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FISCAL IMPACT REPORT

3/04/19
ORIGINAL DATE 3/06/19

SPONSOR Akhil LAST UPDATED 3/14/19 HB 29

SHORT TITLE IPRA Requirements for Certain Entities SB _____

ANALYST Glenn

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI	NFI			

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Attorney General (NMAG)
 Energy, Minerals & Natural Resources Department (EMNRD)
 Council of University Presidents (CUP)
 University of New Mexico (UNM)
 Central New Mexico Community College (CNM)
 New Mexico Independent Community Colleges (NMICC)
 New Mexico State University (NMSU)
 New Mexico Institute of Mining & Technology (NM Tech)

SUMMARY

Synopsis of Bill

House Bill 29 amends Section 6-5A-1 NMSA 1978 to provide that an organization covered by Section 6-5A-1 that exists solely to serve the interests of a state agency, public college or university, or specified local governments is subject to the Open Meetings Act (“OMA”) and the Inspection of Public Records Act (“IPRA”).

The effective date of HB 29 is July 1, 2019.

FISCAL IMPLICATIONS

None noted.

SIGNIFICANT ISSUES

Section 6-5A-1 governs the relationship between government agencies and Section 501(c) nonprofit organizations whose principal purpose is to support the purposes of an agency through financial support or contribution of services, goods, data or information that help the agency to carry out its statutory purposes. Section 6-5A-1 applies to a state agency, a public post-secondary educational institution, a county, a municipality or a public school district.

Section 6-5A-1's requirements are intended to ensure that interactions and transactions between an agency and an organization remain at arm's length. Prior to an agency accepting property or funds from an organization, the parties must enter into a written agreement that describes the relationship between the parties, imposes auditing and financial reporting requirements on the organization, requires that funds or property transferred to the agency by the organization be subject to laws governing the disbursement and administration of public funds and public property, and specifies the consideration the agency receives from the organization for agency services provided in support of the organization.

By making organizations covered by Section 6-5A-1 subject to OMA and IPRA, HB 29 substantially changes the existing law. Section 6-5A-1 currently exempts covered organizations from OMA. Section 6-5A-1 currently makes an organization's annual audit, except for lists of donors or donations, a public record, but otherwise provides that an organization's records are not public records subject to IPRA. More generally, the bill would subject the private organizations covered by Section 6-5A-1 to the same transparency requirements and corresponding obligations that apply to public bodies under OMA and IPRA.

UNM states that HB29 could have the unintended consequence of a significant reduction of current and future donations to support public colleges and universities. UNM states that donors who provide financial support to a public college, university, museum, library, or other government agency, particularly large donors, have many legitimate reasons for seeking to give while remaining anonymous. Those reasons include concerns about being targeted by unscrupulous persons, financial scams and unsolicited requests for donations; concerns about exposing their personal financial affairs, estate plans, or business plans to the public; general concerns about privacy; and the desire to give without public fanfare or recognition. UNM notes that, by making donor information public, the bill is inconsistent with the Charitable Solicitations Act, which excludes organizations covered by Section 6-5A-1 from public registration and reporting requirements, the encouragement of charitable giving, the laws of the majority of other states that protect private donor information from public disclosure, and the United States Tax Code.

EMNRD states that its State Parks Division has 22 formalized support groups, 13 of which are registered 501(c)(3) organizations. Some of the groups are extremely small (3-5 members) and are relatively unsophisticated organizations that raise limited amounts of money and provide volunteer hours to support their local park. The groups tend to operate informally. Meeting times can suddenly change, locations vary and sometimes they are held in an informal setting (i.e. member's home). According to EMNRD, the significant administrative requirements associated with both OMA and IPRA would likely create such a burden on these groups that they would either fail at meeting the requirements, disband, or, in the case of potential new groups, decide

not to form in the first place.

ADMINISTRATIVE IMPLICATIONS

EMNRD notes that while most State Park support groups are small and raise little funding, they provide crucial support in the form of volunteer hours to maintain the parks, visitor centers and other key facilities. If any of these support groups were to fold because of the additional requirements specified in HB 29, this loss of support would directly negatively impact the ability of park staff to provide required services to park visitors. Current park staff would likely need to be redirected to cover job tasks that are currently covered by volunteers associated with park support groups.

EMNRD also notes that the loss of any of the support groups would reduce the park's ability to secure certain services and items that each support group might otherwise purchase to support the park. The requirement to post meeting notices would cut into the limited funds that the support groups have raised for direct benefit to the parks. Most of these support groups struggle to provide even the minimum financial requirements that EMNRD currently asks of them (i.e. annual fiscal reports).

OTHER SUBSTANTIVE ISSUES

The current protection from public disclosure for donor lists and donations in Section 6-5A-1(B)(4)(a) is not necessarily affected by HB 29's amendment to Section 6-5A-1(D). Nevertheless, it might be beneficial to make this clear to resolve any ambiguity and to reassure donors who might be reluctant to make or continue donations to an organization if they believed their identities were subject to disclosure under IPRA.

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