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## FISCAL IMPACT REPORT

ORIGINAL DATE 1/26/07

SPONSOR Swisstack LAST UPDATED \_\_\_\_\_ HB 399

SHORT TITLE Fee for Certain Background Checks SB \_\_\_\_\_

ANALYST Peery-Galon

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY07	FY08	FY09		
\$965.6	\$1,560.0	\$2,216.0	Recurring	Criminal History Fund

(Parenthesis ( ) Indicate Revenue Decreases)

### SOURCES OF INFORMATION

Responses Received From  
 Department of Public Safety (DPS)  
 State Treasurer

No Responses Received From  
 Municipal League  
 Association of Counties

### SUMMARY

#### Synopsis of Bill

House Bill 399 creates a new section of the Arrest Record Information Act to include a criminal history fee. The proposed legislation states the Department of Public Safety may charge an administrative fee of up to \$40.00 to process criminal history background checks based on fingerprint-supported arrest record information maintained by the department and to provide access to the state's criminal history database.

House Bill 399 also creates a Criminal History Fund in the State Treasury. Money received by the Department of Public Safety pursuant to the Arrest Record Information Act will be deposited into the fund. The fund is to be administered by the Department of Public Safety and money in the fund is to be appropriated to the department for administration of the Arrest Record Information Act. Expenditures from the fund will be made by warrant of the secretary of the Department of Finance and Administration upon vouchers signed by the secretary of the Department of Public Safety or the secretary's authorized representative. Remaining balances at the end of the fiscal year in the Criminal History Fund will not revert.

## **FISCAL IMPLICATIONS**

This bill creates a new fund and provides for continuing appropriations. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as earmarking reduces the ability of the legislature to establish spending priorities.

DPS states the proposed legislation will provide approximately \$1,560,000 to fund operation and personnel for the Law Enforcement Records Bureau.

## **SIGNIFICANT ISSUES**

DPS states the Law Enforcement Records Bureau at present is facing an estimated 10,470 unfunded labor hours and 59,000 unfunded labor hours for existing backlog. DPS states some of the risks involved in failing to have adequate funding and staffing can be summarized in the context of public safety concerns. An example given is if a criminal arrest record is not entered into the Criminal Justice Information System, the information may not be accessed by law enforcement agencies or the judicial system. The failure can result in a repeat offender being adjudicated as a first time offender, an offender being cleared for work, or a law enforcement officer being unaware of a warrant or dangerous situation when performing a routine traffic stop. DPS also reports that failure to maintain accurate and timely records may subject the department to federal sanctions and oversight.

## **PERFORMANCE IMPLICATIONS**

DPS reports the proposed legislation will allow the Law Enforcement Records Bureau to operate on a 24/7 schedule which is required by the Federal Bureau of Investigation and the National Crime Information Center regulations. The proposed legislation would also provide up-to-date, timely and accurate information available to auditors for the law enforcement agencies for Uniform Crime Reporting Program, Sex Offender Registration Program, Interstate Identification Index Program, National Crime Information Center Program and Missing Person's Clearing House Program.

## **OTHER SUBSTANTIVE ISSUES**

DPS reports the Law Enforcement Records Bureau has not had a budget increase or staff increase authorized since 1987. In that time period the Law Enforcement Records Bureau has received the following 10 unfunded mandates for the provision of services:

- NM Missing Person's Information Clearinghouse,
- Sex Offender Registration Program,
- Interstate Identification Index,
- National Instant Criminal Background Checks,
- National Crime Information Center Control Terminal Agency,
- National Crime Information Center Interstate Identification Index and Quality Assurance,
- Uniform Crime Reporting,
- State Tracking Number Program,
- National Incident Based Reporting System, and
- Conceal Carry Weapons Background Checks.

**ALTERNATIVES**

DPS states the alternative the proposed legislation is to fund the entire operation of the Law Enforcement Records Bureau through the general fund, or for the Law Enforcement Records Bureau to remain in violation of regulations and not operate on a 24/7 schedule.

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