

Date of Hearing: April 29, 2014

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Das Williams, Chair

AB 2152 (Levine) – As Amended: April 23, 2014

SUBJECT: Public postsecondary education: federal contracts.

SUMMARY: Establishes requirements governing the University of California (UC), California State University (CSU), the California Community Colleges (CCC) and private or independent higher education institutions entering into federal contracts with federal intelligence agencies. Specifically, this bill:

- 1) Requires the UC, CSU, CCC, and private or independent institutions of higher education, and research institutions managed by or affiliated with those entities, to, prior to entering into a contract with a federal intelligence agency, determine whether the proposed contract would involve the analysis or processing of personally identifiable information, and if so, it must require the agency to disclose whether the information was collected with the knowledge of the individuals to whom it pertains.
- 2) Provides that institutions must require a proposed contract to be approved at an open and public meeting of the governing board of the institution and must disclose the type of research and information sought by the federal intelligence agency, if the contract would:
 - a) Involve the analysis or processing of personally identifiable information that was collected without the knowledge of the individuals to whom it pertains;
 - b) Involve the analysis or processing of disaggregated personally identifiable information, or de-identified but re-identifiable information, about individuals;
 - c) Potentially assist in the analytical processing of personally identifiable information of individuals; or
 - d) Assist in the conduct of surveillance activities performed by, or on behalf of, a federal intelligence agency.
- 3) Requires institutions to disclose, on an annual basis, the number of contracts with federal intelligence agencies where the agency sponsoring the contract imposes a limit or restriction on the publication of the research.
- 4) Prohibits an institution from entering into a contract with a federal intelligence agency that imposes limits or restrictions on the publication of research if the contract would involve the analysis or processing of personally identifiable information collected without the knowledge of the individuals to whom it pertains.
- 5) Defines "individual" to mean a natural person, regardless of citizenship.
- 6) Defines "personally identifiable information" to mean information that can be used to distinguish or trace an individual's identity, including, but not limited to, an individual's

name, social security number, or biometric records, whether alone or when combined with other personal or identifying information that is linked or linkable to a specific individual.

EXISTING LAW establishes CCC managed by locally elected governing boards, with oversight provided by the CCC Board of Governors. Establishes the UC as a public trust under the control of the UC Regents, and provides that statutes are applicable to UC only to the extent that the UC Regents make such provisions applicable. Confers upon the CSU Trustees the powers, duties, and functions with respect to the management, administration, and control of the CSU system.

FISCAL EFFECT: Unknown

COMMENTS: Purpose of this bill. According to the author, federal intelligence agencies often contract with institutions of higher education for technical and advanced research; these same intelligence agencies engage in bulk metadata collection practices that violate fundamental privacy expectations. Given the nature of intelligence activities, it is difficult to know the extent to which a higher education institution in California is engaged, or has engaged in research that may assist, directly or indirectly, with the surveillance activities of a federal intelligence agency. There is currently no accountability or disclosure process for a California institution seeking to engage in intelligence research contracts. Intelligence research that assists in federal surveillance activities has proven to push the limits of constitutional privacy protections. The current lack of accountability provides state lawmakers no oversight role in potential intelligence activities; this is especially troubling in the case of public institutions, such as the UC.

According to the author, this bill is intended to address the obscure and undisclosed nature of intelligence agency sponsored contracts by (1) requiring public disclosure when personally identifiable information is used in research, and (2) prohibiting contracts that use personally identifiable information collected without consent when the intelligence agency places restrictions on the publication of that research.

UC and matters of statewide concern. The California Constitution (Section 9 of Article IX) establishes UC as a public trust and confers the full powers of the UC upon the UC Regents. The Constitution establishes that the UC is subject to legislative control only to the degree necessary to ensure the security of its funds and compliance with the terms of its endowments. Judicial decisions have held that there are three additional areas in which there may be limited legislative intrusion into university operations: authority over the appropriation of state moneys; exercise of the general police power to provide for the public health, safety and welfare; and, legislation on matters of general statewide concern not involving internal university affairs. While potentially subject to judicial review, arguably, by placing requirements and prohibitions on research activities conducted at all California institutions in order to protect the constitutional right to privacy, this bill addresses a matter of statewide concern.

The author may wish to establish findings and declarations that outline the reasons why this legislation addresses a matter of statewide concern regarding constitutional privacy protections.

UC research and author request for information. UC practice, in support of academic freedom and faculty publishing rights, is to refuse to perform classified research on campuses. UC's policy, however, allows for exceptions to be made in cases involving national security interest. Committee staff understands that the authority to approve an exception to the classified research prohibition rests with the UC President. In March 2014, the author wrote to President

Napolitano requesting information regarding the extent to which UC participates in research contracts that utilizes personally identifiable information. Committee staff understands that UC is in the process of reviewing and formally replying to the author's request for information.

Impact on legitimate private institution research activities. As drafted, this bill would place reporting requirements and contract restrictions on both public and private postsecondary educational institutions. The Association for Independent California Colleges and Universities (AICCU) has expressed concerns that it is difficult for their member institutions to determine in advance of entering a contract whether research may be indirectly linked to federal government surveillance. AICCU argues that this bill would make it difficult for member institutions to conduct any classified research from the intelligence community because of the impossibility to predetermine whether personally identifiable information will be analyzed or processed.

Limitations of enforcement. As drafted, this bill would apply to higher education institutions in California and research institutions managed by or affiliated with these institutions. However, it is unclear how this requirement would be enforced in cases where the higher education institution does not have management control over the affiliated research entity. For example, UC is arguably still "affiliated" with Los Alamos National Laboratory, but since 2006 has had no direct authority over operations or contracting decisions.

Related legislation. SB 828 (Lieu and Anderson) would prohibit the state from providing material support, participation, or assistance to any federal agency attempting the illegal unconstitutional collection of electronic data, without consent, of any person not based on a warrant that particularly describes the person, place, and thing to be searched or seized, or in accordance with judicially recognized exceptions to warrant requirements. SB 828 is scheduled for hearing in the Senate Public Safety Committee on April 29, 2014.

REGISTERED SUPPORT / OPPOSITION:

Support

American Civil Liberties Union of California

Opposition

None on file.

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