

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 and previously issued FIRs are available on the NM Legislative Website (www.nmlegis.gov) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR Trujillo CA/Harper ORIGINAL DATE 2/09/17
LAST UPDATED _____ HB 267

SHORT TITLE Exempt College Certain Proprietary Info SB _____

ANALYST Chilton

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY17 | FY18 | FY19 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|------|------|------|----------------------|------------------------------|------------------|
| Total | NFI | NFI | NFI | NFI | | |

(Parenthesis () Indicate Expenditure Decreases)

Related to Senate Bill 158, Senate Bill 93, House Bill 10 and House Bill 128.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the Attorney General (OAG)
State Commission of Public Records (CPR)
Higher Education Department (HED)
New Mexico State University (NMSU)
University of New Mexico (UNM)

SUMMARY

Synopsis of Bill

House Bill 267 amends the state's Right to Inspect Public Rights statute (Section 14-2-1 NMSA 1978, referred to as IPRA), which currently lists eight exceptions to the right of the public to have access to state public records, adding an exception for

1. records held by New Mexico's universities that could reveal trade secrets relating to commercial or business partnerships those institutions pursue with private parties, and
2. research results, specified as being on medical, scientific, technical or scholarly issues, not yet published or publicly released

FISCAL IMPLICATIONS

No fiscal impact noted.

SIGNIFICANT ISSUES

HED notes that

Exempting proprietary information provided by third parties to a postsecondary institution could have the effect of improving the institution's ability to negotiate the right to use proprietary research results and business practices in institutional research and development projects.

Exempting proprietary information produced or collected in the course of research and study at an institution could further encourage public-private partnerships and support business creation as a result of research whose results are protected from premature disclosure.

Examples of projects that might be strengthened by the proposed exemption include the Arrowhead Technology Incubator at New Mexico State University and the University of New Mexico's Prevention Research Center.

New Mexico State University indicates that “

Due to the uncertainty as to whether proprietary data and/or trade secrets are subject to IPRA disclosure, university legal counsel warns against signing confidentiality agreements that may contradict current law under the IPRA. As a result, universities must choose to either forego important research activities involving private proprietary data which require a confidentiality agreement, or risk the expense and uncertainty of a legal battle over the disclosure of such data. The threat of proprietary information becoming part of the public domain fosters an unwillingness by the private sector entities to share their proprietary information with universities, thus impeding joint research and economic development activities. This statutory change would provide the clarity that private parties seek before sharing their proprietary data.

Universities also find it difficult to contract for certain services due to their inability to assure private third parties of their ability to protect the confidentiality of proprietary information that the contracting party would reveal. For example, for their business activities, universities need a wide variety of software products. The vendors expect NMSU to sign a confidentiality agreement – yet nothing in the law explicitly assures the university that they are not obligated to disclose such data in their possession.

University Research Data and Information: University faculty and staff invest countless hours, sometimes over many years, collecting research data and analyzing that data with the goal of producing a product that will eventually be copyright or patent protected. Universities around the country produce intellectual property that has substantial economic value. (Gatorade, developed by the University of Florida has generated over \$1 billion in royalties.) Under New Mexico law, it seems that anyone can make an IPRA request for this in-progress research information and essentially “steal” the value of the research before it is ready for public protection and dissemination.

Further, IPRA required disclosures of university research may create a potential public security threat. The FBI has issued warnings to universities that foreign agents are actively seeking exploitable research that is not classified or otherwise protected by law.

UNM states that passage of these provisions will “encourage business relationships with the private sector” and “encourage research and protect the integrity of research” at the state’s public university.

RELATIONSHIP

Senate Bill 158, Senate Bill 93, House Bill 128, and House Bill 10 which would all provide exceptions from the Inspection of Public Records Acts for unrelated reasons.

ALTERNATIVES

OAG suggests that the IPRA statute allows an “elastic” exemption from public inspection, matters “otherwise provided by law,” stating “There are hundreds of exemptions under the state constitution, state statute, and federal law that may be withheld by a public body under IPRA. In lieu of amending IPRA itself, exemptions are often placed in other statutes and incorporated as other law under Section 14-2-1(A)(8).”

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Proprietary material developed by New Mexico’s state universities in concert with outside agencies as well as research findings would not be protected from public disclosure. Outside agencies might decline to be involved in joint projects with the state universities if the information could not be kept from competitors’ eyes. Research material made available publicly might compromise private information or restrict researchers’ ability to publish the results of their research (many scholarly journals will not consider papers on studies the results of which have already been made public). NMSU notes that “Universities invest substantial funds in the development of research with potential economic value, and may lose the ability to capture the economic benefit from that research if the information must be divulged prematurely to the public in response to an IPRA request.”

POSSIBLE AMENDMENTS

OAG suggests that “It may be useful to additionally consider specifically excluding from IPRA “examination material in current or recent use in order to avoid having a professor’s exam requested through IPRA by current students.

LAC/sb/jle