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FISCAL IMPACT REPORT

SPONSOR Martinez, K. ORIGINAL DATE 03/13/15
 LAST UPDATED 03/16/15 HM 125

SHORT TITLE Study IPRA Requests to Schools SB _____

ANALYST Daly

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)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico State University (NMSU)
 Public Education Department (PED)
 General Services Department (GSD)

SUMMARY

Synopsis of Bill

House Memorial 125 requests Legislative Finance Committee (LFC) convene a working group to study and make recommendations: 1) addressing the administrative and fiscal burdens on public post-secondary educational institutions and public school districts of complying with the Inspection of Public Records Act (IPRA); and 2) for preserving the privacy needs and potential claims of individuals. The working group is to report to the legislative interim committee that addresses issues related to courts, corrections and justice and to LFC by November 1, 2015.

FISCAL IMPLICATIONS

No fiscal impact to the State is anticipated. However, GSD advises that if the working group's analysis and recommendations on these IPRA requests lead to reforms that improve how the requests are processed and addressed, the Public Liability Fund managed by the Risk Management Division may incur fewer costs tied to the defense and resolution of legal disputes between IPRA requesters and the public educational institutions.

SIGNIFICANT ISSUES

The Memorial states that public post-secondary educational institutions and public school districts generate and possess many more records than other public bodies, including many more records that contain personal information about employees and students, much of which is prohibited from being disclosed. It also states a mistaken disclosure could subject the institution or school to potential liability, and disclosure of records containing personal or unverified information about an individual could result in harm to the individual and have the effect of discouraging complaints from individuals along with the exercise of individual rights.

Members of the working group to be convened by LFC are established by the Memorial to be a LFC staff member and one representative from each of these entities: the Council of University Presidents; the Association of Community Colleges; the New Mexico school superintendents association; the Risk Management Division of General Services Department; New Mexico Association of Counties; New Mexico Municipal League; and the New Mexico Foundation for Open Government. The working group does not include a representative from either the Attorney General or a District Attorney, although each is authorized by IPRA to bring actions to enforce it. Section 14-2-12(A), NMSA 1978.

NMSU comments that this memorial:

has the potential to identify administrative and fiscal burdens and inefficiencies on public post-secondary educational institutions and public school districts resulting from current IPRA compliance. It may also result in the recognition that privacy needs and potential complaints by individuals, including employees, are negatively impacted under the current IPRA. The current IPRA has the potential to discourage individuals from disclosing personal information and filing complaints due to such records being subject to public disclosure prematurely.

Existing laws provide some exceptions relating to educational records. For example, IPRA itself provides an exception for letters or memoranda that are matters of opinion in students' cumulative files, see Section 14-2-1(A)(4). Section 22-21-2 prohibits the sale or use of public school student, faculty and staff lists in direct marketing; and federal law bars educational agencies or institutions that receive federal funds from releasing educational records or personally identifiable information without consent. See Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. section 1232g.

Further, PED comments that it supports efforts to reduce the administrative burdens on public school districts and their staff members while ensuring that schools operate with transparency and accountability to the public. It explains the particular impact of IPRA on public schools:

Public schools possess records on each student enrolled—hundreds of thousands of student-level records as compiled and amassed over the 12 or more years each student attends school—yet the public school must protect student-level data in most circumstances because of the privacy provisions of the federal FERPA, as implemented by 34 CFR Part 99. Public schools bear especially burdensome administrative burdens under state law in attempting to balance compliance with requests for public records under the state IPRA with federal FERPA limitations disclosure of such records.

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PED provides these additional comments on HM 125:

The memorial provides for a full-fledged study of the impact of balancing IPRA and FERPA requirements at public schools and post-secondary institutions. The memorial provides for appointment of an eight-member working group that includes representatives of cities and counties, state risk management as well as from the New Mexico Foundation for Open Government and schools and their representatives with a staff member from LFC. PED is not a proposed member of the working group, but has a stake in the conclusions of the working group as reported to LFC and the other legislative committee.

GSD notes:

The challenges presented by the oftentimes wide breadth of IPRA requests place significant administrative and fiscal burdens on State agencies. For public educational institutions, these burdens are magnified by the substantial volume of documents these institutions possess and the careful course that must be taken in redacting and excluding personal information of students and employees from documents responsive to a request.

MD/je/bb/je