

LFC Requester:	Liu
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**AGENCY BILL ANALYSIS
2022 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

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{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 February 14, 2022
Bill No: HB193/aHGEIC

Sponsor: Reps. Sariñana, Trujillo,
Herrera, Garratt, and Matthews
School Personnel Background
Short Title: Checks

Agency Name and Code Number: PED - 924
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
FY22	FY23		
N/A	N/A	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY22	FY23	FY24		
N/A	N/A	N/A	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY22	FY23	FY24	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)

Duplicates/Conflicts with/Companion to/Relates to:

House Bill 136 (HB 136), Criminal Offender Employment and Schools
House Bill 191 (HB191), Professional & Occupational Licensure Changes
Senate Bill 103 (SB103), Workforce Solutions Staff Background Checks

Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis of HGEIC Amendment: The House State Government, Elections, and Indian Affairs Committee amendment to House Bill 193 (HB193/aHGEIC) reinstates a statutory provision that required schools to cover the cost of criminal history record checks for applicants who have been offered employment.

Synopsis: House Bill 193 (HB193) proposes to amend the School Personnel Act to update and clarify how and which educational licenses offered by the Public Education Department (PED) are subject to criminal history record check requirements.

FISCAL IMPLICATIONS

HB193/aHGEIC does not contain an appropriation.

If PED were to lose its authorization to conduct background checks, and therefore be unable to issue licenses, revenue initially may be impacted by the loss of licensure fees to the department.

Under HB193/aHGEIC, schools would be required to cover the cost of criminal history record checks for applicants who have been offered employment. This practice reflects current law and is not expected to impact public school budgets.

SIGNIFICANT ISSUES

All school personnel, including licensed school personnel, are required to undergo a criminal history background check before they can begin employment. Currently, Section 22-10A-3 NMSA 1978 of the School Personnel Act requires anyone in public schools who teaches, supervises or supports instruction, administrates, or provides healthcare or performs medical procedures to hold a valid license for their respective functions. Section 22-10A-5 NMSA 1978 requires all applicants for initial licensure to provide two fingerprint cards, or the electronic equivalent, upon application, to either the PED or their superintendent to obtain the applicant's Federal Bureau of Investigation (FBI) record.

Recent correspondence from the Office of General Counsel of the Criminal Justice Information

Law Unit (CJILU) of FBI indicates that these statutory requirements do not meet the requirements of Public Law 92-544 (Pub. L. 92-544), which authorizes the FBI to exchange criminal history records information with officials of state and local governmental agencies for licensing and employment purposes. Only a state statute which has been approved by the Attorney General of the United States, or their representative, can authorize these procedures. Pub. L. 92-544 establishes criteria for the approval of such statutes:

1. The statute must result from legislative enactment;
2. It must require fingerprinting of applicants who are to be subject to national criminal history background checks;
3. It must authorize the use of FBI records for screening of applicants;
4. It must identify the specific categories of licensees and employees falling within its purview;
5. It must not violate public policy; and
6. It may not authorize receipt of criminal history record information by a private entity.

CJILU indicates that Sections 22-10A-3 and 22-10A-5 NMSA 1978 fail to adhere to requirements in several respects. Specifically, CJILU indicates:

- Section 22-10A-5 NMSA 1978, which requires “all applicants for initial licensure” undergo background checks, is overly broad and does not outline specific license types required to undergo the background check;
- The categories of license outlined in Section 22-10A-3 NMSA 1978 are also insufficiently specific to satisfy the requirements of Pub. L. 92-544; and
- Section 22-10A-3 NMSA 1978 does not explicitly require the submission of fingerprints through the state identification bureau to FBI for the criminal background check, nor does it clearly require applicants for licensure undergo background checks required by Section 22-10A-5 NMSA 1978.

CJILU has indicated the FBI would continue to honor background check requests through at least a grace period lasting until July 1, 2021, to amend statute, which grace period has now expired. The Department of Public Safety (DPS) has submitted an extension request to the CJILU; however, the CJILU has not responded to the request as of the writing of this analysis. Additionally, background checks have continued to be performed, and the CJILU has continued to offer the background check reports, thus there has not been a gap in receiving the reports. Once the statutes have been amended as necessary, they must be resubmitted to CJILU for review and approval.

HB193 addresses CJILU’s concerns by amending Section 22-10A-3 NMSA 1978 to specifically refer to the criminal history background check requirement contained in Section 22-10A-5 NMSA 178, and to include specific reference to 15 separate categories of educational licenses and licenses for educational support and administration. The proposed amendments to Section 22-10A-3 NMSA 1978 also clarify that the background check requirements shall remain in effect even if subsequent amendments change the statutory section numbers and permit the PED to require a background check of a current licensee to determine whether the department has sufficient cause to suspend or revoke a current license.

The proposed amendments to Section 22-10A-5 NMSA 1978 permit the PED access to criminal history record information and require all applicants for licensure from the PED submit physical

or electronic fingerprint cards to the Department of Public Safety (DPS) to conduct the review. DPS, upon receipt of the fingerprint cards will conduct a state-level background check and forward them to FBI for a national check, as required under Pub. L. 92-544. The DPS will review the information obtained in the background check and compile and forward the information to the PED, which will use the information to inform decisions about initial and continuing licensure.

These proposed amendments address all three of the insufficiencies noted by CJILU and listed above. Upon enactment of HB193/aHGEIC, the newly amended statutes will be submitted to CJILU for review and approval, allowing the PED to continue offering educational licenses while ensuring candidates and licensees undergo the appropriate background review.

PERFORMANCE IMPLICATIONS

Passage and enactment of HB193/aHGEIC will permit the PED to continue licensing school personnel while satisfying federal legal and regulatory requirements and protecting students and other school personnel.

ADMINISTRATIVE IMPLICATIONS

None for the PED at this time. Passage of the bill would accomplish required clarification of current law and practice and permit the PED to continue with its licensure program unimpeded.

As is the practice under current law, individual public schools would be responsible for paying the cost of criminal history record checks for any applicant who is offered employment.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to House Bill 136 (HB 136), Criminal Offender Employment and Schools, which exempts from the requirements of the Criminal Offender Employment Act any school district that is reviewing job applicants for conduct relating to child abuse or neglect.

House Bill 191 (HB191), Professional & Occupational Licensure Changes, which proposes numerous amendments to the Uniform Licensing Act.

Relates to SB103, Workforce Solutions Staff Background Checks, which would require the Department of Workforce Solutions (DWS) to obtain fingerprint-based criminal background checks on existing employees and finalists for employment with DWS who may have access to federal tax information.

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

HB193/aHGEIC amends the definition of “governing authority” in Section 22-10A-2 NMSA 1978 of the School Personnel Act to clarify that “state agencies” included in the act are those that offer educational services to school-aged persons.

The bill also addresses important privacy concerns. The proposed amendment to Section 22-10A-5 NMSA 1978 explicitly bars the PED from excluding qualified persons from licensure on the sole basis of having been arrested or convicted of a crime, unless it is a qualifying criminal conviction under the Uniform Licensing Act, Section 61-1-36 NMSA 1978. Further, criminal history record information received from the DPS or FBI is to be considered confidential and shall not be subject to the Inspection of Public Records Act, Section 14-2-1, et seq, NMSA 1978; nor shall the PED authorize the receipt of criminal history information by a private entity.

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Failing to enact HB193/aHGEIC may jeopardize New Mexico's ability to license candidates for employment in the public schools, while simultaneously protecting students and school communities from potentially criminal actions. This would occur during a time of such great educator shortages in the state that Governor Lujan Grisham has authorized state employees, and activated the New Mexico National Guard, to act as temporary substitute teachers.

AMENDMENTS

N/A