

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: HB 181a

50th Legislature, 2nd Session, 2012

Tracking Number: .188705.1

Short Title: Higher Education Employee Background Checks

Sponsor(s): Representative Ray Begaye and Others

Analyst: David Harrell

Date: February 5, 2012

AS AMENDED

The House Labor and Human Resources Committee amendments:

- **allow costs assessed from an employee background check to be paid through a payroll deduction;**
- **require postsecondary institutions to require background checks on a current employee when the employee applies for a transfer, when the employee's position is reclassified, or when the employee is promoted;**
- **require each institution's board of regents or governing body to determine by rule which positions require a background check to be conducted on a current employee;**
- **allow institutions to require background checks on probationary employees;**
- **exempt from background checks any employees who are:**
 - **currently enrolled as work-study students; or**
 - **hired on a temporary or emergency basis for a limited time; and**
- **require background checks of employees otherwise exempted before those employees may be granted a permanent position.**

Original Bill Summary:

HB 181 amends higher education provisions in current law to provide for background checks of applicants applying for employment at any of the state's public postsecondary educational institutions.

Specifically, HB 181 requires that:

- **institutions of higher education develop policies and procedures to require background checks on applicants who have been offered employment;**

- an applicant who has been offered employment provide two fingerprint cards, or the equivalent electronic fingerprints, to the institution to obtain the applicant’s Federal Bureau of Investigation (FBI) record, including that:
 - the applicant who has been offered employment may be required to pay for the cost of obtaining a background check;
 - convictions of felonies or misdemeanors contained in the FBI records that are on file with the institution shall be used in accordance with certain sections of the *Criminal Offender Employment Act*; and
 - records and any related information shall be privileged and not be disclosed to a person not directly involved in the employment decision affecting the specific applicant who has been offered employment.

In addition, HB 181 provides that an applicant for employment who has been initially employed within 12 months of applying for employment at an institution not be required to submit to another background check if the institution has copies of the applicant’s FBI records on file.

Finally, HB 181 contains an effective date of July 1, 2012.

Fiscal Impact:

HB 181 does not contain an appropriation.

The fiscal impact report by the Legislative Finance Committee suggests that HB 181 would result in cost-savings to any institutions that currently require and pay for background checks of applicants.

The bill analysis by the Higher Education Department (HED) notes fiscal impact points raised by two postsecondary institutions, Central New Mexico College (CNM) and the University of New Mexico (UNM):

- According to CNM:
 - the cost of fingerprinting and background checks under HB 181 would be \$54 per employee;
 - CNM currently conducts New Mexico-only background checks for employees in designated positions (security, business office, and information technology), which cost \$19 each for New Mexico applicants and \$25 each for out-of-state applicants.
- According to UNM:
 - based on last year’s hiring, the estimated cost of the background checks required by HB 181 would be \$118,000 per year; and
 - there would be an additional cost for administrative personnel of \$77,188 per year, in addition to the cost of electronic equipment.

Substantive Issues:

According to HED’s analysis of HB 181, employers have often used criminal background checks as a means of due diligence in hiring practices. The analysis by HED also says: “Seeking to

avoid workplace violence, lawsuits for negligent hiring, or the fallout from hiring employees with unsuitable criminal records or false credentials can be advantageous for institutions of higher education striving for the safety of faculty, staff, students and the public.”

The analysis by HED also cites a recent national survey of postsecondary human resources officials that found that:

- only 13 percent of colleges and universities never use criminal background checks;
- 87 percent employ background checks for some staff positions;
- 40 percent employ them for some faculty positions; and
- 26 percent employ them for some student workers.

The analysis by HED further cites concerns expressed by CNM that requiring federal background checks may slow the hiring process, especially with regard to part-time instructors who are often not hired until the last week of student registration.

The bill analysis by DoH notes that, under the Caregivers Criminal History Screen Program authorized in state law, DoH conducts federal and state criminal background checks on caregivers, including postsecondary students who work as caregivers as part of class assignments.

Technical Issues:

Noting that HB 181 does not authorize a specific governmental entity to process applicants’ fingerprints through the FBI, the DoH analysis suggests that federal level background checks may not be permissible.

Background:

Legislation similar to HB 181 was introduced during the 2011 regular session, but it did not pass.

Related Bills:

None as of February 5, 2012.