary recruiters. The section further requires public schools provide the same option to students who are age of majority or emancipated minors.
- Section 1-C: Requires the issuance of one additional written announcement to parents and students informing them of their rights no less than one week prior to release of the student's personal information to post-secondary recruiters. Provides for parents, emancipated students or students who have reached age of majority to reserve making this decision up to three days prior to the release of the information. Language in the bill is silent as to who is responsible for issuing this notice.
- Section 1-D: Requires that public secondary schools not release personal information prior to October 1 of each school year.
- Section 1-E: Requires public secondary school to set limits on the number of visits and total hours of access by any post-secondary recruiting organization. Upper limit is not to exceed the equivalent of six school days each year.
- Section 1-F: Requires public secondary schools to require advance notice before post-secondary recruiter visits to campus and that the school maintain a log of these visits.
- Section 1-G: Requires that public secondary schools restrict post-secondary recruiters to designated areas and that recruiters be escorted to other school areas.

Section 2 requires any school that administers the ASVAB to choose “option eight no release to recruiters” with limitations on this restriction based on student age of majority, emancipated status or by permission of parent of a minor student. Requires schools inform parents that taking the ASVAB is not mandatory for their children.

SB-1163 places the burden for compliance on the individual school as opposed to the local school board, where local policy making authority is typically established.

According to DFA, PED legal counsel states that “unless the choice related to the ASVAB test is contrary to state or federal law, requiring all school districts to choose “option eight” implicates the Free Speech (First Amendment) Clause of the U.S. Constitution.”

AGO has included these significant issues in their analysis:

The bill will restrict “recruiting” by “anyone”, of high school students for employment, post-secondary educational opportunities and military service within New Mexico's public high schools. However, the bill does not define “recruiting”. Presumably that term will include providing information to students with regard to employment, post-secondary education, and military service with the intent of attracting those students to those opportunities after high school. It may also include attendance at certain post-secondary educational institutions pursuant to sports or academic scholarships.

The Armed Services Vocational Aptitude Battery Test (ASVAB) determines whether or not one qualifies for military service, and if so, what jobs they qualify for. It is a voluntary test given to high school juniors and seniors. However, there has been some controversy as to whether school districts have informed students that the test is in fact voluntary.

According to the United States Department of Education, Congress has passed two major pieces of legislation that generally require local educational agencies (local school districts, or “LEAs”) receiving assistance under the Elementary and Secondary Education Act of 1965 (ESEA) to give military recruiters the same access to secondary school students as they provide to post-secondary institutions or to prospective employers. LEAs are also generally required to provide students' names, addresses, and telephone listings to military recruiters, when requested. These requirements are contained in § 9528 of the ESEA (20 U.S.C. § 7908), as amended by the No Child Left Behind Act of 2001 (P.L. No. 107-110), and in 10 U.S.C. § 503. Each LEA that receives funds under the ESEA must comply with a request by a military recruiter or an institution of higher education for secondary students' names, addresses, and telephone numbers, unless a parent has "opted out" of providing such information. Schools that do not comply with § 9528 of the ESEA could jeopardize their receipt of ESEA funds.

Although the bill appears to treat military recruiters the same as other recruiters with respect to their activities on campus, its prohibitions against releasing personal information before October 1 of each year, and requiring schools to choose option 8 preventing students' names from being added to the military's recruiting list might violate those provisions and subject any New Mexico school district receiving ESEA funding to a possible loss of that money.

Its restrictions might also be examined in light of the United States Supreme Court holding in *Rumsfeld v. Forum for Academic and Institutional Rights, Inc.* 547 U.S. (2006) to determine whether they are an impermissible intrusion into the power of Congress to provide for the common defense. In that case, the United States Supreme Court upheld the “Solomon Amendment”, 10 U.S.C. 983, which denies federal funding to institutions of higher education with policies or practices denying equal access to students by military recruiters, or which withhold personal student information from those recruiters. The Supreme Court cited Article I Section 8 Clause 1 giving Congress “broad and sweeping” power to provide for the common defense, including the authority to require campus access for military recruiters. Although this bill governs recruiting practices in high schools, its provisions might be examined in light of that decision in order to determine whether its effect or intent intrudes upon that authority and impermissibly restricts access to high school students by military recruiters.

The bill places the burden of complying with its requirements on the individual public schools, as opposed to local school boards.

The bill does not define “personal information”. However, it does reference names, addresses and telephone numbers.

The Public Education Department has adopted a rule allowing the release of names, addresses, telephone numbers, social security numbers and other similar identifying information about students maintained by a public school or local school district for “legitimate educational purposes”, which include educational opportunities, services and/or information offered or

provided by accredited educational entities, professional educational organizations, the Armed Forces of the United States or labor organizations defined in the New Mexico Public Employee Bargaining Act conducting lawful organization and collective bargaining activities. NMAC 6.10.6.

According to HED, administrators from New Mexico Institute of Mining and Technology (NMT), New Mexico State University (NMSU), the University of New Mexico (UNM), and San Juan College (SJC) all stated that public schools already limited recruiter access and restricted visits to designated locations on public school campuses.

RELATIONSHIP

Relates to SB 556, HB 789

TECHNICAL ISSUES

According to DFA, PED legal counsel has identified the following technical issues in SB-1193:

- Page 2, Lines 10 – 11 is not clear if it is requiring that each student/parent must be individually informed of their rights or if a school district can issue a blanket announcement via bulletin boards and emails. If each person must be notified, this would impose a significant bureaucratic duty upon larger school districts in the state.
- Page 2, Line 25, suggest striking “recruiting organization” and replace with “post-secondary recruiter”.
- Page 3, Lines 3 – 5 may be clearer as follows: “Each public secondary school shall require post-secondary recruiters to provide advance notification before visiting the high school campus.” Perhaps a one-week notification may be reasonable.
- Page 3, Line 10, suggest after “or other” adding “licensed”.

BS/nt