

LFC Requester:	Becerra
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**AGENCY BILL ANALYSIS
2021 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 1/24/2021
Bill No: SB39*

Sponsor: Sen. Bill Tallman
Short Title: NAMES OF FINALISTS FOR EXECUTIVE POSITIONS

Agency Name and Code PED - 924
Number: _____
Person Writing John Sena
Phone: 505-570-7816 **Email** John.Sena@state.nm.us

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY21	FY22		
N/A	N/A	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY21	FY22	FY23		
N/A	N/A	N/A	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	N/A	N/A	N/A	N/A	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: N/A

Duplicates/Relates to Appropriation in the General Appropriation Act: N/A

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: Senate Bill 39 (SB39) proposes a new section of law to exempt certain administrative records, related to the identity of applicants or candidates for appointed executive positions, under the purview of the Inspection of Public Records Act (IPRA). Certain other related records would be subject to IPRA under the provisions of the bill. The bill contains an emergency clause, rendering it effective immediately upon signing by the Governor if it passes by a two-thirds majority in each chamber.

FISCAL IMPLICATIONS

SB39 does not contain an appropriation.

SIGNIFICANT ISSUES

SB39 exempts from inspection under IPRA records that would reveal the identity of a non-finalist applicant or candidate for an appointive executive position.

Consistent with current requirements under IPRA, SB39 would also exempt from inspection certain records pertaining to position finalists, including letters of reference and records containing medical or psychological information about finalist candidates. Subsection A of Section 14-2-1 NMSA 1978 of IPRA exempts medical records from inspection under the act. Subsection B likewise exempts letters of reference concerning employment, licensing, or permits. Subsection H of that section exempts records as otherwise provided by law, and would apply to the exemption proposed by SB39.

Other records that might reveal the identity of finalist candidates would remain subject to inspection under IPRA. The bill specifically requires state agencies, institutions, and political subdivisions to prominently post on their websites the names and resumes of at least three finalists for appointive executive position no fewer than 10 days prior to the position's final selection date. (If fewer than three candidates possess a position's minimum qualifications, they shall be deemed finalists for purposes of this section.)

SB39 specifically exempts applicants and nominees for the position of president of institutions of higher education, under Section 21-1-16.1 NMSA 1978.

For purposes of this proposed section only, the bill defines "appointive executive position" to mean "a non-elected chief executive officer of a state agency or political subdivision of the state"

but exempts political appointments, including cabinet secretaries. The bill also defines “finalist” to mean “an applicant or candidate for an appointive executive position who is a member of a final group of applicants or candidates.” Thus, records pertaining to candidates for the position of Secretary of Education, like other cabinet secretaries, would not be subject to the requirements of this bill. They may, however, be subject to inspection under other provisions of IPRA, if not already covered by one of the exemptions in the act.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

The provisions of the bill apply to candidates and applicants for executive positions, not current office-holders, and thus have no immediate performance or administrative implications for PED or the Secretary of Education.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

N/A

AMENDMENTS

N/A