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FISCAL IMPACT REPORT

ORIGINAL DATE 01/27/17

SPONSOR Adkins/Egolf **LAST UPDATED** _____ **HB** 190

SHORT TITLE School District Employee Background Checks **SB** _____

ANALYST Amacher

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY17	FY18	FY19		
	>153.8	>\$153.8	Recurring	LERB Revenue Fund

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Corrections Department (NMCD)
 Public School Insurance Authority (PSIA)
 Regional Education Cooperative Association (RECA)

No Responses Received From

Attorney General's Office (AGO)
 Public Education Department (PED)

SUMMARY

Synopsis of Bill

HB 190 amends the public school code to require that all public school district applicants for employment, current employees and other persons allowed unsupervised access to students must complete a fingerprint-based background check. The amendments proposed also require employees or other persons to comply with a fingerprint-based background check before commencing or continuing employment with a public school, regional education cooperative or charter school. HB 190 requires the same degree of background check in the alternative licensure assessments and of those who are deaf and hard-of-hearing.

FISCAL IMPLICATIONS

Similarly to PED's and RECA's comments from 2016, RECA indicates no adverse fiscal impact on operating budgets, as the cost burden falls on the employee or applicant. Furthermore, existing law regarding payment of these costs only covers applicants Section 2(B) and (D).

DPS confirms that a fee of \$44 is charged for each fingerprinting-based background check. Of that total, \$14.25 is paid to the FBI for the federal criminal history check, and \$29.75 goes to Law Enforcement Records Bureau (LERB) Revenue Fund to cover DPS's processing and administrative fees. Last year PED/DPS reported there were 5,253 new district and charter school employees in FY15 and in their January 28, 2016 Background Check Report ("PED/DPS Report", discussed in more detail below). Using this number of new hires year-over-year, LFC staff estimated a \$153.8 thousand increase in revenues to the LERB revenue fund per fiscal year. In addition, it is unclear how many current public school employees may become immediately subject to fingerprint-based background checks, which would now encompass secretaries, janitors, and maintenance workers among others. Because these numbers are unknown, the ">" symbol reflects that additional income in the revenue table above.

SIGNIFICANT ISSUES

HB 190 amends the public school code to require that all public school district applicants for employment, current employees and other persons allowed unsupervised access to students must complete a fingerprint-based background check. Background checks are already required (Chapter 22-10A-5(C) NMSA 1978). All school employees seeking licensure are expressly subject to fingerprint-based background checks.

HB 190 amends Chapter 22-10A-5(A) with a specific definition for "background check". As proposed, a "background check" is a department-approved process that requires applicants and school district employees to submit a complete set of fingerprints so that a state and national criminal history background check may be obtained. In all cases, the applicant's fingerprints shall be submitted to the federal bureau of investigation to obtain the applicant's national criminal history background check. Background checks shall be used in accordance with the Criminal Offender Employment Act (Chapter 28-2-1 to 28-2-6 NMSA 1978).

Notably HB 190 makes clear this new term "background check" is applicable to all employees or other persons allowed unsupervised access to students of public schools, regional education cooperatives and charter schools, regardless of the employee's or person's date of hire. HB 190 requires the same degree of background check in the alternative licensure assessments and of those who are deaf and hard-of-hearing.

HB 190 expands the existing report requirement to mandate any licensed employee to self-report a felony or misdemeanor conviction involving moral turpitude.

ADMINISTRATIVE IMPLICATIONS

Due to the comprehensive nature of the fingerprint-based background check requirement, it is expected both DPS and PED will be impacted, although the full extent cannot be predicted at this time.

OTHER SUBSTANTIVE ISSUES

The PED/DPS reports from 2016 summarize the result of a statewide compliance investigation and review of the background check policies of all New Mexico public school districts and charter schools. These agencies have commented before that the three month “grace period” for licensure, during which an employee seeking initial licensure may work, does not allow that employees to begin working without a background check.

As provided in earlier analyses by PED, from the PED/DPS report:

- All school districts and charter schools have access to New Mexico’s background check system through the web-based Cogent portal;
- 183 districts and charters submitted board-approved background check policies – one district and four charters failed to make these submissions;
- 184 districts and charters submitted written assurance that their board approved background check policies comply with state law, and that they are in compliance with these policies – one district and three charters failed to make these submissions;
- Districts and charters reported that 14 of 1,758 administrators do not have a required background check on file – two districts and seven charters failed to report data on administrators; and,
- Districts and charters reported that 71 of 5,253 newly hired employees do not have a required background check on file – three districts and six charters failed to report data on newly hired employees.

NMCD notes the amendments contained in HB 190 regarding reporting felony and certain misdemeanor convictions, and regarding employees with unsupervised access to students, do not appear to apply to or impact NMCD educators who teach in prisons.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

It is possible that without this legislation, there may be inconsistency in hiring practices and no assurance that every public school employee, charter school employee and employees of regional education cooperatives have undergone fingerprint-based background checks.

POSSIBLE QUESTIONS

In light of the need for final FBI approval of any enacted legislation and the requirement that all existing public school, charter school and regional education cooperative employees and any other persons with unsupervised access to students undergo a fingerprint-based background check, does the June 16, 2017 effective date raise any logistical issues?

JMA/al