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FISCAL IMPACT REPORT

SPONSOR	<u>Martinez, K.</u>	ORIGINAL DATE	<u>2/26/2015</u>	LAST UPDATED	<u>3/19/2015</u>	HB	<u>575/aHEC</u>
SHORT TITLE	<u>Proprietary College Info & Public Records</u>					SB	<u></u>
				ANALYST	<u>Hartzler</u>		

Relates to HB 511, 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 House Education Committee Amendment

The House Education Committee (HEC) amendment replaces the initially proposed "trade secrets" exception to the Inspection of Public Records Act (IPRA), Section 14-2-1 NMSA 19878, as proposed in House Bill 575 (HB 575). Under the bill, public records that are "trade secrets, as defined in the Uniform Trade Secrets Act, held by a public post-secondary educational institution and proprietary commercial information provided by a private party or entity to a public post-secondary educational institution pursuant to a confidentiality agreement" cannot be reviewed by the public. Such records would be exempted from the IPRA.

Synopsis of Bill

House Bill 575 amends the IPRA 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 of the HEC amendment cites four concerns with the proposed exception:

- (1) The “trade secret” exception is unnecessary in that the IPRA currently includes a “catch-all” provision that allows a public body to protect public records from disclosure if records are protected by other laws. Under New Mexico Supreme Court’s rules governing evidence and discovery, trade secrets held by and proprietary commercial or business information provided to public bodies fall within the IPRA exception.
- (2) Creating a “trade secret” exception for public postsecondary institutions could lead to limiting the current IPRA “catch-all” provision. Where such exceptions are available to public hospitals and public postsecondary institutions, the public may assert that public bodies other than public hospitals or postsecondary institutions must allow inspection of trade secrets or proprietary commercial or business information.
- (3) The Uniform Trade Secrets Act’s definition of “trade secrets” may limit or restrict protections currently afforded such records under the IPRA, particularly where the Uniform Act’s term is interpreted more narrowly to records than the current IPRA exception applies to such records.
- (4) The limits application of the proposed 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 the amendment could be read narrowly and require the institution to allow inspection of trade secrets or proprietary information gained through another means.

DUPLICATION

HB 575, as amended, resembles HB 511. HB 511 is identical to the original HB 575.

TECHNICAL ISSUES

The AGO suggests that HB 575 be further 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 (1) the requirement for a confidentiality agreement as a condition of the exception and (2) the definition of “trade secret” in the Uniform Trade Secrets Act.

OTHER SUBSTANTIVE ISSUES

Based on the original bill, 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