

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website (www.nmlegis.gov) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 2/12/18
LAST UPDATED 2/14/18

SPONSOR SJCS **HB** _____
SHORT TITLE Commercial Aerospace Protection Act **SB** 98/SJCS/aSFL1
ANALYST Martinez

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY18	FY19	FY20		
See Fiscal Impact	See Fiscal Impact	See Fiscal Impact	See Fiscal Impact	See Fiscal Impact

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From
New Mexico Spaceport Authority

SUMMARY

Synopsis of Senate Floor Amendment

In section 3, the Senate floor amendment removes “shall be confidential and,” and replaces it will “is,” in the following sentence:

The following information ~~shall be confidential and~~ “is” not subject to inspection pursuant to the Inspection of Public Records Act.

Synopsis of Original Bill

Senate Bill 98 amends the Inspection of Public Records Act, and amends the Spaceport Development Act.

Section 2: amends definitions within the Inspection of Public Records Act, and adds a definition for “trade secret.”

Section 3: adds. “Information not Subject to Disclosure,” to the Spaceport Development Act. The following information is not subject to inspection pursuant to the Inspection of Public Records Act (IPRA):

1. Information obtained by the Authority that is related to specific technical or business information that is proprietary and is related to the possible relocation, expansion or operation of its aerospace customers.
2. Trade secrets, includes information created, obtained or in the possession of the authority that derives actual or potential value for the business operation of the authority.
3. The identity of authority aerospace customers, if nondisclosure is requested by the customer.
4. Information that would compromise the physical security or cybersecurity of authority facilities.

FISCAL IMPLICATIONS

The New Mexico Spaceport is a publicly funded entity. The Legislature appropriated a total of \$132.6 million in capital outlay funding to the Spaceport Authority for planning, design, and construction of Spaceport America and related infrastructure, and \$76.4 million bond proceeds from an incremental gross receipts tax imposed by Sierra and Dona Ana counties brings the total cost to \$209 million. The tax increase was approved in Dona Ana County in 2007 and Sierra County in 2008. Voters voted on the tax increase with an understanding that three-fourths of the money would be used for construction of the facility and the remaining one fourth of the tax money was to be used for education programs in the two counties. Using these funds to pay for operations must be approved by the New Mexico Finance Authority (NMFA). In June, NMFA gave approval for Spaceport Authority to continue using these funds for another year, when another review will be given. The tax money has thus far paid off approximately \$44 million in bond debt. The remaining \$74 million is scheduled to be paid off through 2029. The tax increase is due to sunset in 2028.

The following fiscal implications were provided by the New Mexico Spaceport Authority:

This bill has the potential to help attract new jobs to New Mexico. It is hard to predict exact revenue increases for the New Mexico Spaceport, but there will be increased revenue from new companies paying taxes as well as fees paid directly to Spaceport America. The forecast suggests an increase of \$2 million in revenue by FY20 from new customers due to this legislation. The commercial space industry generates \$330 billion worldwide. A number of large commercial space companies are currently considering site locations, and any one of these companies could bring approximately 200 jobs each.

SB98 can significantly impact the appropriation request of the NM Spaceport Authority. A large part of the operating budget or (75 percent) of Spaceport America is funded through aerospace customer revenue. However, as revenue increases, expenditures also increase to support the additional aerospace job creation. Increases in expenditures are funded through new customer revenue generated by the New Mexico Spaceport, rather than state appropriations.

SIGNIFICANT ISSUES

Section 3 states that information obtained by the Authority that is related to specific technical or business information that is proprietary and is related to the possible relocation, expansion or operation of its aerospace customers is exempt from IPRA. This language is broad and allows the authority to not disclose financial information that is related to relocation, expansion or

operations that would be vital for New Mexico oversight entities such as the Department of Finance and Administration and the Legislative Finance Committee to know when making crucial decisions and policy analysis relating to operating budget needs.

Providing one state agency with an exemption from IPRA may create potential opportunities for other state agencies to request to do the same.

As acknowledged by the New Mexico Supreme Court, “[w]ritings coming into the hands of public officers in connection with their official functions should generally be accessible to members of the public so that there will be an opportunity to determine whether those who have been entrusted with the affairs of government are honestly, faithfully and competently performing their function as public servants.” State ex rel. Newsome v. Alarid, 90 N.M. 790, 795, 568 P.2d 1236 (1977) (quoting with approval MacEwan v. Holm, 359 P.2d 413, 420-21 (Or. 1961)).

The Attorney General’s Office guidelines to IPRA states that there are circumstances where the right to inspect public records is outweighed by specific competing interests protecting the confidentiality of certain records. However, courts interpreting the Act have established a clear presumption in favor of access: A citizen has a fundamental right to have access to public records. The citizen’s right to know is the rule and secrecy is the exception. Where there is no contrary statute, the right to inspect public records must be freely allowed.

The following significant issues were provided by the New Mexico Spaceport Authority:

The Spaceport is a point of entry for private entities attempting to become established in the highly competitive commercial space industry, which is driven by ever-evolving innovations in technology. The intense competition existing among rival companies could make the untimely revelation of sensitive proprietary information involving financial, technical and strategic data an event capable of hindering a competitive advantage necessary for success, for both the customer and the Spaceport. In order to honor its statutory mandate to foster development and actively promote public and private sector infrastructure development to attract new industries and businesses to the state, the Spaceport must be able to provide its customers with protections from the premature disclosure of sensitive proprietary information that are offered by other spaceports in order to remain competitive. This Act seeks to provide that protection in the form of exemption from the mandatory disclosure provisions of the Inspection of Public Records Act.

The legislation will make New Mexico attractive to aerospace companies considering relocation to the state. The investment in Spaceport America makes New Mexico an ideal location for the commercial space Industry, but there are also eleven spaceports in other states competing for space companies. Some of these states have already enacted similar legislation. The two largest spaceports in Virginia and Florida, have similar laws already enacted. This act levels the playing field, and makes New Mexico competitive.

In conversations with potential aerospace companies, this issue is one of the top considerations when companies are choosing a location. Companies in the commercial space industry are highly secretive about their operations, and New Mexico does not provide protection for their private company information because Spaceport America is owned by the state and the company’s onsite become subject to IPRA. There are high risks for companies if information, like a company’s flight schedule, get released to the public. This can impact company financing, stock

price, competitive advantage, and sales.

Under the current IPRA legislation, these companies are not protected. However, other states have specifically granted IPRA exemptions for spaceports.

PERFORMANCE IMPLICATIONS

The following performance implications were provided by the New Mexico Spaceport Authority:

This bill is important to continue the successful growth of jobs at Spaceport America. Spaceport America has five long-term customers including Virgin Galactic. However, to continue to bring in new aerospace jobs, New Mexico needs to be competitive with other states for protections over company private information.

Passage of this bill impacts the appropriation request of the NM Spaceport Authority. A large part of the Operations budget or (75 percent) of Spaceport America is funded through aerospace customer revenue. Spaceport America management is aggressively pursuing increases to customer revenue, but revenue forecasts largely assume this bill passes. Lack of revenue growth results in a dramatic reduction in the budget for Spaceport America due to the lost revenue.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

There will be no specific protections of records submitted by clients to Spaceport America.

Spaceport America states that New Mexico may lose companies and jobs to spaceports in competing states that have already passed similar legislative protections.

JM/al/jle