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FISCAL IMPACT REPORT

ORIGINAL DATE 1/29/08

SPONSOR Maestas LAST UPDATED _____ HJM 13

SHORT TITLE Criminal Offender Employment Act Cooperation SB _____

ANALYST Lucero

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY08	FY09	FY10	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total	\$0.1	\$0.1	\$0.1	\$0.1	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB223 “Continue Task Force on Employment Barriers”
 Relates to Appropriation in the General Appropriation Act

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Workforce Solutions (DWS)
 Regulation and Licensing Department (RLD)
 State Personnel Office (SPO)
 Department of Finance and Administration (DFA)
 Public Education Department (PED)
 New Mexico Corrections Department (NMCD)

SUMMARY

Synopsis of Bill

House Joint Memorial 13 directs each state agency to comply with all of the provisions of the Criminal Offender Employment Act, to apply the presumption of sufficient rehabilitation set forth in that act, and to cooperate with the Workforce Solutions Department and the task force formed pursuant to House Memorial 41 and Senate Joint Memorial 4 passed in the 2007 Legislative session to develop a better understanding of and to consistently apply the provision of the Criminal Offender Employment Act.

FISCAL IMPLICATIONS

There is no appropriation contained in this bill; however, there is a potential administrative expense to state agencies to train staff on the provisions of the Criminal Offender Employment Act.

SIGNIFICANT ISSUES

The Workforce Solutions Department (WSD) reports that research has shown that obtaining gainful employment for a person released from prison is a key factor in rehabilitation, reducing recidivism and ensuring the safety and security of New Mexican citizens. Currently, WSD works with the Corrections Department to provide career services to individuals with a criminal conviction.

The Regulation and Licensing Department (RLD) states that all boards and commissions within the Regulation and Licensing Department's Boards and Commissions Division are required to comply with the Criminal Offender Employment Act [28-2-1 NMSA 1978] and all but four (Nutrition and Dietetics Practice Board, Interior Design Board, Respiratory Care Advisory Board and Private Investigators and Polygraph Advisory Board) specifically provide for compliance in their enabling statutes.

NMCD already complies with the Criminal Offender Employment Act, and will cooperate fully with the task force. However, it is important to remember that convicted felons are disqualified by law (Section 33-1-11 NMSA) from ever working as correctional officers for NMCD, and NMCD's largest number of vacancies is correctional officer positions.

The 2007 Legislature authorized a task force to convene and report back on barriers to public employment for persons with criminal convictions. The task force found:

- That state agencies are inconsistently applying the provisions of the Act, including the provision for a presumption of sufficient rehabilitation for certain individuals;
- That implementation of the Act is limited due to a lack of understanding and inconsistent interpretation of the law.
- Most persons with criminal convictions have barriers to employment related to those convictions and associated behavioral and educational issues, which can include "spotty" work histories, low skill levels, and physical and mental health problems. (<http://reentrypolicy.org/http>)
- The Criminal Offender Employment Act, 28-2-3.A, Employment Eligibility Determination, states that subject to the provisions of Section B (which provides that records of arrest not followed by a valid conviction and misdemeanor convictions not involving moral turpitude shall not be used in connection with an application for any public employment, license or other authority), in "determining eligibility for employment with the state or any of its political subdivisions or for a license, permit, certificate or other authority to engage in any regulated trade, business or profession, the board or other department or agency having jurisdiction may take into consideration the conviction, but such conviction shall not operate as an automatic bar to obtaining public employment or license or other authority to practice the trade, business or profession".
- In 28-2-4, Power to refuse, renew, suspend or revoke public employment or license, the state and its political subdivisions can refuse to grant employment for certain causes to persons with convictions but must explicitly state in writing the reasons for their decision to do so. Completion of probation or parole supervision or expiration of a period of three years after final discharge or release from any term of imprisonment without any subsequent conviction shall create a presumption of sufficient rehabilitation for purposes of Paragraph (2) of Subsection A of this section, which provides that where moral turpitude is involved but the conviction does not directly relate to the particular employment, the employer can make the

determination, after investigation, that the person has not been sufficiently rehabilitated to warrant the public trust.

ADMINISTRATIVE IMPLICATIONS

The department of workforce solutions is asked to work with other agencies to ensure that state agencies are complying with all of the provisions of the criminal offender employment act.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to HB223 “Continue Task Force on Employment Barriers”

Relates to Appropriation in the General Appropriation Act

OTHER SUBSTANTIVE ISSUES

The public at large is best protected when criminal offenders are given the opportunity to secure employment or to engage in a lawful trade, occupation or profession.

According to the Criminal Offender Employment Act, “completion of probation or parole supervision or expiration of a period of three years after final discharge or release from any term of imprisonment without any subsequent conviction shall create presumption of sufficient rehabilitation” when the criminal conviction does not directly relate to the particular employment.

ALTERNATIVES

The governor could issue an executive order directing state agencies to provide evidence of their full compliance with the criminal offenders employment act.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

DL/bb