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FISCAL IMPACT REPORT

SPONSOR Herrell ORIGINAL DATE 2/6/18
 LAST UPDATED 2/8/18 HB 267/aHHHC/ec

SHORT TITLE Human Svcs. Dept. Background Checks SB _____

ANALYST Esquibel

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY18	FY19	FY20	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$30.0	\$10.0	\$40.0	Recurring	General Fund, Federal Matching Funds

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Attorney General’s Office (NMAG)
 Human Services Department (HSD)

SUMMARY

Synopsis of HHHSC Amendment

The House Health and Human Services Committee amendment to House bill 267 adds an emergency clause to the bill.

Synopsis of Original Bill

House Bill 267 would add a provision to the Human Services Department Act, NMSA 1978, Sections §§ 9-8-1 to 9-8-14, providing that the Human Services Department (HSD) conduct background checks on employees, prospective employees, contractors, prospective contractors, sub-contractors and prospective sub-contractors that have or will have access to federal tax information (FTI).

Under the provisions of the bill, HSD would conduct background checks on personnel and prospective personnel through the following steps:

- Conducting local law enforcement agency criminal history record checks where the subject has lived, worked, and/or attended school within the last 5 years;

- Submitting fingerprint cards to the Department of Public Safety and the Federal Bureau of Investigation for the purpose of conducting a national agency check on the subject; and
- Conducting a citizenship/residency check to confirm that the subject is eligible to legally work in the United States.

The bill proposes that contractors, prospective contractors, sub-contractors and prospective sub-contractors would be responsible for their own costs for conducting background checks. Criminal history records obtained pursuant to this policy would be confidential, and any person who releases or discloses information from these records would be guilty of a misdemeanor and sentenced. HSD would be required to promulgate procedural rules pertaining to this policy, and personnel and prospective personnel denied employment or terminated based on this policy would be entitled to appeal the decision.

FISCAL IMPLICATIONS

The bill does not include an appropriation.

The Human Services Department (HSD) reports an estimated FY19 cost of approximately \$30 thousand to conduct background checks for all current department staff who have access to federal tax information (FTI) as well as all recommended new hires into those identified positions. The following years would only require background checks for recommended new hires in those positions as well as current employees again within 10 years of the first investigation.

SIGNIFICANT ISSUES

The Human Services Department (HSD) notes the Internal Revenue Service (IRS) issues safeguards to verify compliance with Internal Revenue Code (IRC) 6103. Safeguards identify and mitigate any risk of loss, breach, or misuse of federal tax information (FTI) held by external government agencies. HSD receives FTI directly from the IRS, Social Security Administration (SSA), Federal Office of Child Support Enforcement (OCSE), Bureau of the Fiscal Service (BFS) and Centers for Medicare and Medicaid Services (CMS). On September 30, 2016, the IRS issued new safeguards establishing minimum requirements for background investigations. Agencies are now required to develop a written policy requiring that employees, contractors and sub-contractors with access to FTI complete a background investigation that is favorably adjudicated, and must begin implementing the policy in order to continue to receive FTI. HSD has agreements with agencies of the federal government, as permitted by 9-8.12 NMSA, to receive and utilize FTI to determine income support and medical assistance program eligibility and to establish and enforce child support obligations.

HSD reports passage of this legislation is necessary for HSD to be in compliance with IRC 6103. Failure to demonstrate compliance with this federal statutory tax law and the safeguards prescribed by the IRS would result in the IRS no longer disclosing FTI to HSD. The HSD Child Support Enforcement Division (CSED) uses FTI to establish and enforce child support obligations. CSED collected \$8,579,655 from IRS tax intercepts for FY17. The HSD Income Support Division (ISD) uses FTI as a post eligibility check for cash assistance and medical assistance, and may be subject to financial penalty from the federal government for not complying with IRS regulations.

ADMINISTRATIVE IMPLICATIONS

HSD indicates under the provisions of the bill it would be required to establish regulations which set out general provisions regarding background checks including compliance, prohibitions and appeal rights.

TECHNICAL ISSUES

The Attorney General’s Office indicates the following provision of the bill on page 5, lines 9 to 13, should identify the applicable statutory or regulatory provisions under which review and appeal may be taken: “Where a department employee or prospective department employee who is denied employment or terminated employment based on information obtained in a background check is given a right to review and appeal that employment decision.”

RAE/sb