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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/17/11  
 LAST UPDATED 03/10/11    **HB** 404/aHLC

**SPONSOR** Begaye

**SHORT TITLE** Higher Education Employment Background Checks    **SB** \_\_\_\_\_

**ANALYST** Haug

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

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		See Narrative	See Narrative			

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Central New Mexico Community College (CNM)  
 Higher Education Department (HED)  
 University of New Mexico (UNM)  
 New Mexico State University (NMSU)

### SUMMARY

#### Synopsis of HLC Amendment

House Labor and Human Resources Committee Amendment replaces the reference to the Criminal Offender Act on page 2 with the statutory reference to 28-2-3 through 28-2-5 NMSA 1978.

#### Synopsis of Original Bill

House Bill 404 would require higher education institutions to establish policies and procedures to require background checks on job applicants who have been offered employment. Applicants receiving job offers would be required to provide fingerprints so that the higher education institution could obtain the applicant's federal bureau of investigation record. Fees may be charged to the applicant.

### FISCAL IMPLICATIONS

House Bill 404 contains no appropriation and has no direct fiscal impact for state agencies.

NMSU's analysis of HB404 states that requiring applicants who are offered employment to

obtain a background check would add costs, but at the expense of the applicant. According to the analysis, the Las Cruces Public School's has a process in place similar to the one required by HB404, 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 CNM's analysis of HB404, 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.

The UNM's analysis of HB404 provides institutional information based on hires over the last 12 months; the cost estimate is 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 will 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 only positions that are security and safety sensitive positions based on the duties are checked.

## **SIGNIFICANT ISSUES**

The HED reports:

Criminal background checks have often 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 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.

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**

CNM recommends considering excluding work-study employees from the legislation.

UNM recommends changing the language of HB404 from "shall" to "may" in order to allow the institution to determine which positions require a background check and the method by which the background check will be conducted.

### **OTHER SUBSTANTIVE ISSUES**

The HED notes that 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 HB404 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.

GH/svb:bym