

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: HB 404a

50th Legislature, 1st Session, 2011

Tracking Number: .184615.2

Short Title: Higher Education Employment Background Checks

Sponsor(s): Representatives Ray Begaye and Eliseo Lee Alcon

Analyst: Ally Hudson

Date: March 12, 2011

AS AMENDED

The House Labor and Human Resources Committee amendment removes the reference to the *Criminal Offender Employment Act* and, in its place, refers to only two sections of the same act.

Original Bill Summary:

HB 404 amends higher education provisions in current law to provide for background checks of applicants applying for employment at one of the state's public postsecondary educational institutions.

Specifically, HB 404 requires that:

- institutions of higher education develop policies and procedures to require background checks on an applicant who has 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 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; and
- 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 404 contains an effective date of July 1, 2011.

Fiscal Impact:

HB 404 does not contain an appropriation.

Fiscal Issues:

According to an analysis by Central New Mexico Community College (CNM):

- not including student work-study employees, the institution hires approximately 300 employees each year;
- CNM employs approximately 300 work-study employees on an annual basis;
- the estimated cost for a national background check is \$54.00 per employee; and
- assuming HB 404 applies to work-study employees, the total cost to CNM would be approximately \$32,400.

According to the University of New Mexico (UNM) analysis:

- the cost estimate is approximately \$118,000 per year to either the institution, or the new hires, based on hires over the last 12 months; and
- the administrative cost for personnel is estimated at \$77,188 per year.

Substantive Issues:

The analysis by the Higher Education Department (HED) indicates that, according to a national survey conducted by Risk Aware, a company that specializes in background checks for colleges:

- 87 percent of colleges and universities conduct background checks for some staff positions;
- 40 percent conduct background checks for some faculty positions;
- 26 percent conduct background checks for some student workers; and
- 13 percent never engage in criminal background checks.

The analysis by HED further suggests that, if the law is to be applied equally across all universities, standards should be determined about what kind of criminal background would require an institution of higher education to reject an applicant for employment. Moreover:

- Both HED's and UNM's analyses indicate that administrative procedures would need to be developed to ensure compliance with the *Criminal Offender Employment Act*. For example, HB 404 does not allow the employer to determine whether a background check needs to be conducted based on the duties of the position (see "Technical Issues," below).
- According to HED, the institutions would be responsible for enforcing privacy provisions for records that should not be disclosed to a person not directly involved in the employment decision of a specific applicant.
- The analyses by both HED and UNM also point out that, if the university decided to pass the cost of a background check on to a potential employee, it could dissuade a

number of individuals from applying because requiring an applicant to pay for an FBI background check may place a financial burden on the applicant. As a result, the analyses suggest, institutions may wish to consider policies that address financial hardship cases.

- HED's analysis explains that institutions would 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, because according to the provisions of the legislation, they would not be required to submit another background check.
- Finally, the analysis by HED cites a Pennsylvania law that excludes employees who do not have direct contact with students from undergoing background checks.

The analysis by CNM raises other points:

- Although HB 404 allows the cost of a background check to be passed on to the applicant, it might not be appropriate to require work-study employees to pay \$54.00. Therefore, institutions may need to consider which applicants should be responsible for the costs.
- Currently, the analysis continues, CNM conducts background checks for certain positions including security, the business office, and information technology. Altogether, CNM spends approximately \$2,400 on background checks annually.
- Finally, the CNM analysis concludes, national or FBI background checks could slow the hiring process. Often, based on student demand, CNM will add new sections of a course during the final week of student registration. If background checks are required for all applicants, 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.

As a final point, according to an analysis by New Mexico State University:

- the process outlined in HB 404 is similar to the process currently used by Las Cruces Public Schools;
- the institution may need to consider the administrative cost associated with creating an internal process for completing fingerprinting on selected applicants; and
- a substantial delay in receiving the results of a background check could mean that an employee begins work before the results are received.

Technical Issues:

The UNM analysis suggests that the committee may wish to:

- change the bill to use *may* rather than *shall*; and
- allow the employer to determine which positions require a background check.

On this point, the title of the bill indicates that HB 404 will allow postsecondary institutions to conduct background checks, whereas the text of the bill requires them to do so.

Finally, the analysis by HED questions whether, and to what extent, the bill would apply to private and proprietary institutions.

Related Bills:

SB 66 *Criminal Defendant Background Info for Judges*

SB 116a *Emergency Medical Personnel Background Check*

SB 165 *CYFD Safe Exchange Program Background Checks*

*SB 558 *CYFD Placement Home Background Checks*