

<b>LFC Requester:</b>	<b>Tracy Hartzler</b>
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**AGENCY BILL ANALYSIS  
2015 REGULAR SESSION**

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*{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: 3/19/2015

Bill No: HB 575a

Sponsor: Rep. W. Ken Martinez

Agency/Code: Attorney General's Office

Proprietary College Info &

Person Writing Analysis: Betsy Glenn

Short Title: Public Records

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**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)**

	<b>FY15</b>	<b>FY16</b>	<b>FY17</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/~~Conflicts with/Companion to/Relates to~~: HB 511  
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:

The amendment to HB 575 rewords the exception added by the original bill 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. As amended, the exception applies to “trade secrets, as defined in the Uniform Trade Secrets Act, held by a public post-secondary educational institution” and “proprietary commercial information provided by a private party or entity to a public post-secondary educational institution pursuant to a confidentiality agreement.”

**FISCAL IMPLICATIONS**

**SIGNIFICANT ISSUES**

The amendment to HB 575 raises issues similar to those present in the original bill. Specifically:

1. IPRA makes public records available for inspection, with specified exceptions. See NMSA 1978, § 14-2-1(A). Those exceptions include a “catch-all” provision that allows a public body to protect public records from disclosure if “otherwise provided by law.” Id. § 14-2-1(A)(8). The New Mexico Supreme Court has interpreted Section 14-2-1(A)(8) to permit nondisclosure of public records protected by statute, rules adopted by the Supreme Court or the state or federal constitution. See Republican Party v. New Mexico Taxation and Revenue Dep’t, 2012-NMSC-026, ¶ 16, 283 P.3d 853, 860.

Trade secrets held by and proprietary commercial or business information provided to public bodies are already protected from inspection under IPRA’s “otherwise provided by law” exception because of 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 575 - 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. The amendment to HB 575 applies to trade secrets “as defined in the Uniform Trade Secrets

Act.” This potentially reduces the protection currently available under IPRA for trade secrets held by public post-secondary educational institutions if the definition of trade secrets in the Uniform Trade Secrets Act applies to a narrower category of records than those covered by the court rules discussed above.

3. HB 575, as amended, states that the exception for 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 proprietary information provided to a public post-secondary educational institution is protected from inspection under IPRA only if it is provided under a confidentiality agreement. Under the current interpretation of the law, as discussed above, proprietary information held by or provided to a public body is protected regardless of whether the public body obtained it under a confidentiality agreement.

## **PERFORMANCE IMPLICATIONS**

## **ADMINISTRATIVE IMPLICATIONS**

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

The original HB 575 is a duplicate of HB 511

## **TECHNICAL ISSUES**

## **OTHER SUBSTANTIVE ISSUES**

## **ALTERNATIVES**

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Trade secrets and commercial proprietary information held by or provided to public post-secondary educational institutions will continue to be protected from inspection under IPRA to the same extent they are currently protected for all public bodies.

## **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 575’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.

Delete the reference to the definition of “trade secret” in the Uniform Trade Secrets Act.