

LFC Requester:	Julia Downs
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**AGENCY BILL ANALYSIS
2017 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** _____ **Date** 01/26/17
Correction _____ **Substitute** _____ **Bill No:** HB15

Sponsor: Rep. William "Bill" R. Rehm **Agency Code:** 924
Short Title: DATA BREACH NOTIFICATION ACT **Person Writing:** Aguilar/Hamilton
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY17	FY18		
	None Noted		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Statewide Governance & Standards	\$250,000	\$100,000	\$75,000	\$425,000	Recurring	Various
Annual Audit: All LEAs Statewide	\$2,500,000	\$2,000,000	\$2,000,000	\$6,500,000	Recurring	Various
Semi-Annual Training	\$200,000	\$175,000	\$150,000	\$525,000	Recurring	Various
State Notification System	\$150,000	\$75,000	\$75,000	\$300,000	Recurring	Various
Total	\$3,100,000	\$2,350,000	\$2,300,000	\$7,750,000		

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: House Bill 15 proposes to require notification to persons affected by a security breach involving personal identifying information to consumer reporting agencies, the Office of the Attorney General and (in some circumstances) card processors. Failure to notify a breach may incur civil penalties. Furthermore, the bill includes sections which require reasonable measures be taken to ensure data security with regard to storage, disposal and sharing of personal identifying data to contractors.

FISCAL IMPLICATIONS

House Bill 15 provides that various entities:

1. Establish state data privacy and security governance and standards.
2. At least an annual audit of all state and local education agencies of their compliance with data privacy and security standards.
3. Training of state and local education agency personnel on how to comply with and enforce state data privacy and security standards
4. Develop and maintain a notification system in the event of a breach, including keeping current records with the appropriate information (i.e., physical address, email address and/or mobile phone numbers).

These requirements are significant and are estimated to cost \$3 million statewide in the current fiscal year to implement and about \$2.3 million annually thereafter.

SIGNIFICANT ISSUES In the area of education data both the PED, districts, and charter schools store and maintain data that meet the definition of “personal identifying information” as outlined in section 2.B of the proposed bill. This would result in additional work for the PED, districts and charter schools. It is unclear what would be required to bring (or help bring) the state education agency and all local education agencies into compliance with a security standards only described as “reasonable.”

TECHNICAL ISSUES

1. The bill does not contain a definition of a person that owns or maintains records containing personal identifying information.
2. The bill instructs the aforementioned “person” to dispose of data “when they are no longer reasonably needed for business purposes, however the definition of “reasonable need” nor “business purposes” are not defined.
3. The bill lacks a definition of what a “reasonable” standard would be for ensuring security.
4. There is no mention of redress for the victims of a data breach (e.g., provide credit monitoring) apart from civil penalties.
5. Regarding reference to “good faith acquisition” in section 2.C, it would be helpful expand to other personnel actions performed as part of their official duties.

OTHER SUBSTANTIVE ISSUES

- Creating civil penalties with poorly defined privacy and security standards could stifle the use of data that would provide benefit to students, families, teachers and schools.

ALTERNATIVES

There is a rich policy foundation related to data privacy and security that is not addressed in this bill. Perhaps DoIT (in collaboration with other state agencies) could develop such a policy foundation that could define data privacy and security standards against which the state education agencies, local education agencies and other state or local entities could be measured. With such a foundation in place, the goals of this bill could be reasonably implemented.