

REVISE INTELLECTUAL PROPERTY FREEDOM OF INFORMATION EXEMPTION

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House Bill 4242

Sponsor: Rep. Paul Opsommer

1st Committee: Commerce

2nd Committee: Oversight, Reform, and Ethics

Complete to 10-25-11

A REVISED SUMMARY OF HOUSE BILL 4242 AS INTRODUCED 2-10-11

The Confidential Research and Investment Information Act (MCL 390.1554 currently exempts from disclosure, intellectual property created by a person employed by (or under contract to) a public university for purposes that include research, education, and related activities, until a reasonable opportunity is provided for the information to be published in a timely manner in a forum intended to convey the information to the academic community.

House Bill 4242 would make two changes to the act regarding this exemption:

- First, the bill specifies that the exemption described above applies only to the intellectual property created by the person employed by or under contract to the public university, and does not exempt from the Freedom of Information Act any information relating to the terms of employment of that person, the costs and sources of funding for creating that intellectual property, or any other financial information relating to the creation of the intellectual property.
- Second, the bill revises the existing disclosure exemption under the FOIA, specifying that intellectual property created by a person employed by or under contract to a public university for purposes that include research, education, and related activities is exempt from disclosure only until one of the following occurs:
 - (1) A reasonable opportunity is provided for the information to be presented or published in a timely manner in a forum intended to convey the information to the academic community (this in current law; the underline portion is new language).
 - (2) The public university or college presents the information in a public forum.
 - (3) The public university or college publishes more than an insignificant amount of the information in any newspaper, newsletter, or non-academic magazine.
 - (4) The public university makes available to the Legislature or the general public the findings, the results, or a summary of the information.

Current Law

Under the act, some information in which a public university holds an interest, or that is owned, prepared, used, or retained by or in the possession of the university is exempt from disclosure as a public record under the Freedom of Information Act. In particular, the following are exempt from disclosure:

(a) Intellectual property created by a person employed by (or under contract to) a public university for purposes that include research, education, and related activities, until a reasonable opportunity is provided for the information to be published in a timely manner in a forum intended to convey the information to the academic community. (This is the provision House Bill 4242 is amending.)

(b) Original works of authorship fixed in any tangible medium of expression created by a person employed by or under contract to a public university for purposes that include research, education, or related activities, until a reasonable opportunity is provided for the author to secure copyright registration, not to exceed 12 months from the date the work is first fixed in a tangible medium of expression.

(c) Records regarding a process, a machine, an item of manufacture, or a composition of matter, or any new and useful improvement of a process, a machine, an item of manufacture, or a composition of matter, until a reasonable opportunity is provided for the inventor to secure patent protection, not to exceed five years from the date the records are first made.

(d) Trade secrets or other proprietary information in which a public university holds an interest that is determined to have potential commercial value, if a general description of the nature of the information and a description of the extent of the interest held by the university in the information is made available to a person upon request.

Under current law, to the extent that the information and its commercial value are capable of being adequately protected by copyright, patent, or trademark protection, and are not encompassed by a pending, unissued patent application, these exemptions do not apply to information regarding a product or process, if the public university is selling or marketing the product or process to the general public.

FISCAL IMPACT:

The direct fiscal impact of this bill on state government or public universities would not be significant. As this proposal adds conditions under which academic research is subject to Freedom of Information Act (FOIA) requests, an increase in the number of FOIA requests could result. The fiscal impact of such increases would be minimal.

The indirect impact of the bill is unclear. Allowing outside entities to obtain research findings at an earlier stage in the research process (initial presentation vs. final publication) could potentially have implications for commercialization and other research-related revenue generated by universities.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.