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## FISCAL IMPACT REPORT

Sariñana/Trujillo/  
Herrera/Garratt/  
**SPONSOR** Matthews **ORIGINAL DATE** 2/08/22 **LAST UPDATED** 2/12/22 **HB** 193/aHGEIC

**SHORT TITLE** School Personnel Background Checks **SB** \_\_\_\_\_

**ANALYST** Liu/Taylor Garcia

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY22	FY23	FY24		
	See Fiscal Implications		Recurring	Educator Licensure Fund

(Parenthesis ( ) Indicate Revenue Decreases)

Relates to HB136, HB191, SB103

### SOURCES OF INFORMATION

LFC Files

Legislative Education Study Committee (LESC) Files

#### Responses Received From

Department of Public Safety (DPS)

Public Schools Insurance Authority (PSIA)

Public Education Department (PED)

#### Other Responses

Federal Bureau of Investigation (FBI)

### SUMMARY

#### Synopsis of HGEIC Amendment

The House Government, Elections, and Indian Affairs Committee amendment to House Bill 193 requires public schools to pay for a criminal history record check for applicants that have been offered employment.

#### Synopsis of Original Bill

House Bill 193 clarifies which educational licenses offered by PED are subject to criminal history record check requirements. The bill requires PED, DPS, and FBI to conduct a criminal history record check on all applicants for licensure, volunteers, and contractors. The bill further

prohibits PED from excluding an otherwise qualified person from licensure solely based on previous arrests or convictions, unless that person has a qualifying criminal conviction. Criminal history information received from DPS or FBI would be confidential and not considered a public record.

The effective date of this bill is July 1, 2022.

### **FISCAL IMPLICATIONS**

Current statute requires public schools to pay for an applicant's background check. The HGEIC amendment reinstates this requirement, which was previously stricken from the bill, albeit for a criminal history record check. As such, costs of implementation for this provision are likely minimal or the same.

The bill does not contain an appropriation; however, provisions of the bill address deficiencies in New Mexico statutes pertaining to the exchange of criminal history records with FBI. According to PED, failure to bring New Mexico statutes in alignment with requirements of Public Law 92-544 may limit PED's access to national criminal history records, which are necessary to determine whether applicants receive licensure.

PED notes delays in licensing could negatively affect revenue to the educator licensure fund, which comes from licensure application fees. Provisions of this bill would ensure PED continues to receive FBI criminal history records and prevent potential delays in licensing fee collections. According to DPS, applicants must pay a \$44 fee for each fingerprint criminal history check.

### **SIGNIFICANT ISSUES**

PED notes all school personnel, including licensed school personnel, must undergo a criminal history background check before employment. Currently, the School Personnel Act requires anyone in public schools who teaches, supervises or supports instruction, administrates, or provides healthcare or performs medical procedures to hold a valid license for their respective functions. Section 22-10A-5 NMSA 1978 requires all applicants for initial licensure to provide two fingerprint cards, or the electronic equivalent, upon application, to either PED or their superintendent to obtain the applicant's FBI record.

Recent correspondence between PED and FBI indicates New Mexico statutory provisions do not meet the requirements of Public Law 92-544 (PL92-544), which authorizes FBI to exchange criminal history records information with officials of state and local governmental agencies for licensing and employment purposes. Only a state statute which has been approved by the Attorney General of the United States, or their representative, can authorize these procedures. PL92-544 establishes criteria for the approval of such statutes:

- The statute must result from legislative enactment;
- It must require fingerprinting of applicants who are subject to national criminal history background checks;
- It must authorize the use of FBI records for screening of applicants;
- It must identify the specific categories of licensees and employees falling within its purview;
- It must not violate public policy; and
- It may not authorize receipt of criminal history record information by a private entity.

FBI notes New Mexico statutes currently do not adhere to requirements in several respects. Specifically:

- Section 22-10A-5 NMSA 1978, which requires “all applicants for initial licensure” undergo background checks, is overly broad and does not outline specific license types required to undergo the background check;
- The categories of license outlined in Section 22-10A-3 NMSA 1978 are also insufficiently specific to satisfy the requirements of Pub. L. 92-544; and
- Section 22-10A-3 NMSA 1978 does not explicitly require the submission of fingerprints through the state identification bureau to FBI for the criminal background check, nor does it clearly require applicants for licensure undergo background checks required by Section 22-10A-5 NMSA 1978.

FBI indicated a willingness to continue honoring background check requests from PED for a grace period lasting until July 1, 2021. DPS has submitted an extension request to FBI; however, FBI has not responded to the request to date. Current operations suggest the state is still performing background checks with FBI with no gaps in record exchanges.

PED notes the bill addresses FBI’s concerns by amending statutes specifically referring to the criminal history background check requirement contained in Section 22-10A-5 NMSA 1978 and including specific reference to 15 separate categories of educational licenses and licenses for educational support and administration. The bill further amends Section 22-10A-3 NMSA 1978 to clarify that background check requirements will remain in effect even if subsequent amendments change the statutory section numbers and permits PED to require a background check of current licensees for license suspension or revocation determinations.

### **ADMINISTRATIVE IMPLICATIONS**

Provisions of the bill authorize PED to access criminal history record information and require all applicants for licensure from PED to submit physical or electronic fingerprint cards to DPS. After DPS conducts a state-level background check, the department forwards records to FBI for a national check, as required under PL92-544. Information obtained in the background check is then forwarded to PED to make decisions about initial and continuing licensure.

### **RELATIONSHIP**

This bill relates to House Bill 136, which provides exemptions for school districts reviewing job applicants for conduct relating to child abuse or neglect; House Bill 191, which proposes numerous amendments to the Uniform Licensing Act; and Senate Bill 103, which requires the Workforce Solutions Department (WSD) to obtain fingerprint-based criminal background checks on existing employees and finalists for employment with WSD who may have access to federal tax information.

### **OTHER SUBSTANTIVE ISSUES**

Provisions of the bill amend the definition of “governing authority” in Section 22-10A-2 NMSA 1978 to clarify that “state agencies” included in the act are those that offer educational services to school-aged persons.

The bill explicitly bars PED from excluding qualified persons from licensure on the sole basis of having been arrested or convicted of a crime, unless it is a qualifying criminal conviction under

the Uniform Licensing Act, Section 61-1-36 NMSA 1978. Further, the bill classifies criminal history record information received from DPS or FBI as confidential and not subject to the Inspection of Public Records Act, Section 14-2-1 NMSA 1978. The bill also prohibits PED from authorizing the receipt of criminal history information by a private entity.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Failure to enact this bill may restrict PED's ability to license candidates for employment in public schools.

JTG/SL/acv/al