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| LFC Requester: | Tracy Hartzler |
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**AGENCY BILL ANALYSIS
2015 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original **Amendment**
Correction **Substitute**

Date Prepared: 2/21/2015

Bill No: HB 511

Sponsor: Rep. W. Ken Martinez
Proprietary College Info &
Short Title: Public Records

Agency/Code: Attorney General's Office
Person Writing Analysis: Betsy Glenn, CDAG
Phone: 827-6425 **Email:** eglenn@nmag.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

| Appropriation | | Recurring or Nonrecurring | Fund Affected |
|----------------------|-------------|--------------------------------------|--------------------------|
| FY15 | FY16 | | |
| | | | |
| | | | |

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

| Estimated Revenue | | | Recurring or Nonrecurring | Fund Affected |
|--------------------------|-------------|-------------|--|--------------------------|
| FY15 | FY16 | FY17 | | |
| | | | | |
| | | | | |

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY15 | FY16 | FY17 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|-------------|-------------|-------------|------------------------------|--------------------------------------|--------------------------|
| Total | | | | | | |

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/~~Conflicts with~~/~~Companion to~~/~~Relates to~~: HB 575
Duplicates/Relates to Appropriation in the General Appropriation Act:

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Letter. This is a staff analysis in response to an agency’s, committee’s, or legislator’s request.

BILL SUMMARY

Synopsis:

HB 511 adds an exception to the right to inspect public records under the Inspection of Public Records Act (“IPRA”) for trade secrets and proprietary commercial or business information provided to a public post-secondary educational institution.

FISCAL IMPLICATIONS

SIGNIFICANT ISSUES

1. Trade secrets and proprietary commercial or business information provided to public bodies are already protected from inspection under court rules governing evidence and discovery. See Rules 1-026(C)(8), 11-508 NMRA. Enacting special exceptions for trade secrets and proprietary information only for certain public bodies - such as the current exception for public hospitals (Section 10-15-1(A)(6) of IPRA) and the one for public post-secondary educational institutions proposed by HB 511 - may encourage people who want access to trade secrets and proprietary information held by public bodies to argue that a public body that is not covered by an express exception must allow inspection of trade secrets and proprietary information in response to a request under IPRA.

2. HB 511 provides that the exception for trade secrets and proprietary information applies only when the information is provided to a public post-secondary educational institution “pursuant to a confidentiality agreement.” The requirement for a confidentiality agreement may unnecessarily limit the availability of the exception. As written, the exception suggests that trade secrets and proprietary information are subject to inspection under IPRA unless they are provided under a confidentiality agreement. Generally, the opposite is true: a confidentiality agreement cannot protect public records from inspection under IPRA unless the public records are covered by an exception.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 511 is a duplicate of HB 575

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS

To avoid ambiguity and prevent the harm resulting if trade secrets and proprietary information provided and held by public bodies are made public, HB 511's express exception for trade secrets and proprietary information should apply to all public bodies subject to IPRA.

Delete the requirement for a confidentiality agreement as a condition to the exception's applicability.