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FISCAL IMPACT REPORT

ORIGINAL DATE 2/25/09
LAST UPDATED 3/12/09 **HB** 722/aHJC
SPONSOR Thomas
SHORT TITLE Disclosure of Educational Retirement Info **SB** _____
ANALYST Hoffmann

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Relates to Senate Bill 399.
House Bill 722 is a duplicate of Senate Bill 490

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
Educational Retirement Board (ERB)
Public Education Department (PED)
Higher Education Department (HED)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment to House Bill 722 modifies the definition of a punishable violation of the proposed law so that it now reads "C. Whoever knowingly violates a provision of Subsection A or B of this section is guilty of a petty misdemeanor and shall be sentenced in accordance with Section 31-19-1 NMSA 1978." (Underline by FIR analyst)

Synopsis of Original Bill

House Bill 722 protects member information, other than member names, local administrative unit where employed, dates of employment, retirement and reported death, service credit, reported salary and employee and employer contributions to the Educational Retirement Fund, from disclosure to anyone other than the member, spouse, or authorized representative of the member, or persons identified in a release signed by the member, spouse or authorized person. The information that may be disclosed without a signed release is generally subject to disclosure under the Inspection of Public Records Act.

Information related to member and employer retirement contributions to the Education Retirement Fund, payments or management of money received by, or the financial controls or procedures of, a local administrative unit may be provided to the Attorney General, appropriate law enforcement agencies, State Auditor, Public Education Department or Higher Education Department without a signed release.

FISCAL IMPLICATIONS

House Bill 722 makes no appropriations.

SIGNIFICANT ISSUES

The ERB reports that it houses a significant amount of confidential member information. Currently, there are no protections of this information from disclosure. House Bill 722 will help protect sensitive data from disclosure, without affecting the ability of the public to access appropriate records. This is especially important due to the increase in identity theft.

The following comments on confidentiality were contributed by the AOC.

The Public Records Act currently allows personal identification information records to be inspected, with the exception of records pertaining to physical or mental examinations and medical treatment of persons confined to an institution. (See Sec. 14-2-1 A (1), NMSA 1978). In addition, personal identification information deemed confidential by law is not subject to disclosure. (See Sec. 14-3-7.1, NMSA 1978) Moreover, information solicited with the understanding that they would be kept confidential is not a public record, according to the 1967 Attorney General Opinion No. 67-57. Thus, Educational Retirement members and retirees' records would be available for public inspection.

By comparison, the Public Employees Retirement Act provides an exception to the public inspection or disclosure of information from any member or retiree file unless a prior release and consent has been executed by the member or retiree, with the exception of information about the applicable coverage plan, amounts of contributions by members and employers, pension amounts paid, names and addresses of members requested for the purpose of election to the retirement board, which information may be released without consent. (See Sec. 10-11-130 I, NMSA 1978)

The Judicial Retirement Act and Magistrate Retirement Act are both administered by the PERA retirement board, and as such, most of the information in member and retiree records is accepted from disclosure following Sec. 10-11.130 I, NMSA 1978.

RELATIONSHIP

Senate Bill 399 is related to House Bill 722. Senate Bill 399 would authorize ERB to conduct audits of the financial books and records of local administrative units to ensure compliance with the Educational Retirement Act and ERB regulations. Unauthorized disclosure under House Bill 722 would be a violation of the Educational Retirement Act.

Senate Bill 490 and House Bill 722 are duplicates.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The ERB comments that they will continue to rely on internal procedures to protect member information from disclosure to third parties if House Bill 722 is not enacted.

CH/mt:mc