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FISCAL IMPACT REPORT

SPONSOR Martinez, K. ORIGINAL DATE 2/26/2015
LAST UPDATED _____ HB 511
SHORT TITLE Proprietary College Info & Public Records SB _____
ANALYST Hartzler

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI				

(Parenthesis () Indicate Expenditure Decreases)

Duplicates HB 575, Proprietary College Information and Public Records.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)

Economic Development Department (EDD)

SUMMARY

Synopsis of Bill

House Bill 511 amends the Inspection of Public Records Act (IPRA), Section 14-2-1 NMSA 19878, by adding an exception for when public records of the state may be reviewed. The bill adds a section exempting "trade secrets or proprietary commercial or business information provided by a private party or entity to a public post-secondary institution pursuant to a confidentiality agreement" from public inspection.

FISCAL IMPLICATIONS

Neither agency response noted the fiscal impact of a public post-secondary institution that has to comply with a request for trade secrets or proprietary commercial or business information, where the institution asserts that such information should be exempt from public review. The Council of University Presidents (CUP) testified at the LFC's December 2014 FY16 budget hearings and more recently at the House Appropriation and Finance Committee's and Senate Finance Committee's institutional budget hearings, that such costs for complying with IPRA are burdensome.

SIGNIFICANT ISSUES

AGO staff analysis states that court rules governing evidence and discovery already provide for an exception to one’s right to review trade secrets and proprietary commercial or business information. Rules 1-026©(8), 11-508 NMRA. Creating another IPRA exception (the first exists for public hospitals) for public post-secondary institutions, as does HB 511, may lead individuals seeking access to trade secrets and proprietary information from other public bodies to assert the other public body is not covered by Rule 1-026©(8), 11-508 NMRA, and therefore must allow inspection of the requested records.

Further, the AGO notes that the bill limits application of the sought after exception to trade secrets and proprietary information provided to a public post-secondary institution “pursuant to a confidentiality agreement.” Institutions could receive information pursuant to other agreements. The limit in HB 511 could unnecessarily be read narrowly, and require the institution to allow inspection of trade secrets or proprietary information gained through another means.

DUPLICATION

HB 511 duplicates HB 575.

TECHNICAL ISSUES

The AGO suggests that HB 511 be amended so that an IPRA exception for trade secrets and proprietary information apply to all public bodies, and not just public post-secondary institutions. Further, the AGO suggests striking the requirement for a confidentiality agreement as a condition of the exception.

OTHER SUBSTANTIVE ISSUES

EDD observed that failing to provide for this IPRA exception to public post-secondary institutions hampers the ability of such institutions “to engage in public-private partnerships related to the commercialization of technology.” This possible deterrent to entering partnerships “undermines [the department’s] five year strategic goals of the State [] and [the department] to promote technology transfer and commercialization through the participation of public post-secondary educational institutions, specifically, but not exclusively, through the Technology Research Collaborative Initiative.”

TH/bb/je