

LFC Requester:	Jorgensen
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**AGENCY BILL ANALYSIS
2021 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:
Original **Amendment**
Correction **Substitute**

Date 2/1/2021
Bill No: HB96

Sponsor: Rep. Andrea Romero
Short Title: CRIMINAL RECORDS & PUBLIC EMPLOYMENT

Agency Name and Code PED - 924
Number: _____
Person Writing: John Sena
Phone: 505-570-7816 **Email** John.Sena@state.nm.us

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY21	FY22		
N/A	N/A	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY21	FY22	FY23		
N/A	N/A	N/A	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	N/A	N/A	N/A	N/A	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with: HB128.

Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: House Bill 96 (HB96) proposes to add certain criminal records to the list of those that cannot be used, distributed, or disseminated in connection with any application for employment, licensure, permits, certificates, and other authority to work. They include: convictions that have been sealed, dismissed, expunged, or pardoned; juvenile adjudications; and convictions for a crime that is not recent enough and sufficiently job-related to be predictive of performance in the position sought. Boards and commissions are directed to promulgate rules specifically listing which criminal convictions may be considered as factors disqualifying an applicant from licensure, and shall not exclude from licensure a person who is otherwise qualified on the sole basis of arrest or conviction for a crime unless it is a “disqualifying criminal conviction.”

FISCAL IMPLICATIONS

HB96 does not contain an appropriation.

SIGNIFICANT ISSUES

HB96 would amend Section 28-2-3 NMSA 1978 of the Criminal Offender Employment Act to add certain sorts of criminal records to those that cannot be considered when determining eligibility for public employment or for licensure, certification, or other authority to engage in any regulated business or profession. The bill would strike misdemeanor convictions not involving moral turpitude from that list, but adds: convictions that have been sealed, expunged, or pardoned; juvenile adjudications; and convictions for a crime that is “not recent enough and sufficiently job-related to be predictive of performance in the position sought, given the position’s duties and responsibilities.”

These amendments are subject to the requirements of Sections 28-2-4(B) and 28-2-5 NMSA 1978. Section 28-2-4(B) requires a board or other agency to specifically state in writing the reasons for a decision that prohibits a person from engaging in employment if the decision is related to: a felony or misdemeanor conviction involving moral turpitude that directly relates to the particular employment; and a conviction for drug trafficking, criminal sexual offenses, or child abuse where the applicant is applying for teacher certification or licensure for or employment in a child-care facility. Where the potentially disqualifying act involves moral turpitude not directly related to the particular employment sought, completion of probation or parole, or expiration of a period of three years after release from prison with no subsequent

conviction creates a presumption of sufficient rehabilitation to permit employment.

Section 28-2-5 NMSA 1978 specifically exempts law enforcement agencies from the Criminal Offender Employment Act (COEA).

The proposed amendments to the COEA appear related to a series of judicial rulings in a certain series of cases adjudicating termination from employment in the public schools. Those cases interpret the defined term, “just cause” of the School Personnel Act, which means, “a reason that is rationally related to a school employee's competence or turpitude or the proper performance of the school employee's duties and that is not in violation of the school employee's civil or constitutional rights.” See, for example, *Kibbe v. Elida Sch. Dist.*, 996 P.2d 419 (N.M. 1999), where the court found that a coach’s arrest for DWI, resisting or obstructing an officer, and battery was insufficiently related to his competence as an employee or the proper performance of his duties to warrant termination under the School Personnel Act.

HB 96 would also create a new section of the Uniform Licensing Act (ULA) that would prohibit a board from excluding from licensure an otherwise qualified person solely because they had been arrested or convicted of a crime, unless that crime was a “disqualifying criminal conviction.” That term is specifically defined for this section as, “conviction for a crime that is recent enough and sufficiently job-related to be predictive of performance in the position sought, given the position's duties and responsibilities.”

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

HB96 also requires boards to promulgate rules, by December 31, 2021, related to licensing requirements, which must list specific criminal convictions that may disqualify a licensure applicant, and prohibits rules related to licensing requirements from using the terms “moral turpitude” or “good character”. Boards are only to list specific disqualifying convictions. Further, the bill places the burden of proof on boards in showing in administrative hearings whether exclusion from licensure is related to a disqualifying criminal conviction. The bill requires all boards annually, by October 31, to publish certain information related to licensure in a report of the prior fiscal year, including the number of applicants for licensure, the number granted, the number who had a potential disqualifying criminal conviction, the number with such a conviction who provided written justification evincing rehabilitation, and the number of those with disqualifying convictions who were granted and denied licensure. “Boards” is defined under the ULA to include an agency that administers a professional license under the Act, and thus includes the Public Education Department (PED).

The term, “moral turpitude” appears in at least three PED rules related to licensure, and at least two not directly related to licensure but otherwise related to service qualifications, including for armed security personnel, at 6.12.12 NMAC, Armed Public School Security Personnel (see “Technical Issues”).

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB96 conflicts with HB128, School Personnel Background & Training, which addresses

background checks, employment history, and criminal background of school personnel in an effort to ameliorate the effects of “passing the trash.” That term refers to the practice of an applicant for employment in the public schools moving from an area or jurisdiction where they have been convicted or accused of ethical or sexual misconduct to another area or jurisdiction where the offense or accusation is unknown. That bill uses the term “moral turpitude” in several instances, and specifically defines that term.

TECHNICAL ISSUES

HB96 prohibits the use of the term “moral turpitude” in agency licensure rules, but also makes specific reference to Section 28-2-4 NMSA 1978 of the COEA, which uses that very term to qualify relevant criminal convictions, possibly creating an inherent conflict that may be difficult for affected boards and agencies to navigate.

PED Rule 6.12.12 NMAC, Armed Public School Security Personnel, employs the term, “moral turpitude.” That rule relies upon Section 22-10A-40 NMSA 1978 of the School Personnel Act as statutory authority, which requires the department to promulgate rules related to persons prohibited from employment as school security personnel for “commitment of a misdemeanor involving moral turpitude that has bearing on the job of school security personnel.”

The proposed amendment to Section 28-2-3 NMSA 1978 of the COEA refers to convictions for a crime that is not “recent enough” and sufficiently job related to be predictive of performance in the applied-for employment. While relation to job performance, presumably, can be readily interpreted by those reviewing applications for specific employment, “recent enough” seems vague and open to wide interpretation. The bill may benefit from either a definition for this term or the use of more specific language.

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

N/A

AMENDMENTS

N/A