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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
53rd Legislature, 2nd Session, 2018

Bill Number	<u>HB218</u>	Sponsor	<u>Fajardo</u>
Tracking Number	<u>.209784.3SA</u>	Committee Referrals	<u>HSIVC/HJC</u>
Short Title	<u>Additional & Withheld Sunshine Portal Info</u>		
Analyst	<u>Force</u>	Original Date	<u>2/13/18</u>
		Last Updated	<u></u>

BILL SUMMARY

Synopsis of Bill

*This LESC analysis focuses only on the elements of the bill affecting public schools.

House Bill 218 (HB218) amends the Sunshine Portal Transparency Act. It expands the sunshine portal to include “electronic public information” and additional financial information. It requires an annual summary of the state’s financial status as well as information on appropriations and a directory of all employees by agency, title, salary, and the employee’s name.

State agencies are not required to post information on the sunshine portal or transparency websites electronic information that would otherwise be public, but due to confidentiality, safety or privacy concerns, the public interest lies in not publishing the information.

The bill adds new definitions for “electronic public information,” “financial information,” “sunshine portal,” and “transparency website.”

FISCAL IMPACT

HB218 does not contain an appropriation.

SUBSTANTIVE ISSUES

“Local education providers,” defined separately from state agencies, are not greatly affected by the requirements of HB218. Most of the provisions in the Sunshine Portal Transparency Act related to local education providers are enumerated in Section 10-16D-6 NMSA 1978, which is not amended by HB218. The new requirements proposed by HB218 are linked to state agencies, not local education providers. It is possible, however, that rules promulgated pursuant the bill may affect local education providers, as well as state agencies.

ADMINISTRATIVE IMPLICATIONS

The Department of Information Technology (DoIT) is charged with developing the sunshine portal to host not only financial, but electronic public information. HB218 directs DoIT to promulgate rules for the information exchange process for collection and electronic publication of electronic public information that is not financial information. Financial information posted on the sunshine portal is to be updated at least monthly.

The sunshine portal must include links to state agencies' "transparency websites," and any other electronic public information, including information required by rules promulgated by the Department of Finance and Administration (DFA).

TECHNICAL ISSUES

Although HB281 removes DFA's responsibility under the act, making DoIT the sole agency in charge of the sunshine portal, Section 2 of the bill delegates rulemaking authority to DFA for any additional financial information, not enumerated in the act, to be posted on the portal. Moreover, The Attorney General's Office (AGO) notes that Subsection B of Section 10-16D-4 NMSA 1978 delegates general rulemaking authority to "carry out the provisions of the act" to DFA, while newly proposed Subsection C of the same section delegates rulemaking authority for "the architecture and the information exchange process for the collection and electronic publication of the state's electronic public information that is not financial information" to DoIT. The sponsor may wish to consider limiting rulemaking authority for the execution of the Sunshine Portal Transparency Act to just one of those agencies. Moreover, Subsection A of Section 10-16D-4 NMSA 1978 is nearly identical to proposed Subsection C. The sponsor may wish to consider consolidating the language of Subsection A and proposed Subsection C in just one subsection.

Further, AGO notes the bill extends immunity from disclosure to information that is confidential under rule or regulation, in addition to state and federal law. However, New Mexico case law, under *Republican Party of New Mexico v. New Mexico Taxation and Revenue Department* (2012-NMSC-026, 283 P. 3d 853), makes clear that public bodies, in most cases, may not withhold a public record based on a claim of confidentiality under the administrative code.

RELATED BILLS

SB83, Sunshine Portal Audit & Compliance, which appropriates \$50 thousand to the Office of the State Auditor to contract with a third party to review compliance of the legislative, executive, and judicial branches, and agencies with the requirements of the Sunshine Portal Transparency Act.

SB244, Public Disclosure of Cybersecurity Info, which provides an exemption to the Open Meetings Act for public disclosure of certain information concerning cybersecurity.

SOURCES OF INFORMATION

- LESC Files
- Attorney General's Office

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