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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/8/22

SPONSOR SJC/Padilla LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Workforce Solutions Staff Background Checks SB CS/SB103/aSHPAC/  
SJCS

ANALYST Chenier

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY22	FY23	FY24		
	\$1.1	\$0.3	Recurring	DPS Law Enforcement Bureau Fees

(Parenthesis ( ) Indicate Revenue Decreases)

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY22	FY23	FY24	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		\$1.1	\$0.3	\$1.4	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Workforce Solutions Department (WSD)

Department of Public Safety (DPS)

### SUMMARY

#### Synopsis of Bill

The Senate Judiciary Committee Substitute for Senate Bill 103 would require WSD obtain fingerprint-based records on any employee, prospective employee, prospective contractor, or contractor who has access to federal tax information. WSD will then request fingerprint-based criminal history records from DPS who will then conduct their own background check and provide fingerprints to the Federal Bureau of Investigations for a national criminal history screening. WSD will use the information to determine an individual's suitability for employment.

There is no effective date of this bill. It is assumed that the effective date is 90 days following adjournment of the Legislature.

### **FISCAL IMPLICATIONS**

WSD said the agency will bear the costs of implementing this bill out of its administrative budget. In total, WSD expects 25 employees will need to have a background check completed to comply with the background check requirement, with about 5 – 7 new checks conducted each year.

DPS says they charge \$44 dollars per background check.

The cost of conducting these checks in the first year will cost \$1,100, and \$308 in subsequent years.

### **SIGNIFICANT ISSUES**

WSD said they receive Federal Tax Information (FTI) directly from the Internal Revenue Service (IRS) as part of an IRS-approved exchange agreement with WSD. For WSD to perform and execute its obligation to the public, WSD must comply with safeguards required by IRS to protect individual privacy rights and the confidentiality of FTI entrusted to the IRS and to those state agencies who received FTI from the IRS, including WSD. IRS has established guidelines for state agencies to ensure the restriction of FTI access to those individuals who have undergone a suitability and/or security background check. IRS Publication 1075 provides the guidelines that WSD must comply with to ensure compliance with suitability and security background checks of individuals who will have access to FTI.

WSD also said if the employee receives a “Not Suitable for Employment”, the employee shall be removed from the position and reassigned to another position for which the employee is qualified to perform based on minimum qualifications of the new position. If the position is in a lower pay grade from which the employee is currently in, WSD will follow State Personnel Board rules or respective collective bargaining agreement. If there is no position in which the employee can be assigned to, then the employee will be terminated from employment for not meeting a part of the essential functions of their position.

DPS said that as the designated state investigation bureau they would support WSD with criminal history concerns, issues, and questions and with the training of staff to receive, review, and maintain the criminal history information. If enacted, DPS will submit the enabling statute to the DOJ, specifically the FBI’s Criminal Justice Information Law Unit (CJILU), for final approval, certifying that it complies with the requirements of U.S. Public Law 92-544. If approved, the DOJ would issue an Originating Agency Identifier (ORI) Number to WSD to permit access to nationwide criminal history information. The Workforce Solutions Department will not be able to submit any fingerprint background check requests to the FBI, through DPS, prior to the assignment of the ORI. The approval process itself can take up to 150 days.

### **ADMINISTRATIVE IMPLICATIONS**

DWS provided the following:

Disqualifying offenses listed below will automatically disqualify an employee or applicant as “not suitable for employment” for positions that required access to FTI. If a

background investigation finds a felony conviction or plea of guilty or nolo contendere involving a crime of dishonesty or fraud, including but not limited to the following, the employee/applicant worker will not be eligible for FTE within NMDWS:

- a. Bribery;
- b. Counterfeiting;
- c. Embezzlement;
- d. Forgery;
- e. Fraud (to include Unemployment Insurance Fraud);
- f. Identity fraud;
- g. Identity theft;
- h. Immigration violations;
- i. Money laundering;
- j. Receiving stolen property;
- k. Robbery;
- l. Tax evasion; or
- m. Theft.

In the event the employee or applicant been notified by the Human Resources Bureau that they have been deemed “not suitable for employment”, the employee or applicant may request administrative reconsideration by submitting a request in writing to the Cabinet Secretary within fifteen (15) calendar days from receipt of notice.

The Cabinet Secretary will consider the following factors in in determining suitability for employment:

- i. Level and seriousness of offense.
- ii. Date of the last offense.
- iii. Age at the time of the offense.
- iv. Circumstances surrounding the offense, if known.
- v. The employee or applicant’s prison, jail, probation, parole, rehabilitation since the date of the offense.
- vi. The employee or applicant’s truthfulness to the questions on their background check form.
- vii. Whether federal laws and regulations permit NMDWS any discretion in continuing an individual’s employment or in considering the subject for the selected position.

The Cabinet Secretary will provide a decision no later than 30 calendar days from receipt of appeal.