

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: CS/CS/HB 127

52nd Legislature, 2nd Session, 2016

Tracking Number: .203978.2

Short Title: School District Employee Background Checks

Sponsor(s): Representative David E. Adkins

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**HOUSE JUDICIARY COMMITTEE SUBSTITUTE
FOR HOUSE EDUCATION COMMITTEE SUBSTITUTE
FOR HOUSE BILL 127**

Bill Summary:

House Judiciary Committee Substitute for House Education Committee Substitute for HB 127 amends the *School Personnel Act*, at Section 22-10A-5 NMSA 1978, to require all charter school governing bodies to develop policies and procedures to require background checks of their employees and other persons allowed unsupervised access to students of public schools, as is already required of local school boards and regional education cooperatives (RECs); and requires all school district and charter school employees to undergo a fingerprint-based background check. CS/CS/HB 127 effectively closes a loophole that would allow school employees who were licensed before May 20, 1998 to obtain their license without the required background check.

Fiscal Impact:

CS/CS/HB 127 does not contain an appropriation.

The fiscal impact on school districts, charter school governing boards, and RECs should be minimal, as the cost of background checks is borne by the employee or applicant.

The New Mexico Department of Public Safety (DPS) notes that the agency will receive \$44 for each fingerprint background check. The Federal Bureau of Investigation (FBI) will be paid \$14.25 for each federal criminal history check, and \$29.75 is kept for processing and administration at DPS. The Public Education Department and DPS report 5,253 new school district and charter school employees for FY 15. Based on these figures, together with an indeterminate number of current employees who will be subject to the background check, the Legislative Finance Committee (LFC) estimates more than \$153,800 in additional revenue will flow into the Law Enforcement Records Bureau (LERB) Revenue Fund per fiscal year.

At a Glance:

- All employees of public schools and RECs, as well as other persons with unsupervised access to students, would be required to satisfactorily clear a fingerprint-based

background check, regardless of the employee's date of hire, before commencing or continuing employment.

- School employees are responsible for the cost of their own background checks.

Detailed Provisions:

CS/CS/HB 127 requires all unlicensed school employees who perform the duties of licensed employees to undergo a fingerprint-based background check before they may be hired, where "background check" is defined as:

- A process approved by PED that requires applicants and school district employees to submit a complete set of fingerprints for a state and national criminal history background check. All applicants' fingerprints are to be submitted to the FBI for the national background check, which shall be used in accordance with the *Criminal Offender Employment Act*.

The bill also requires:

- all public school and REC employees, and other persons permitted unsupervised access to students to have a completed fingerprint-based background check on file with their prospective employer before they may commence or continue with employment, regardless of their date of hire; and
- any licensed school employee who has been convicted of a felony or misdemeanor involving moral turpitude to report their conviction to designated administrator at their school district, school, or REC.

CS/CS/HB 127 extends the fingerprint-based background check requirement to:

- candidates for alternative level one licensure; and
- persons who have teaching degrees from accredited programs who are deaf or hard-of-hearing and seeking licensure through portfolio assessment.

CS/CS/HB 127 retains the exception for employees who were initially licensed within 24 months of their application, when PED has copies of the applicant's FBI records on file.

Finally, the bill cleans up current statutory language in several respects, including changing outdated references to the "state board" to references to PED and changing references to "charter schools" to references to their governing bodies.

Substantive Issues:

While child abuse remains a problem across the country, instances involving school employees are only a fraction of the total of such cases; nevertheless, incidents of abuse that do involve school personnel are magnets for public attention. As a result, background checks for school personnel have become more frequent, intense, and potentially intrusive, though requirements vary from state to state.

The National Center for Missing and Exploited Children suggests that states should:

- conduct national fingerprint checks on all employees who have contact with children, including teachers, volunteers, contractors, and other school employees;
- require regular checks on current school employees every year or two after initial hire, more frequently than most states currently require.

CS/CS/HB 127 expands current requirements for background checks to:

- include previously hired employees who have not yet completed the background check;
- clarify that the required background check is to be fingerprint-based;
- establish a mandatory reporting requirement for all school employees to report to a designated administrator any conviction that results in any action being taken against them.

Current language only places the onus of reporting school employees' convictions on superintendents, charter school administrators, and RECs; and allows the Secretary of Public Education to suspend, revoke, or refuse to renew the license of an administrator who fails in their duty to report these convictions. However, the expanded requirement for licensed employees to report any of their felony or misdemeanor convictions does not appear to include any sanctions for noncompliance.

Technical Issues:

The Attorney General's Office suggests that language requiring all employees to report to a designated administrator any known conviction involving moral turpitude of *licensed* employees should be changed so that the duty to report covers the convictions of *any* employee.

DPS indicates that the original version of this bill was submitted to the FBI for pre-approval; any amendments or committee substitutions or amendments must also be submitted, as must the final, signed version of the bill, should it successfully be passed by the Legislature and approved by the governor.

Background:

On January 28, 2016, PED and DPS issued a comprehensive report of school background check policies that noted:

- 183 school districts and charter schools submitted board-approved background check policies, while one school district and four charter schools failed to make these submissions;
- 184 school districts and charter schools submitted written assurance that their board approved background check policies comply with state law, and that they are in compliance with these policies, while one school district and three charter schools failed to make these assurances;
- school districts and charter schools reported that 14 of 1,758 administrators do not have a required background check on file, and two school districts and seven charter schools failed to report data on administrators; and

- school districts and charter schools reported that 71 of 5,253 newly hired employees do not have a required background check on file, and three school districts and six charter schools failed to report data on newly hired employees.

PED indicates that the bill includes recommendations from the department to:

- require all employees, regardless of date of hire, to have a background check prior to having direct access to students or school resources; and
- ensure that no employee may commence work until they have completed that background check.

In the summer of 2015, the then-superintendent of Albuquerque Public Schools (APS) hired an individual to serve as Deputy Superintendent. Evidently, the decision to hire this individual was made without any awareness that, despite having been released on bond, he was not permitted to leave Colorado, where he was facing charges of sexual contact with a boy under the age of 15. Despite statutory requirements and APS' own safety protocols, this person was hired to serve in an influential position, potentially granting him access to other children, without having completed fingerprinting and background checks. Colorado authorities have indicated that the charges against the man were part of a pattern of child abuse. Additional charges related to domestic abuse and assault with a motor vehicle.

This situation eventually prompted the superintendent's resignation after only three months in his position.

Related Bills:

HB 41 *School Superintendent Contract Criteria*

HB 51 *Firearm Transfer Act*

HB 145a *Adjunct Secondary Instructors Act*

SB 114a *Adjunct Secondary Instructors Act*