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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/11/16

SPONSOR HJC LAST UPDATED \_\_\_\_\_ HB 127/HECS/HJCS

SHORT TITLE School District Employee Background Checks SB \_\_\_\_\_

ANALYST Daly

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		
	>\$153.8	>\$153.8	Recurring	LERB Revenue Fund

(Parenthesis ( ) Indicate Revenue Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General’s Office (AGO)  
 Department of Public Safety (DPS)  
 Regional Education Cooperative Association (RECA)  
 Public Education Department (PED)  
 Public School Insurance Authority (PSIA)

### SUMMARY

#### Synopsis of Bill

The House Judiciary Committee Substitute for the House Education Committee Substitute for House Bill 127 requires all current and future public school employees, charter school employees, regional education cooperative (REC) employees, or other persons allowed unsupervised access to students to have a completed fingerprint-based background checks on file with the public or charter school or REC before commencing or continuing employment. It also changes existing reporting requirements to require all licensed employees who have been convicted of a felony or misdemeanor involving moral turpitude to report that conviction.

### FISCAL IMPLICATIONS

RECA and PED in their analyses of the previous substitute bill advise that there will be no adverse fiscal impact on operating budgets, as the cost burden falls on the employee or applicant.

It should be noted that existing law regarding payment of these costs only covers applicants. See Section 2(B) and (D).

DPS advised in its analysis of an earlier version of this bill that the fee charged for each fingerprint-based background check is \$44. 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. PED/DPS report there were 5,253 new district and charter school employees in FY15 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 estimates 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. Further, this substitute expands those persons required to complete such a background check to include other persons allowed unsupervised access to students. Because these numbers are unknown, the ">" symbol reflects that additional income in the revenue table above.

## **SIGNIFICANT ISSUES**

Currently, background checks are required on all applicants for employment at public schools, including charters and regional education cooperatives. See Section 22-10A-5(C), NMSA 1978. Additionally, all school employees seeking licensure are expressly subject to fingerprint-based background checks. Supra at subsection (B). However, as PED pointed out in its earlier analysis, a loophole in current law allows a school employee who received a teaching license before May 20, 1998 to have a teaching license without completing a fingerprint-based background check. This substitute of HB 127 expands this fingerprint check requirement to all public school employees (including charter school and REC employees, as well as others with unsupervised access to students), regardless of date of hire, so this loophole will be closed. These license holders (along with all others as described) must complete a fingerprint-based background check before beginning or continuing employment at a public school, charter school, and regional education cooperative.

The substitute includes a definition of "background check" that appears to be limited to applicants and employees of public school districts only. This definition requires PED to approve a process by which these individuals to submit fingerprints so a state and national fingerprint criminal history background check can be obtained. Additionally, an applicant's fingerprints must be submitted to the federal bureau of investigation (FBI) to obtain a national criminal history background check. It requires schools district to use the information gathered in accordance with the Criminal Offender Employment Act (COEA), which bars use of arrest records not followed by a valid conviction or any misdemeanor conviction not involving moral turpitude. Section 2(A)(2). See Section 28-2-3(B), NMSA 1978.

The provision that appears to govern charter schools and regional education cooperatives, which now includes others with unsupervised access to students, however, refers to a "fingerprint-based background check", does not specify the level (state or national) of criminal history background check that is to be completed, and contains no reference to the COEA. Section 2(C). Thus, under this language, secretaries, cafeteria workers and other unlicensed employees of charter schools and RECs as well as persons with unsupervised access may not benefit from the protections afforded under the COEA to district school and licensed employees.

Similarly, Subsection 2(C) requires non-licensed employees of RECs and charter schools and others having unsupervised access to students to have a completed fingerprint-based background check on file but does not define what a completed background check is. Again, existing law provides some direction concerning the use of the information obtained relating to persons applying for initial licensure, see Section 2(B), including provisions that felony or misdemeanor convictions shall be used in accordance with the COEA and other information contained in an FBI record must be supported by independent evidence to form a basis for denial (or suspension or revocation) of a license. There is not, however, any clear direction—at least as to charter school and REC employees and others with unsupervised access to students—regarding use of information obtained relating to applicants or employees to whom the licensing requirements do not apply.

DPS advised in their earlier analyses that, without fingerprints, only state Criminal History Record Information (CHRI) is available to school districts, charter schools and regional education cooperatives. The records of the other 49 states would not be available, nor other pertinent databases. Additionally, although the PED/DPS report indicates that CHRI accounts that each school district, charter school and regional educational cooperative will have to apply for are approved within 48 hours of application, the initial impact of the expanded requirement now applicable to all existing employees and those with unsupervised access may cause delays in this process, or in actually receiving CHRI information. Further, once that information is received, the continued operations of district schools, charter schools and regional education cooperatives may be adversely affected if some of their existing employees or others with unsupervised access do not “complete” or pass a fingerprint-based background check.

HB 127 also expands the existing reporting requirement, in Section 2(E), to mandate any licensed employee to self-report a felony or misdemeanor conviction involving moral turpitude.

Lastly, in an earlier analysis DPS advised that the original version of HB 127 had been submitted for pre-approval by the FBI, and if the bill is amended in any way—as it has been in this substitute--the new version will have to be resubmitted. If HB 127 is enacted into law in any form, DPS will be required to send it back to the FBI with a formal letter requesting final approval.

### **ADMINISTRATIVE IMPACT**

In light of the comprehensive nature of the fingerprint-based background check requirement, at least some impact on DPS and its systems can be expected, although the full extent cannot be predicted at this time.

### **TECHNICAL ISSUES**

To make the background check requirement more consistent, two amendments may be considered:

- On page 9, line 17, insert “completed” between “a” and “fingerprint-based”; and
- On page 11, line 2, replace “submitted to” with “completed”.

## **OTHER SUBSTANTIVE ISSUES**

The PED/DPS Report summarizes the results of a statewide compliance investigation and review of the background check policies of all New Mexico public school districts and charter schools. Pertinent to this analysis of the substitute for HB 127, the report recommended two amendments to the School Personnel Act: first, make the background check requirement apply to all school employees, regardless of the date of hire; and second, clarify that the three month “grace period” for licensure, during which an employee seeking initial licensure may work, does not allow that employee to begin working without a background check. Both of these areas are addressed in the substitute.

PED provided in its earlier analyses these highlights of 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.

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

RECA noted in its earlier analysis 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 May 18, 2016 effective date raise any logistical issues?

MD/jle/jo/al