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## FISCAL IMPACT REPORT

ORIGINAL DATE 01/27/12  
 SPONSOR Begaye LAST UPDATED 02/06/12 HB 181/aHLC  
 SHORT TITLE Higher Education Employee Background Checks SB \_\_\_\_\_  
 ANALYST Hoffmann/Martinez

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY12	FY13		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

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

	FY12	FY13	FY14	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		See Fiscal Implications				

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of Health (DOH)

Higher Education Department (HED)

### SUMMARY

#### Synopsis of House Labor and Human Resources Committee Amendment

The House Labor and Human Resources Committee amendment to House Bill 181 (HB181/aHLC) would make the following changes.

The amendment addresses the problem of newly-hired employees being charged for a background check by allowing for the payment to be made through a payroll deduction.

A paragraph is added in Section 1 requiring background checks on current employees when they transfer to a new position, their position is reclassified, or they are promoted. The employer may also require background checks on probationary employees.

Currently enrolled students working as a part of a financial assistance program, and employees hired on a temporary or emergency basis are exempt from the background check requirement. However, if these classes of employees are offered permanent positions, the background check must be performed.

### Synopsis of Original Bill

House Bill 181 would enact a new section of Chapter 21, Article 1 NMSA 1978 requesting New Mexico's institutions of higher education to develop policies and procedures to require background checks on applicants offered employment. The potential employee may be required to pay for the cost of obtaining the background check and will be required to provide two fingerprint cards or the equivalent electronic fingerprints to the institution to obtain the applicant's Federal Bureau of Investigation (FBI) record.

### **FISCAL IMPLICATIONS**

House Bill 181 makes no appropriation. The bill would pass on the cost of the background check to the applicant, so there would be no impact to the higher education institutions not currently performing background checks. Those institutions currently requiring background checks would realize cost savings.

According to New Mexico State University (NMSU), requiring applicants offered employment to obtain a background check would add costs, but at the expense of the applicant. Additionally, the Las Cruces Public School's has a process in place similar to the one required by HB181, so NMSU would not be the first entity to require applicants to pay the cost of the background check. If the cost of the background check is passed on to the selected applicant, it might result in a cost savings to NMSU because the institution would no longer be responsible for the cost of the current background check process in place.

According to Central New Mexico Community College's (CNM), an estimated cost to the institution if the applicant is not responsible for the cost of the background check is \$44 per employee plus another \$10 per employee for fingerprinting. CNM hires about 300 employees each year, not including student work-study employees. CNM employs another 300 work-study employees annually. At the rate of \$54 per employee and work-study employee for a national background check and fingerprinting, the estimated total cost to CNM would be  $600 \times \$54 = \$32,400$ . CNM currently conducts background checks for certain positions including those in Security, the Business Office, and Information Technology. For applicants in New Mexico, the institution conducts New Mexico-only background checks, which cost \$19 each. For out-of-state applicants, the cost is \$25 per applicant. In total, CNM spends about \$2,400 per year on background checks for potential employees.

Based on last year's hiring over a 12 month period, the University of New Mexico (UNM) estimated the costs associated with employee background checks at approximately \$118,000 per year to either UNM or the new hires. The administrative program cost of personnel is estimated at \$77,188 per year for three full-time employees. There would also be a one-time cost to the institution for the electronic equipment, which has not been budgeted. UNM considers these costs substantial. If the University decided to pass the cost to the potential employee, the institution believes it could dissuade a significant number of potential hires from applying, particularly in the lower graded positions where the majority of the hiring is done. UNM reports

that the university currently uses a background checking vendor at a much lesser cost of \$24,000 per year. The cost is substantially less because the only positions that are checked are those determined to be security and safety sensitive positions based on job duties.

### **SIGNIFICANT ISSUES**

Criminal background checks have often been used by employers to practice due diligence in hiring. 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.

According to a survey of HR officials at colleges nationally conducted by Risk Aware, a company that specializes in background checks for colleges, and reported by Inside Higher Ed, <http://www.insidehighered.com/news/2007/11/12/background>, only 13 percent of colleges and universities never engage in criminal background checks; 87 percent do the checks for some staff positions; 40 percent for some faculty positions, and 26 percent for some student workers.

### **ADMINISTRATIVE IMPLICATIONS**

The HED states that if HB181 is enacted, standards should be determined about what kind of criminal background would require an institution of higher education to reject an applicant for employment, if the law is to be applied equally across all colleges and universities.

HB181 does not create any apparent administrative requirements for HED, but the department notes it has impact on its institutions.

To meet the requirements of the legislation should it be enacted, administrative procedures would need to be developed to ensure compliance with the Criminal Offender Employment Act for convictions of felonies or misdemeanors contained in the FBI records that are on file with the institution of higher education. The institution would be responsible for enforcing privacy provisions for records and any related information that should not be disclosed to a person not directly involved in the employment decision affecting the specific applicant. The institution would also need to create a process for applicants who have been initially employed within 12 months of applying for employment at an institution of higher education, as they would not be required to submit another background check because the institution of higher education is required to maintain copies of the applicant's FBI records on file.

CNM reports that requiring national or FBI background checks would significantly slow the hiring process. This could be a challenge when hiring part-time instructors. Often, based on student demand, CNM will add sections of courses during the last week of student registration. The institution may not be able to hire part-time instructors quickly enough to ensure that students can complete program requirements during a given semester.

NMSU reports a possible impact associated with the administrative requirement to create an internal process for completing the fingerprinting process for applicants. Additionally, NMSU believes there could be a substantial delay in receiving information from background checks, resulting in employees beginning to work without receiving the results.

## **TECHNICAL ISSUES**

The HED observes that HB181 implicates the institutions of higher education in New Mexico, but does not make a distinction between the public institutions of higher education and the private and proprietary schools. HED sets standards regarding issues such as faculty qualification, credit hour requirements and administrative procedures for private and proprietary institutions of higher education; however licensure with HED does not constitute endorsement or approval of these institutions by the Department. The HED would not have the authority to enforce the application of the provisions of HB181 for the purposes of non-public postsecondary institutions.

## **OTHER SUBSTANTIVE ISSUES**

The HED comments it is plausible that requiring an applicant for employment at an institution of higher education to pay for a FBI background check could be a financial burden for the applicant, especially if the potential employee does not have current employment. Should HB181 be enacted so that the potential employee must pay for the background check, institutions should consider how to deal with financial hardship cases as not to economically eliminate possible job candidates who cannot afford to comply with the requirements of the legislation.

HB181 does not outline requirements for institutions of higher education to perform continued screening of employees once the initial background check is complete. This would add an additional cost and administrative burden to the institutions.

## **ALTERNATIVES**

The HED advises that alternatives could include excluding work-study employees from the legislation or HB181 may include language that allows institutions to determine which positions require a background check and the method which the background check will be conducted.

In Pennsylvania, the law regarding background checks for all prospective employees of public and private schools excludes employees who do not have direct contact with students to undergo background checks. This could also be a consideration for language in HB181.

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

According to the HED, New Mexico institutions of higher education will continue to have the authority to require background checks for certain positions they deem necessary based on the duties of the position, pursuant to policies set forth by the institution and the Criminal Offender Employment Act.

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