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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
54th Legislature, 2nd Session, 2020

Bill Number	<u>SB137/SJCS</u>	Sponsor	<u>SJC</u>
Tracking Number	<u>.217354.1</u>	Committee Referrals	<u>SPAC/SJC;HCEDC</u>
Short Title	<u>Licensure Eligibility without Lawful Presence</u>		
Analyst	<u>Porter/Bedeaux</u>	Original Date	<u>1/28/2020</u>
		Last Updated	<u>2/13/2020</u>

BILL SUMMARY

Synopsis of Bill

The Senate Judiciary Committee Substitute for Senate Bill 137 (SB137/SJCS) establishes that a person is eligible for occupational or professional licensure or certification for which that person is qualified, regardless of the person's citizenship or immigration status. SB137/SJCS prohibits any administrative rule or agency procedure from being adopted or enforced that would conflict with a person's eligibility for occupational or professional licensure or certification. SB137/SJCS also serves as affirmation of eligibility for public benefits in New Mexico as authorized by federal law.

FISCAL IMPACT

SB137/SJCS does not contain an appropriation.

SUBSTANTIVE ISSUES

According to the National Conference of State Legislatures (NCSL), in recent years, several states have acted to reduce barriers for immigrants to obtain professional licenses through legislation, the governor's office, or a task force. Reasons for this include worker shortages and retaining skilled immigrants to capitalize on underutilized immigrant talent and the economic benefits of their increased income, spending, and tax revenues. Ten states have enacted laws providing licenses for certain populations, such as Deferred Action for Childhood Arrivals (DACA) recipients, legal immigrants, and unauthorized immigrants. These states are California, Florida, Illinois, Minnesota, Nebraska, Nevada, South Dakota, Utah, West Virginia, and Wyoming.

SB137/SJCS may prohibit federal background checks from being conducted during the state's educator licensure processes. Given the sensitive nature of positions that work directly with children, New Mexico has established that licenses for some teachers and early childhood educators require a federal identification number, state-issued identification, and are subject to federal background checks. The newly-created early childhood education and care department

(ECECD) requires background checks for all new employees. Subsection H of Section 9-28-8 NMSA 1978 states that ECECD will accomplish the following:

“conduct pre-employment fingerprint-based national criminal background checks on all department employees...and on staff members and volunteers of department-contracted providers whose jobs involve direct contact with children participating in programs delivered by the department or those providers.”

Additionally, the Public Education Department requires federal background checks for new license applications. Subsection B of Section 22-10A-5 NMSA 1978 states, “an applicant for initial licensure shall be fingerprinted...to obtain the applicant’s federal bureau of investigation record.” The same holds true for other employees; Subsection D of Section 22-10A-5 NMSA 1978 states, “an applicant who has been offered employment or a school volunteer, contractor or contractor’s employee shall provide two fingerprints...to obtain the applicant’s, school volunteer’s, contractor’s or contractor’s employee’s federal bureau of investigation record.”

SB137/SJCS may still allow background checks if agency rules or procedures provide that an applicant’s citizenship status shall not be grounds for the denial of licensure. Agency provisions may be crafted to allow consideration of other issues highlighted during a background check, particularly issues that pose a threat to students’ safety. It is unclear how many licensed New Mexico teachers and administrators are not lawful U.S. citizens, and furthermore how many applicants have been denied licensure due to an unlawful citizenship status. NCSL estimates immigrants make up approximately 17 percent of the U.S. workforce, with 11 percent of those being unauthorized. In 2016, immigrants made up approximately 10 to 15 percent of the workforce in New Mexico.

OTHER SIGNIFICANT ISSUES

SB137/SJCS represents an affirmation of eligibility for unlawful residents to receive state and local public benefits as authorized by federal law. Pursuant to Paragraph D of Title 8 U.S. Code, Section 1621, “a state may provide that an alien who is not lawfully present in the United States is eligible for any state or local public benefit for which such alien would otherwise be ineligible...only through the enactment of a state law after August 22, 1996, which affirmatively provides for such eligibility.”

TECHNICAL ISSUES

SB137/SJCS applies only to agency rules and procedures, but does not apply to state or federal laws that may conflict with the bill’s affirmation of eligibility. For this reason, it is unclear how conflicts between SB137/SJCS and existing state laws like Sections 9-28-8 and 22-10A-5 NMSA 1978 will be resolved.

SOURCES OF INFORMATION

- LESC Files

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