

LFC Requester:	Liu
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**AGENCY BILL ANALYSIS
2023 REGULAR SESSION**

SECTION I: GENERAL INFORMATION

Check all that apply:

Original **Amendment**
Correction **Substitute**

Date Prepared: 02/10/23
Bill No: SB383

Sponsor: Stewart
Short Title: PUBLIC ED BACKGROUND CHECK PROCESS

Agency Name and Code Number: PED - 924
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY23	FY24		
None	None	N/A	NFA

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25		
None	None	None	N/A	NFA

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	None	None	None	None	N/A	NFA

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Relates to Appropriation in the General Appropriation Act; None

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: Senate Bill 383 (SB383) would amend the School Personnel Act to specify the educational license offered by the Public Education Department (PED) that would be subject to a criminal history record check requirement.

The effective date of this bill is July 1, 2023.

FISCAL IMPLICATIONS

SB383 does not contain an appropriation.

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, administers, 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 the school district superintendent to obtain the applicant's Federal Bureau of Investigation (FBI) record.

Correspondence from the Office of General Counsel of the Criminal Justice Information Law Unit (CJILU) of the FBI indicates that these existing 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 that 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" to 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.

The state has received a waiver from the FBI to continue background checks through June 2023. Without passage of a state statute, such as SB383, the Public Education Department may not be able to issue licenses past June.

The bill proposes to amend the state's current educator background check law – drafted by PED in collaboration with the New Mexico Department Public Safety (DPS) and the FBI – that

address the concerns raised by CJILU, as well as additional concerns raised over the level of agency discretion in the bill in several areas, including criminal history record checks for current personnel, and sharing information gleaned from criminal history records checks with other agencies,

The bill also addresses concerns that current state law does not list various categories of instructional support providers with sufficient particularity for the FBI. The bill specifically lists all categories of instructional support providers required to undergo criminal history record checks.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

SB383 would allow the Public Education Department to continue issuing licenses past June 2023.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

SB383 would specify the requirement of criminal history record checks for:

- Diagnosticians
- Attendance coaches
- Practical nurses
- School health assistants
- School business officials
- Rehabilitation counselors
- Athletic coaches
- Educational alcohol and drug abuse counselors
- Substance abuse associates

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Failing to enact the bill will risk the PED's ability to license candidates for employment in the public schools. This would occur during a time of educator shortages in the state.

AMENDMENTS

N/A