Bill Number: <u>HB 163aa</u>   <u>52nd Legislature, 1st Session, 2015</u>

Tracking Number: <u>.198118.3</u>

Short Title: <u>School Use of Social Security Numbers</u>

Sponsor(s): <u>Representative Dennis J. Roch and Others</u>

Analyst: <u>Kevin Force</u>   **Date:** <u>February 25, 2015</u>

FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE

AS AMENDED

The House Government, Elections and Indian Affairs Committee amendment adds an effective date of July 1, 2016.

The House Education Committee amendments:

- **strike the proposed definition for "personally identifiable information";**
- **strike all the proposed references to the term "personally identifiable information" and replace them with "social security number" or "numbers," as appropriate; and**
- **reinsert those references to "personally identifiable information" that had been proposed to be removed.**

The effect of these amendments allows for the use of the more general term "personally identifiable information," where appropriate, while still restricting the collection, storage, and dissemination of Social Security numbers, as proposed in the original bill.

<u>**Original Bill Summary:**</u>

HB 163 proposes to amend:

- the *Public School Code* provision[1] creating the Educational Data System (EDS) to:

  ➢ define "personally identifiable information" as a person's Social Security number (SSN); and
  ➢ prohibit the use of personally identifiable information in the educational data system;

- the *Assessment and Accountability Act*, by creating a new section prohibiting the use of SSNs for any purpose under the act; and
- the *School Personnel Act*, by creating a new section restricting the use of SSNs to:

  ➢ performing background checks, pursuant to the act;
  ➢ processing a request for a license pursuant to the act;

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[1] Section 22-1-11 NMSA 1978, "Educational Data System"

> ➢ executing payroll and benefit requirements;
> ➢ complying with court orders and subpoenas; and
> ➢ releasing information containing the SSN to its owner.

Fiscal Impact:

HB 163 does not contain an appropriation.

Fiscal Issues:

The Higher Education Department (HED) notes that its Data Editing and Reporting System (DEAR), which collects information from public colleges and universities on students, courses, financial aid, degrees and certificates, does use the SSN as a unique identifier. In contrast, the Public Education Department's (PED) Student Teacher Accountability Reporting System (STARS) uses a unique identifier other than a student's SSN, necessitating a careful "matching" process between the two tracking systems, which HED says is costly. HED further notes that, if the provisions of HB 163 were more broadly applicable to the HED DEAR system, both the current cost and potential inaccuracies of the matching process would increase.

Technical Issues:

The Attorney General's Office (AGO) indicates that, while HB 163 defines "personally identifiable information" narrowly, as SSNs, the *Inspection of Public Records Act* (IPRA) defines it more broadly, to include:

- all but the last four digits of either a:

  - ➢ tax identification number;
  - ➢ financial account number; or
  - ➢ driver's license number;

- all but the year of a person's date of birth; and
- SSNs.

It should be noted that, according to the provisions of IPRA:

- personally identifiable information *may* be redacted from public records before inspection or copying of a record;
- the presence of such information does *not* exempt a public record from inspection; and
- unredacted records containing such information *shall not* be made available on publicly accessible web sites operated by a public body (emphasis added).

Thus, it is possible that the a student's personally identifiable information, as it is defined more broadly, may be still be discoverable under the provisions of IPRA.

Substantive Issues:

According to an audit report[2] from the Office of the Inspector General of the Social Security Administration:

- while no single body of federal law regulates the use and disclosure of SSNs, several sources do contain provisions governing SSNs and privacy concerns, including:

  - the *Privacy Act of 1974*;
  - the *Social Security Act*; and
  - the *Family Educational Rights and Privacy Act of 1974* (FERPA);

- moreover, the Office of Management and Budget has directed that federal agencies are to reduce the volume of personally identifiable information to the minimum amount necessary, including the elimination of unnecessary collection and storage of SSNs;
- states' K-12 schools' collection of SSNs is common, and a growing trend in the states is the establishment of longitudinal databases on education, students, and student outcomes, which may include the use and storage of SSNs as a unique identifier that most students either already have, or for which they are eligible;
- recent data suggest that the number of children younger than 19 who are victims of identity theft is growing, as this population is especially vulnerable to such abuse, since children have clean credit histories, about which most will have no need to inquire until they are much older;
- between 2005 and 2010, at least 40 cases of school-related breaches of children's personal information, including SSNs, have been reported;
- states should take steps to limit their collection of SSNs, and implement stringent controls to protect the data, once it is collected;
- thirty-two percent of states warehouse student SSNs in their longitudinal data systems, and 80 percent of states fail to have data retention policies limiting the time during which the information may be retained;
- while many states collect SSNs, they may no longer need to do so, as all states now assign other unique identifiers to students in these databases; and
- the Inspector General recommends that:

  - state departments of education and K-12 school systems coordinate their efforts to inform the education community about the potential risks attendant upon the use of SSNs as student identifiers;
  - states and K-12 school systems reduce unnecessary collection and use of SSNs, and implement stringent safeguards to protect the collected data; and
  - states and school systems promote best practices that already take steps to limit SSN collection and use.

In addition, the Social Security Administration agrees with the Inspector General's recommendations.

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[2] Please see *Audit Report: Kindergarten through 12th Grade Schools' Collection and Use of Social Security Numbers*, Office of the Inspector General, Social Security Administration, July 2010 (A-08-10-11057), at: http://oig.ssa.gov/sites/default/files/audit/full/pdf/A-08-10-11057.pdf.

According to HED:

- the EDS is under development, and will ultimately include data from several public agencies for longitudinal tracking of New Mexico students and student outcomes;
- the difference in data sources between the two systems necessitates a "matching" process because the data is used to verify financial aid awards, and there is no other practicable way to track students as they move between institutions, and out into the workforce;
- SSNs will not, however, be entered in to the EDS, but rather, when a student moving into higher education from public education is matched between the two systems, the student's unique STARS identifier will be used;
- for students who did not attend a public secondary school, a unique identifier can be generated for use in the EDS;
- the Data System Council has determined that job placement data would be an important component of the EDS, and can be included in the system by matching student information with the Department of Workforce Solutions (DWS) unemployment insurance files, which uses SSNs, although those numbers will not be entered into the EDS;
- even as the EDS grows to include information from other state agencies, SSNs will not be used, despite the fact that they remain the most viable way to identify individuals by those departments; and
- in all cases, SSNs are already protected by federal and state law, including the current provisions of the EDS, itself.

Background:

In New Mexico, over the course of the last decade, there have been a number of legislative and executive initiatives aimed at the development of better tracking of data for education:

- In 2003, the New Mexico Legislature passed and the Governor signed comprehensive education reform legislation that included a provision requiring PED to issue a state ID number for each public school student as part of the state's assessment and accountability system.
- Realizing that reliable data are critical to educational research and policy development, the 2005 Legislature included language in the *General Appropriation Act* to establish a comprehensive data warehouse at PED to begin to collect and store student, teacher, course, testing, and financial data in one comprehensive system, known as the STARS.
- Through legislation endorsed by the Legislative Education Study Committee (LESC), the Legislature implemented additional initiatives directed toward providing New Mexico with a single, unified data system that can exchange information within and across pre-K through postsecondary (P-20) education and allow the state to continue monitoring achievement as students move from place to place through the education pipeline.
- A 2007 bill requiring HED to use the PED student ID number also included a measure requiring PED to collaborate with public teacher preparation programs and HED to create a uniform statewide teacher education accountability reporting system (TEARS) to measure and track teacher candidates from pre-entry to post-graduation in order to benchmark the productivity and accountability of New Mexico's teacher workforce.
- During the 2007 interim, the LESC heard a presentation describing the work of the Data Sharing Task Force, which HED convened in response to a request from the LESC to plan the implementation of a common P-20 student ID, which was to have proceeded through three phases: (1) extending the student ID system in STARS into higher

education; (2) expanding STARS to include higher education data submitted by postsecondary institutions; and (3) adding enhancements, such as a common online application for admission to college and electronic transcripting between P-12 and public postsecondary institutions.

- Taking into account the recommendations of the Data Sharing Task Force, the LESC endorsed legislation to support the implementation of the common P-20 student ID during the 2008 Legislature by codifying the requirements for a comprehensive P-20 data warehouse (STARS) at PED that collects, integrates, and reports data from PED, HED, and other agencies; and by appropriating $3.9 million to PED to integrate the common PED/HED student ID into STARS. However, the bill was ruled not germane.
- In fall 2008, New Mexico was accepted along with seven other states to participate in the College and Career Ready Policy Institute (CCRPI), a Bill and Melinda Gates Foundation-funded initiative to provide participants with technical assistance in developing high school accountability systems aligned with the expectations of college and the workplace. Participating state entities included HED, PED, the LESC, DWS, and the New Mexico Business Roundtable for Educational Excellence. A key goal in New Mexico's proposal to CCRPI was development of its longitudinal student data system.
- In 2009, a recent innovation in the P-20 Initiative was introduced as the Electronic Student Management System, an individual student-based, interactive system for personal management and review of requirements associated with graduation and preparation for college or the workforce.
- LESC staff testimony during the 2009 interim provided an overview of the 2009 Educator Accountability Reporting System (EARS) report and related issues, and testimony from a representative of the deans and directors of New Mexico teacher preparation programs provided the committee with details of the report.
- In 2009, Executive Order 2009-19 established the New Mexico Data Warehouse Council, requiring multiple state agencies to work together toward a comprehensive P-20 data system.
- During the 2010 Regular Legislative Session, LESC-endorsed legislation was enacted (Laws 2010, Chapter 112) to create the "Educational Data System."

Committee Referrals:

HEC/HGEIC

Related Bills:

SB 202a *Public Education Data Advisory Council*