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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
54th Legislature, 1st Session, 2019

Bill Number	<u>HB614</u>	Sponsor	<u>Lara</u>
Tracking Number	<u>.213757.1</u>	Committee Referrals	<u>HEC/HJC</u>
Short Title	<u>Exempt Certain School Records from IPRA</u>		
Analyst	<u>Force</u>	Original Date	<u>2/21/19</u>
		Last Updated	<u></u>

BILL SUMMARY

Synopsis of Bill

House Bill 614 (HB614) proposes a new section of the Public School Insurance Authority Act to limit availability of certain records pertaining to school insurance coverage under the Inspection of Public Records Act (IPRA). The bill also proposes to make a violation of the provisions of the bill a misdemeanor, punishable by a fine of up to \$1,000, and would stipulate that persons convicted of a violation would not be eligible for employment by the state for five years after conviction.

Should HB614 be enacted, it would become effective on July 1, 2019.

FISCAL IMPACT

HB614 does not contain an appropriation.

SUBSTANTIVE ISSUES

HB614 would make certain records related to school insurance exempt from inspection under IPRA, although the records would still be subject to inspection by state officers, legislators, and state employees, when within the scope of their official duties. Records pertaining to insurance coverage would be protected from IPRA disclosure, although they would still be available to public entities under the coverage. Records dealing with claims of damages or other relief against a governmental entity or public officer or employee are likewise exempt from inspection, except that they will become open to inspection 180 days after: the applicable statutes of limitation have run; the date all litigation has been brought to final judgment, including all rights to appeal; the date the claim is fully and finally settled; and the date the claim was placed in closed status.

All the records exempted from IPRA under the provisions of the bill would be made available for purposes of audits or defense and, in those cases, the records are to be kept confidential.

HB614 largely duplicates statutory language providing for the same exceptions to inspection for the Risk Management Division, specifically in Section 15-7-9 NMSA 1978. The proposed new

section of the Public School Insurance Authority Act would protect the New Mexico Public School Insurance Authority (NMPSIA) in the same manner as current law does for the Risk Management Division.

Currently, IPRA provides for a number of exceptions to the general requirements of the act:

1. **Medical records**, including those for persons confined to institutions. The New Mexico Attorney General's (AG) IPRA Compliance Guide indicates that the New Mexico Supreme Court extended this exception to include employee records pertaining to illness, injury, disability, sick leave, and ability to perform job tasks. The Court did not limit the exception to only persons confined to institutions. Rather, any records pertaining to health and treatment of individuals have been exempted from IPRA.
2. **Letters of reference for employment, licensing, or permits** are also exempted. Letters of reference, by their nature, include an author's personal opinion. If authors knew their personal opinions might be exposed to public review, it could deter them from providing such letters.
3. **Matters of opinion**, such as records in personnel files or students' cumulative files are exempted to protect documents that may mainly contain subjective rather than factual information that, if exposed, may be damaging to an employee or student. According to the IPRA Compliance Guide, the Court has interpreted this exemption to include personnel records such as disciplinary records, performance reviews, and the like.
4. **Records of law enforcement**, such as those that reveal confidential sources, methods, information or individuals accused but not charged with a crime. Evidence compiled in connection with investigations or prosecutions is also exempt from IPRA.
5. Matters related to the **Confidential Materials Act**, which permits libraries, colleges, universities, museums, and institutions of the state or its subdivisions to keep confidential materials of historical or educational value on which donors or vendors may have imposed access restrictions, except for materials that were public records to at the time of acquisition.
6. **Public hospital records**, including trade secrets, attorney-client privileged materials, and long-range and strategic business plans of public hospitals addressed in closed meetings, according to the exception provided for in the Open Meetings Act
7. **Tactical response plans**, or procedures prepared by or for the state or one of its political subdivisions, which might reveal vulnerabilities, risk assessments, or emergency security procedures that could be used to facilitate a terrorist attack.
8. **Protected personally identifiable information**, though this information may be redacted from documents otherwise subject to IPRA. The IPRA Compliance Guide notes that the presence of such information on a record does not exempt the record from inspection, and unredacted records that contain personally identifiable information may not be posted on publicly accessible websites operated by a public body.

Generally, public records are accessible to public inspection. As noted by the AG, even where no statute exists, a common law right to inspect and copy public records does exist. Further, public policy acknowledges the importance of public accessibility to the government records. The AG also notes that litigation claims, with only a few exceptions, such as sealed cases are public records and are open to inspection. Although HB614 duplicates language in existing law, the AG indicates the time limitations proposed by the bill regarding the inspection of records related to litigation are not afforded to such civil and criminal matters in the district court.

RELATED BILLS

SB154, Public Property Disposition Act, provides that documents related to the disposition of tangible personal property are subject to IPRA disclosure.

SB201, Firearm Transfer Act, would exempt any records created pursuant to that Act from IPRA disclosure.

SB259, Disclose Finalists of Appointed Positions, would allow public bodies to deny inspection of public records that reveal the identity of an applicant for government employment.

SB 397, Anonymity of Lottery Winners, proposes to amend the New Mexico Lottery Act to exempt names, addresses and other personal identifying information of lottery winners from IPRA disclosure.

SB 514, Public Inspection of Certain Warrants, proposes to exempt outstanding warrants of a state agency or local public body that have not been cleared by that agency's or public body's fiscal agent from inspection as public records.

SOURCES OF INFORMATION

- LESC files
- New Mexico Attorney General (AG)
- New Mexico Public School Insurance Authority (NMPSIA)

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