

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: HB 575

52nd Legislature, 1st Session, 2015

Tracking Number: .199836.1

Short Title: Proprietary College Info & Public Records

Sponsor(s): Representative W. Ken Martinez

Analyst: Kevin Force

Date: March 5, 2015

Bill Summary:

HB 575 proposes to amend the *Inspection of Public Records Act* (IPRA) to create a new exemption for public records that the public has a right to inspect: “trade secrets of proprietary commercial or business information provided by a private party or entity to a public post-secondary educational institutions pursuant to a confidentiality agreement.”

Fiscal Impact:

HB 575 does not contain an appropriation.

Fiscal Issues:

According to the Fiscal Impact Report (FIR) from the Legislative Finance Committee, while HB 575 creates neither direct nor indirect expenses or revenue, it may enhance public university revenue by promoting universities’ participation in private grants, which might otherwise not be possible without legal protection for the private parties’ proprietary information.

Technical Issues:

The Attorney General’s Office (AGO) notes that:

- the application of the proposed exception only to trade secrets and proprietary information that are covered by a confidentiality agreement may unnecessarily limit the availability of the exception;
- as it is written, the exception suggests that trade secrets are subject to IPRA *unless* they are covered by a confidentiality agreement; however,
- generally, the opposite is true; the mere presence of a confidentiality agreement is insufficient to shield public records from discovery, absent another express exemption from IPRA.

Substantive Issues:

The AGO suggests that:

- proprietary business information and trade secrets are already protected from discovery by the Rules of Civil Procedure for the District Court¹, as well as the Rules of Evidence²;
- the sort of specific exception to IPRA proposed by the bill may encourage people who desire access to these trade secrets to argue that a particular public body, which is not expressly covered by the exception, must allow access to the secrets; and
- the provisions of the bill may be more effective if offered to all public bodies, not just institutions of higher learning.

While it is difficult to determine whether such a speculative concern is valid, it must be noted that the rules cited by the AGO apply only to discovery in district court, or to the rules of evidence, respectively. The exception proposed by HB 575 goes beyond the scope of the courtroom to offer protections for proprietary information in a separate arena, that of institutions of higher education, which frequently are engaged in research. Moreover, the possibility that certain people might seek proprietary information from institutions not covered by the exceptions offered in IPRA would suggest that other exceptions may be ripe for consideration, rather than that the exception proposed by the bill is inappropriate. Finally, transparency is an overarching concern of all branches of government, leading the Legislature, as a matter of policy, to exempt only certain instances and entities from the requirements of IPRA, rather than offering a blanket exception to all public bodies.

Committee Referrals:

HEC/HGEIC

Related Bills:

HB 511 *Proprietary College Info & Public Records*

¹ Please see, Rule 1-026(C)(8), "General provisions governing discovery."

² Please see, Rule 11-508, "Trade secrets."