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House BILL NO. 373

INTRODUCED BY Alan Kottel, Larry

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING APPLICANTS FOR TEACHER CERTIFICATION TO BE FINGERPRINTED; REQUIRING BACKGROUND CHECKS OF THE APPLICANTS; CREATING A SPECIAL REVENUE ACCOUNT; GRANTING RULEMAKING AUTHORITY; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 5] grants rulemaking authority to the department of justice for the implementation of fingerprinting and background checks for applicants for teacher certification. At a minimum, the rules must address:

- (1) a fee schedule commensurate with the actual costs associated with the fingerprinting and the background check;
- (2) the specific crimes that are relevant to a person's fitness for certification. The rules may provide for some differentiation among the specific crimes, depending upon the crime's relevance to an applicant's responsibility for the safety and well-being of children.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Definitions. As used in [sections 1 through 5], the following definitions apply:

- (1) "Department" means the department of justice provided for in 2-15-2001.
- (2) "Superintendent" means the superintendent of public instruction.

NEW SECTION. Section 2. Fingerprinting -- affidavit -- right to challenge. (1) A person applying for a teacher or specialist certificate must be fingerprinted, and a background check must be made of local, state, and national criminal history records to disclose a criminal record. A fingerprint card and an affidavit, as provided in subsection (3), must be submitted to the superintendent at the time of application for



1 certification. The superintendent shall forward the fingerprint card to the department.

2 (2) A person who holds a teacher or specialist certificate and who applies for an additional
3 certificate may not be required to be fingerprinted.

4 (3) (a) On a form provided by the superintendent and notarized, a person shall certify whether the
5 person is charged with or has ever been convicted or adjudicated of a crime involving arson, harm to
6 children, or physical or sexual violence against any person in this state or in another state.

7 (b) If the background check reveals that the applicant is charged with or has been convicted or
8 adjudicated of a crime listed in subsection (3)(a), the superintendent shall consider the results of the
9 background check in evaluating the fitness of the applicant for certification.

10 (4) The applicant may obtain a copy of the applicant's criminal history record and may challenge
11 the accuracy and completeness of the information contained in the record in accordance with 44-5-215.

12
13 **NEW SECTION. Section 3. Department to conduct background check -- release of information.**

14 (1) The department shall conduct the background check in compliance with Public Law 92-544. The
15 department shall make a reasonable effort to respond to the request for the background check within 15
16 business days. If the criminal history record is incomplete, the department shall make a reasonable effort
17 to conduct research in order to complete the record.

18 (2) The department shall notify the superintendent of the results of the background check.
19 Information regarding a conviction or a pending indictment for an offense listed in [section 2(3)(a)] must
20 be forwarded to the superintendent. A person's full criminal history record may not be released to the
21 superintendent.

22
23 **NEW SECTION. Section 4. Fees -- special revenue account.** (1) The applicant is responsible for

24 all costs associated with the background check. The fee charged for conducting the background check
25 may not exceed the actual cost of the check.

26 (2) There is an account in the state special revenue fund to the credit of the department. The fees
27 collected pursuant to subsection (1) must be deposited into the account. The money in the account is
28 statutorily appropriated, as provided in 17-7-502, and must be used by the department for the
29 administration of [sections 1 through 5].

30

1 **NEW SECTION.** **Section 5. Rulemaking authority.** The department, in consultation with the
2 superintendent, shall adopt rules implementing [sections 1 through 4].

3
4 **Section 6.** Section 17-7-502, MCA, is amended to read:

5 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory
6 appropriation is an appropriation made by permanent law that authorizes spending by a state agency
7 without the need for a biennial legislative appropriation or budget amendment.

8 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply
9 with both of the following provisions:

10 (a) The law containing the statutory authority must be listed in subsection (3).

11 (b) The law or portion of the law making a statutory appropriation must specifically state that a
12 statutory appropriation is made as provided in this section.

13 (3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105;
14 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706;
15 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410;
16 16-1-411; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-101; 17-6-201; 17-6-409;
17 17-7-304; 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-15-101; 19-17-301; 19-18-512; 19-18-513;
18 19-18-606; 19-19-205; 19-19-305; 19-19-506; 20-4-109; [section 4]; 20-8-111; 20-9-361; 20-26-1403;
19 20-26-1503; 23-2-823; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301;
20 23-7-402; 27-12-206; 32-1-537; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321;
21 39-71-2504; 44-12-206; 44-13-102; 50-5-232; 50-40-206; 53-6-150; 53-24-206; 60-2-220; 61-2-107;
22 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-2-222;
23 80-4-416; 80-11-310; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402; 90-3-301; 90-4-215;
24 90-6-331; 90-7-220; 90-9-306; and 90-14-107.

25 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,
26 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued
27 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of
28 Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as
29 determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the
30 bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec.

1 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for
2 supplemental benefit; and pursuant to sec. 15, Ch. 534, L. 1993, the inclusion of 90-14-107 terminates
3 July 1, 1995.)"

4

5 NEW SECTION. **Section 7. Codification instruction.** [Sections 1 through 5] are intended to be
6 codified as an integral part of Title 20, chapter 4, part 1, and the provisions of Title 20, chapter 4, part 1,
7 apply to [sections 1 through 5].

8

9 NEW SECTION. **Section 8. Applicability.** [This act] applies to certificates issued on or after
10 January 1, 1996.

11

12 NEW SECTION. **Section 9. Effective date.** [This act] is effective on passage and approval.

13

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0373, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act requiring applicants for teacher certification to be fingerprinted; requiring background checks of the applicants; creating a special revenue account; granting rulemaking authority; and providing a statutory appropriation.

ASSUMPTIONS:

Office of Public Instruction (OPI):

1. The fingerprinting requirement applies to the initial application for a teaching certificate and applicants with "lapsed" teaching certificates. School teachers and administrators applying for renewal or for additional Montana certification will not be required to be fingerprinted.
2. OPI receives 1,500 applications for teacher certification program annually for first-time Montana teaching certificates.
3. Applications for teaching certificates are processed in one to two weeks at the slower times of the year (November through February) and six to eight weeks at the busiest time of the year (March through October).
4. A fingerprint card for a first-time applicant will be forwarded to the Department of Justice.
5. A reasonable effort will be made to respond to the request for the background check within 15 business days. The fingerprinting requirement will increase the processing time for first-time applications by three to four weeks given that, once the results are provided to the department, the department will need to consider the results of the background check in evaluating the fitness of the applicant for certification.
6. The department will receive fewer applications for teaching certificates given a cost of the fingerprinting and background check procedure.

Department of Justice (DOJ):

7. About 84% of the background checks will result in no criminal history record. A "no record" background check takes approximately 10 minutes to conduct. Processing 1,260 background checks will take approximately 210 hours.
8. About 16% of the background checks will result in a potential "hit" on a criminal history record. A potential "hit" could be as a result of the same name, date of birth or previous driving conviction. To completely verify the "hit" as correct will take on the average two hours. Processing 240 background checks will take approximately 480 hours.
9. An individual can completely process 50 fingerprint cards each day through the Automated Fingerprint Identification System (AFIS) and the administrative process of the Identification Bureau which requires approximately 10 minutes per fingerprint.
10. A 0.50 FTE is needed for the Law Enforcement Services Division (210 + 480 + 250 hours = 940 hours which is approximately 0.50 FTE). In FY96, only 0.25 FTE is needed since the bill applies to certificates issued after January 1, 1996. Personal services costs would be \$5,057 in FY96 (0.25 FTE grade 8) and \$10,148 in FY97 (0.50 FTE grade 8).
11. Operating costs of \$3,500 for supplies, postage, phone, processing of fingerprints would be incurred in FY96 and \$4,000 in FY97. One-time-only equipment costs for desk, personal computer, chair are \$2,900 included in FY96 only.
12. Programming to make the CJIN background check system efficient for conducting these background checks will cost approximately \$17,000 in FY96 only.

(Continued)

Dave Lewis 2-6-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Deb Kottel
DEB KOTTEL, PRIMARY SPONSOR DATE

Fiscal Note for HB0373, as introduced

HB 373

(continued)

13. The DOJ will adopt rules to implement the bill. Current charges are \$5 for fingerprints taken by ID Bureau, \$8 for background checks on AFIS and \$24 for background checks at the FBI.
14. A new state special revenue account will be established. The revenue would go to the new account for certification of teachers. Approximately \$55,500 a year (1,500 x \$37 (5+8+24)) would be generated for background checks on the 1,500 certificates (one-half in FY96 due to January 1, 1996 date).
15. The start-up and ongoing expenses will be paid out of the statutory appropriation required in the bill with a small amount of general fund for start-up costs in FY96.

FISCAL IMPACT:

Department of Justice:

	<u>FY96</u>	<u>FY97</u>
<u>Expenditures:</u>	<u>Difference</u>	<u>Difference</u>
FTE	0.25	0.50
Personal Services	5,057	10,148
Operating Expenses	20,500	4,000
Equipment	<u>2,900</u>	<u>0</u>
Total	28,457	14,148

Funding:

General Fund (01)	707	0
State Special Revenue (02)	<u>27,750</u>	<u>55,500</u>
Total	28,457	55,500

Revenues:

Teacher Certification Fund (02)	27,750	55,500
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Net Impact:

General Fund (Cost)	(707)	(0)
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DEDICATION OF REVENUE:

- a) Are there persons or entities that benefit from this dedicated revenue that do not pay?
(Please explain)
No.
- b) What special information or other advantages exist as a result of using a state special revenue fund that could not be obtained if the revenue were allocated to the general fund?
None
- c) Is the source of revenue relevant to current use of the funds and adequate to fund the program/activity that is intended? Yes No (if no, explain)
Source of revenue is adequate to fund the new activity. It is relevant to use of funds.
- d) Does the need for this state special revenue provision still exist? Yes No (Explain)
New fund.
- e) Does the dedicated revenue affect the legislature's ability to scrutinize budgets, control expenditures, or establish priorities for state spending? (Please explain)
No
- f) Does the dedicated revenue fulfill a continuing, legislatively recognized need?
(Please explain)
Fund just established, so not a continuing need.
- g) How does the dedicated revenue provision result in accounting/auditing efficiencies or inefficiencies in your agency? (Please explain. Also, if the program/activity were general funded, could you adequately account for the program/activity?)
Could account for it in the general fund with separate revenue estimate,