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INTRODUCED BY Keith House BILL NO. 448

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING FINGERPRINTING AND BACKGROUND CHECKS OF APPLICANTS FOR A TEACHER OR SPECIALIST CERTIFICATE OR FOR AN APPLICANT FOR AN EMPLOYEE OR VOLUNTEER POSITION IN A PUBLIC SCHOOL THAT HAS SIGNIFICANT UNSUPERVISED ACCESS TO A STUDENT; AUTHORIZING THE CHIEF ADMINISTRATOR OF A PRIVATE SCHOOL TO REQUIRE FINGERPRINTING AND BACKGROUND CHECKS FOR AN APPLICANT FOR A TEACHING, SPECIALIST, EMPLOYEE OR VOLUNTEER POSITION THAT HAS SIGNIFICANT UNSUPERVISED ACCESS TO A STUDENT; 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 A RETROACTIVE APPLICABILITY DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 6] grants rulemaking authority to the department of justice for the implementation of fingerprinting and background checks for applicants for teacher and specialist certificates, noncertified employees, and volunteer positions in public schools and applicants for teaching and specialist positions, employees, and volunteer positions in private schools. At a minimum, the rules must address:

(1) a fee schedule commensurate with the actual costs associated with the fingerprinting and the background checks;

(2) the specific crimes that are relevant to a person's fitness for certification, employment, or a volunteer position. 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 6], the following definitions apply:

(1) "Chief administrator" means the chief administrative officer of a private school.

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

2 (3) "Employee" means a person working in a noncertified position who has significant unsupervised
3 access to a student in connection with the person's position.

4 (4) "Superintendent" means the superintendent of public instruction.

5 (5) "Volunteer" means a person in an appointive position who has significant unsupervised access
6 to a student in connection with the person's assignment.

7

8 **NEW SECTION. Section 2. Fingerprinting and background check for public school teacher or**
9 **specialist certificate -- certain employees and volunteers -- affidavit -- right to challenge.** (1) A person
10 applying for a teacher or specialist certificate at a public school must be fingerprinted, and a background
11 check must be made of local, state, and national criminal history records to disclose a criminal record. A
12 fingerprint card and an affidavit, as provided in subsection (3), must be submitted to the superintendent
13 at the time of application for certification. The superintendent shall forward the fingerprint card to the
14 department.

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

17 (3) (a) On a form provided by the superintendent and notarized, an applicant under subsection (1)
18 shall certify whether the applicant is charged with or has ever been convicted or adjudicated of a crime
19 involving arson, harm to children, or physical or sexual violence against any person in this state or in
20 another state.

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

24 (4) The applicant under subsection (1) may obtain a copy of the applicant's criminal history record
25 and may challenge the accuracy and completeness of the information contained in the record in accordance
26 with 44-5-215.

27 (5) A school district superintendent shall require an applicant for an employee position or an
28 applicant for a volunteer position to submit to a fingerprinting and a criminal background check as a
29 condition for employment or appointment and, where reasonable cause exists, may require an existing
30 employee or volunteer to submit to a criminal background check.

1 (6) The applicant under subsection (5) must receive written notice that the background check has
2 been requested.

3 (7) (a) On a form provided by the district superintendent and notarized, an applicant under
4 subsection (5) shall certify whether the applicant is charged with or has ever been convicted or adjudicated
5 of a crime involving arson, harm to children, or physical or sexual violence against any person in this state
6 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 (7)(a), the district superintendent shall consider the results of
9 the background check in evaluating the fitness of the applicant for an employee or volunteer position.

10 (8) The district superintendent shall require an applicant under subsection (5) to pay the costs of
11 fingerprinting and the background check as a condition for consideration for employment or appointment
12 if a copy of the background check is provided to the district or school considering employment or
13 appointment of the applicant and if the applicant:

14 (a) has passed an initial review;

15 (b) is one of a pool of no more than five candidates for a position; and

16 (c) has not been the subject of a criminal background check of similar scope that was requested
17 by the potential employer or the board of public education during the preceding 2 years.

18
19 **NEW SECTION. Section 3. Fingerprinting and background check authorized for private school**
20 **teacher, specialist, employee, or volunteer.** (1) The chief administrator at a private school may require a
21 person applying for a teaching or specialist position or an applicant for an employee or volunteer position
22 at a private school to submit to a fingerprinting and a criminal background check as a condition for
23 employment or appointment and, where reasonable cause exists, may require an existing employee or
24 volunteer to submit to a criminal background check.

25 (2) The applicant must receive written notice that the background check has been requested.

26 (3) (a) On a form provided by the chief administrator, an applicant shall certify whether the
27 applicant is charged with or has ever been convicted or adjudicated of a crime involving arson, harm to
28 children, or physical or sexual violence against any person in this state or in another state.

29 (b) If the background check reveals that the applicant is charged with or has been convicted or
30 adjudicated of a crime listed in subsection (3)(a), the chief administrator may consider the results of the

1 background check in evaluating the fitness of the applicant for employment or for a volunteer position.

2 (4) The chief administrator may require an applicant to pay the costs of fingerprinting and the
3 background check as a condition for consideration for employment or appointment if a copy of the
4 background check is provided to the district or school considering employment or appointment of the
5 applicant and if the applicant:

6 (a) has passed an initial review;

7 (b) is one of a pool of no more than five candidates for a position; and

8 (c) has not been the subject of a criminal background check of similar scope that was requested
9 by the potential employer or the board of public education during the preceding 2 years.

10
11 **NEW SECTION. Section 4. Department to conduct background check -- release of information.**

12 (1) Pursuant to [sections 2 and 3], the department shall conduct the background check in compliance with
13 Public Law 92-544. The department shall make a reasonable effort to respond to the request for the
14 background check within 15 business days. If the criminal history record is incomplete, the department
15 shall make a reasonable effort to conduct research in order to complete the record.

16 (2) The department shall notify the superintendent, district superintendent, or chief administrator
17 of the results of the background check. Information regarding a conviction or a pending indictment for an
18 offense listed in [sections 2(3)(a), 2(7)(a), and 3(3)(a)] must be forwarded to the superintendent, district
19 superintendent, or chief administrator. An applicant's full criminal history record may not be released to
20 the superintendent, a district superintendent, or a chief administrator.

21
22 **NEW SECTION. Section 5. Fees -- special revenue account.** (1) The fee charged for fingerprinting
23 and conducting the background check pursuant to [sections 2 and 3] may not exceed the actual cost of
24 the procedures.

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

29
30 **NEW SECTION. Section 6. Rulemaking authority.** The department, in consultation with the

1 superintendent, shall adopt rules implementing [sections 1, 2, 4, and 5].

2

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

4 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory
5 appropriation is an appropriation made by permanent law that authorizes spending by a state agency
6 without the need for a biennial legislative appropriation or budget amendment.

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

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

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

12 (3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105;
13 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706;
14 15-30-195; 15-31-702; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411;
15 16-11-308; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 17-6-101; 17-6-201; 17-7-304;
16 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-17-301; 19-18-512; 19-18-513; 19-18-606; 19-19-205;
17 19-19-305; 19-19-506; section 5; 20-8-107; 20-8-111; 20-9-361; 20-26-1503; 23-5-136; 23-5-306;
18 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 32-1-537; 37-43-204; 37-51-501;
19 39-71-503; 39-71-907; 39-71-2321; 39-71-2504; 44-12-206; 44-13-102; 50-4-623; 50-5-232;
20 50-40-206; 53-6-150; 53-6-703; 53-24-206; 60-2-220; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214;
21 75-11-313; 76-12-123; 80-2-103; 80-2-222; 80-4-416; 81-5-111; 82-11-136; 82-11-161; 85-1-220;
22 85-20-402; 90-3-301; 90-4-215; 90-6-331; 90-7-220; 90-7-221; and 90-9-306.

23 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,
24 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued
25 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of
26 Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as
27 determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the
28 bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec.
29 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for
30 supplemental benefit; and pursuant to sec. 7(2), Ch. 29, L. 1995, the inclusion of 15-30-195 terminates

1 July 1, 2001.)"

2

3 NEW SECTION. **Section 8. Codification instruction.** [Sections 1 through 6] are intended to be
4 codified as an integral part of Title 20, chapter 4, part 1, and the provisions of Title 20, chapter 4, part 1,
5 apply to [sections 1 through 6].

6

7 NEW SECTION. **Section 9. Effective date -- retroactive applicability.** [This act] is effective on
8 passage and approval and applies retroactively, within the meaning of 1-2-109, to certificates issued on
9 or after January 1, 1997.

10

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0448, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act requiring fingerprinting and background checks of applicants for a teacher or specialist certificate. Set up a special revenue account and provides a statutory appropriation.

ASSUMPTIONS:

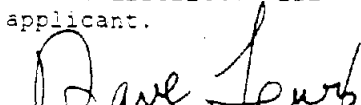
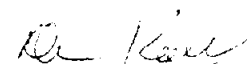
1. The bill requires the Department of Justice to run approximately 1,550 (per OPI) records checks on teachers seeking certification each year in the State of Montana. The bill also requires records checks on volunteers estimated at 6,000 in FY98 and 3,000 in FY99 (assuming approximately 1 volunteer for 30 students - 170,000 students).
2. The revenue generated will be placed in a state special revenue account per the bill. The Identification Bureau's fingerprint based record check is \$8 a record. Revenue are projected to be \$60,400 in FY98 ((1,550 + 6,000) x \$8) and \$36,400 ((1,550 + 3,000) x \$8) in FY99. Fee will be paid by applicant.
3. To handle the increased record checks, the Department will need a .50 FTE grade 9 position at a cost of \$12,332 per year (21,964 - 2,700 insurance = 19,264 x .50 = 9,632 + 2,700 = 12,332). Record checks cost \$3 each to run through the automated fingerprint information system (AFIS). To process the 7,550 checks in FY98 will cost \$22,650 and \$13,650 in FY99 to process the 4,550 checks. Additional operating costs of \$7,840 each year are needed for computer network charges, supplies, communications, travel, rent, and miscellaneous. Finally, equipment charges of \$9,200 is needed in FY98 for a computer, office equipment such as a chair and file cabinets, printer and fax machine.
4. OPI will amend the application form for a teaching certificate to include criminal history statement.
5. The time frame for the issuance of teaching and specialist certificates will increase by 4-6 weeks to allow for background checks on the criminal history of the applicant.

FISCAL IMPACT:

<u>Expenditures:</u>	<u>FY98</u> <u>Difference</u>	<u>FY99</u> <u>Difference</u>
FTE	0.50	0.50
Personal Services	12,332	12,332
Operating Expenses	30,490	21,490
Equipment	8,200	0
Total	51,022	33,822
 <u>Funding:</u>		
State special revenue	51,022	33,822
 <u>Revenues:</u>		
Special State Revenue (New)	60,400	36,400
 <u>Net impact to fund balance (revenue minus expenditure):</u>		
Special State Revenue (New)	9,378	2,578

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

School districts will assess the fees for fingerprint and background checks to the applicant.

 2-11-97
  2/10/97
 DAVID LEWIS, BUDGET DIRECTOR DATE DEB KOTTEL, PRIMARY SPONSOR DATE
 Office of Budget and Program Planning

TECHNICAL NOTES:

1. The FTE has to be hired and trained immediately to conduct the record checks. There is no money in the new state special revenue account until the record checks are conducted. Therefore, there will be a cash flow problem in the account because expenses will be incurred before the revenue is generated. The Department suggests that FY98 expenses be paid out of the general fund to build up the cash in the new state special account. Then in FY99, the expenses could be paid out of the state special revenue account.
2. The bill appears to allow discretion to some groups, such as private schools, conducting criminal record checks. If not mandatory, the FBI will not allow a fingerprint card check through their system making multi state and federal records impossible to get.
3. Records checks cannot be returned to a non-state agency. Thus individual schools could not receive a detailed criminal history response. As presented, the FBI would return fingerprint check requests to the Identification Bureau of Justice and we would have to notify each requester that a criminal record exists in another state(s). This process is not currently conducted by the ID Bureau and would create additional duties and responsibilities.
4. Montana can comply with the response of background check within 15 days, but the FBI multi-state check usually takes 6 to 8 weeks.
5. Bill creates an information dissemination procedure that is not consistent with existing work flow at the Identification Bureau.
6. Section 2 of HB 448 refers to "a person applying for a teacher or specialist certificate at a public school." The individual applies for a certificate from the Office of Public Instruction, not a public school. The section needs to be amended to clarify whether the law applies to an applicant for a certificate or a teacher or specialist position.

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 ___X No (if no, explain)

Cash flow problem. Expenses incurred immediately but revenue not generated until record check conducted. Will need general fund loan to get program operational.

- d) Does the need for this state special revenue provision still exist? ___ Yes ___X No (Explain)

Revenue could be put into the General Fund; no state special fund needed since a separate responsibility center could be used to account for revenues and expenditures.

- e) Does the dedicated revenue affect the legislature's ability to scrutinize budgets, control expenditures, or establish priorities for state spending? (Please explain)

No, provided a separate responsibility center is utilized to account for revenues and expenditures.

- f) Does the dedicated revenue fulfill a continuing, legislatively recognized need? (Please explain)

No

- 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?)

It results in no accounting efficiencies. Activity can be tracked in general fund through use of object of revenue and revenue estimate.