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FISCAL IMPACT REPORT

SPONSOR: Heaton DATE TYPED: 10/29/03 HB 10

SHORT TITLE: Public Employment of Convicted Sex Offenders SB _____

ANALYST: Gilbert

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
		\$0.1 See Narrative		Recurring	GF

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Administrative Office of the Courts (AOC)
- Attorney General’s Office (AGO)
- Corrections Department (CD)

SUMMARY

Synopsis of Bill

House Bill 10 amends Subsection A and B of Section 28-2-4 of the Criminal Offender Employment Act (Power to Refuse, Renew, Suspend, or Revoke Public Employment or License). Section 28-2-4 A(3) is amended to include the crimes of homicide and kidnapping and to remove criminal sexual penetration and related sexual offenses. Convictions for either crime, like for the other listed crimes, would give the relevant board or agency the ability to prevent the convicted applicant or employee seeking reinstatement, renewal or issuance of a teaching certificate, a license to operate a childcare facility or from employment at a child-care facility from obtaining said certificate, license or employment, regardless of whether or not the applicant or employee has been rehabilitated.

This Bill also amends Section 28-2-4A to add a new subsection A(4) to give the relevant board or agency the power to prevent an applicant, employee or licensee (who has been convicted of a sex offense and required to register pursuant to the Sex Offender Registration And Notification Act, and who in the course of the employment or license would be required to have direct contact with children) from obtaining or maintaining the employment or license.

The board or agency is required to explicitly state in writing the reasons for their decisions to prohibit persons from engaging in the employment, trade, business or profession when the decision is based on conviction of the crimes described in Section 28-2-4 A(1), A(3), and A(4).

Significant Issues

This bill may expand the potential for litigation by persons now included in the expanded category of convictions under the Criminal Offender Employment Act. Such persons may seek to challenge the denial of their employment or license, or to challenge the constitutionality of the bill.

FISCAL IMPLICATIONS

According to the Administrative Office of the Courts, HB 10 could result in fiscal impact since a larger number of individuals could appeal employment decisions rendered by an agency or a board, thus resulting in more hearings or more complex preparation for existing hearings.

TECHNICAL ISSUES

The Attorney General's Office believes that language should be added to make clear that state or local governments may refuse employment or licensure of a registered sex offender under the stated conditions "regardless of rehabilitation" as contained in Section 28-2-4(A)(3) of the current law. Otherwise, this bill may be vulnerable to an interpretation requiring that a sex offender be hired or licensed if the offender can show that he or she has been sufficiently rehabilitated. See New Mexico Bd. of Pharmacy v. Reece, 100 N.M. 339 (1983).

The Administrative Office of the Courts believes that the phrase "direct" contact with children may need clarification.

RLG/yr