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HB 18-1339

**REVISED
FISCAL NOTE**

(replaces fiscal note dated March 26, 2018)

Drafting Number: LLS 18-1162
Prime Sponsors: Rep. Rankin
Sen. Lambert

Date: April 2, 2018
Bill Status: Senate Appropriations
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Bill Topic: BACKGROUND CHECKS EMPLOYEES ACCESS FEDERAL TAX INFO

Summary of Fiscal Impact:

| | |
|---|--|
| <input checked="" type="checkbox"/> State Revenue | <input checked="" type="checkbox"/> TABOR Refund |
| <input checked="" type="checkbox"/> State Expenditure | <input checked="" type="checkbox"/> Local Government |
| <input type="checkbox"/> State Transfer | <input type="checkbox"/> Statutory Public Entity |

This bill requires fingerprint-based background checks on every applicant, contractor, employee, or other individual who has access to federal tax information received from the federal government. This bill increases state revenue and expenditures and local government costs on an ongoing basis.

Appropriation Summary: For FY 2018-19, this bill requires an appropriation of \$231,887 to multiple state agencies.

Fiscal Note Status: This revised fiscal note reflects the reengrossed bill. This fiscal note has also been revised to reflect new information.

**Table 1
State Fiscal Impacts Under HB 18-1339**

| | | FY 2018-19 | FY 2019-20 |
|----------------------|------------------------|-------------------|-------------------|
| Revenue | Cash Funds | \$157,092 | \$22,673 |
| | Total | \$157,092 | \$22,673 |
| Expenditures* | General Fund | \$189,140 | \$27,277 |
| | Cash Funds | \$129,473 | \$19,338 |
| | Centrally Appropriated | \$13,125 | \$2,119 |
| | Total | \$331,738 | \$48,734 |
| | Total FTE | 0.6 FTE | 0.1 FTE |
| Transfers | | - | - |
| TABOR Refund | General Fund | \$117,322 | \$16,933 |

* Of the expenditure amount shown for FY 2018-19, \$181,880 requires an appropriation. See the State Appropriations Section.

Summary of Legislation

In accordance with federal rule (IRS publication 1075), this bill requires a fingerprint-based background check for every applicant, contractor, employee, or other individual who has access to federal tax information (FTI) received from the federal government. Each state agency must use the results of the background check to investigate and determine if the applicant, contractor, employee, or other individual is qualified to have access to FTI and to deny access for anyone not qualified. The state agency must pay for the cost of the background check, which must be conducted in the year this bill becomes law, every ten years thereafter, and when filling a position that has access to FTI. State agencies may use a name-based background check for any applicant, contractor, employee, or other individual who has twice submitted a fingerprint-based background check and whose fingerprints are unclassifiable.

Counties. A state agency that receives FTI and shares it with a county department administering public assistance, child support services, or other programs may authorize and require the county department by written agreement to collect fingerprints on all applicants, contractors, employees, or other individuals. Similar to the state, the county must use the background check information to determine if the applicant, contractor, employee, or other individual is qualified to have access to FTI. The county is required to pay the cost of the fingerprint background check.

State agencies sharing FTI. State agencies that receive FTI and share that information with another state agency may authorize the agency in which the information is shared by written agreement to conduct fingerprint-based background checks for every applicant, contractor, employee, or other individual who has access to FTI. State agencies may not share FTI with another state agency that does not comply with these requirements.

Background and Assumptions

This analysis estimates 3,977 background checks will be needed in FY 2018-19 and every ten years thereafter. Using the statewide vacancy rate of 14.4% it is estimated that approximately 574 background checks will be needed in FY 2019-20 and each year when background checks are only required as a result of employee or contractor turnover. Table 2 shows the breakdown of background checks by state agency and Table 5 shows the fingerprint background check cost breakdown by agency. It is assumed that expenditures can be accomplished within existing appropriations for institutions of Higher Education and for state agencies with costs of less than \$5,000.

It is also assumed that staff will be given time off to have their fingerprints taken by a local law enforcement agency, which will cost \$10 and be paid by the state agency. These would then be submitted to the Colorado Bureau of Investigation (CBI) for a CBI/FBI background check, which will cost \$39.50 and be paid by the state agency. Should a state agency elect to utilize a different service for fingerprinting or the background check, additional appropriations can be requested through the annual budget process, if required.

Table 2
Estimated Background Checks by State Agency Under HB 18-1339

| | Background checks needed FY 2018-19 | Background checks needed FY 2019-20 |
|---|---|---|
| Higher Education Institutions | 1,615 | 233 |
| Department of Revenue | 840 | 121 |
| Department of Human Services | 740 | 107 |
| Department of Personnel and Administration | 235 | 34 |
| Department of Labor and Employment | 150 | 22 |
| Department of Local Affairs | 135 | 19 |
| Office of Information Technology | 125 | 18 |
| Judicial Department | 30 | 4 |
| State Auditor | 30 | 4 |
| Department of Public Health and Environment | 25 | 4 |
| Department of Regulatory Agencies | 18 | 3 |
| Department of Higher Education | 15 | 2 |
| Department of Education | 13 | 2 |
| Department of Transportation | 6 | 1 |
| Total State Agency Background Checks | 3,977 | 574 |

State Revenue

This bill increases state revenue from fingerprint background checks by at least \$157,092 beginning in FY 2018-19 and every ten years thereafter. Assuming the statewide employee turnover rate of 14.4 percent, state revenue from fingerprint background checks is increased by at least \$22,673 in FY 2019-20 and other years where background checks are only required in the event of a job opening.

Fee impact on Fingerprint-based background checks. Colorado law requires legislative service agency review of measures which create or increase any fee collected by a state agency. Table 3 estimates the fee impact of this bill.

Table 3
Fee Impact on HB 18-1339

| Fiscal Year | Type of Fee | Current Fee | Number Affected | Total Fee Impact |
|-------------|-------------------------------------|----------------|--------------------|---------------------|
| FY 2018-19 | Fingerprint-based background checks | \$39.50 | 3,977 | \$157,092 |
| FY 2019-20 | Fingerprint-based background checks | \$39.50 | 574 | \$22,673 |

TABOR Refund

This bill increases state cash fund revenue from background check fees from which will increase the amount of money required to be refunded under TABOR by \$117,322 in FY 2018-19 and \$16,933 in FY 2019-20. Only \$29.50 of the \$39.50 background fee check revenue is subject to TABOR as the rest is passed through to the federal government.

Since the bill increases the TABOR refund obligation without a corresponding change in General Fund revenue, the amount of money available in the General Fund for the budget will decrease by an identical amount. State revenue subject to TABOR is not estimated for years beyond FY 2019-20.

State Expenditures

For FY 2018-19, this bill increases state expenditures by \$331,738, including \$134,873 and 0.6 FTE for the Department of Public Safety and \$196,865 for multiple state agencies. For FY 2019-20, this bill increases state expenditures by \$48,734, including \$20,318 and 0.1 FTE in for the Department of Public Safety and \$28,416 for other state agencies. These impacts are shown in Tables 4 and 5 and discussed below.

**Table 4
Expenditures Under HB 18-1339**

| | FY 2018-19 | FY 2019-20 |
|---|-------------------|-------------------|
| Department of Public Safety | | |
| Personal Services | \$38,475 | \$6,082 |
| Operating Expenses and Capital Outlay Costs | \$5,273 | - |
| Background Check Related Costs | \$38,230 | \$5,229 |
| Federal Background Check Pass Through | \$39,770 | \$6,888 |
| Centrally Appropriated Costs* | \$13,125 | \$2,119 |
| FTE – Personal Services | 0.6 FTE | 0.1 FTE |
| Total Cost | \$134,873 | \$20,318 |
| Total FTE | 0.6 FTE | 0.1 FTE |

* Centrally appropriated costs are not included in the bill's appropriation.

**Table 5
 State Agency Background Check Expenditures Under HB 18-1339**

| | FY 2018-19 | FY 2019-20 |
|---|-------------------|-------------------|
| Department of Revenue | \$41,580 | \$5,990 |
| Department of Human Services | \$36,630 | \$5,297 |
| Department of Personnel and Administration | \$11,633 | \$1,683 |
| Department of Labor and Employment | \$7,425 | \$1,089 |
| Department of Local Affairs* | \$6,683 | \$941 |
| Office of Information Technology | \$6,188 | \$891 |
| Higher Education Institutions* | \$79,943 | \$11,534 |
| Judicial Department | \$1,485 | \$198 |
| State Auditor | \$1,485 | \$198 |
| Department of Public Health and Environment | \$1,238 | \$198 |
| Department of Regulatory Agencies | \$891 | \$149 |
| Department of Higher Education | \$743 | \$99 |
| Department of Education | \$644 | \$99 |
| Department of Transportation | \$297 | \$50 |
| Total Background Check Expenditures | \$196,865 | \$28,416 |

* It is assumed that costs for the institutions of Higher Education and for state agencies below \$5,000 can be accomplished within existing appropriations.

Colorado Bureau of Investigation. This bill increases workload for the Colorado Bureau of Investigation in the Department of Public Safety to conduct the fingerprint-based background checks shown in Table 2. This requires 0.6 FTE for a fingerprint technician and a data specialist in FY 2018-19 and every ten years to conduct fingerprint background checks on all state employees and contractors with access to FTI. This is based on current workload amounts in which a fingerprint technician can process 8,250 background checks per year and a data specialist can process 16,500. For FY 2019-20 and each year when background checks are only required in the event of employee turnover, 0.1 FTE is required.

State agencies. Beginning in FY 2018-19 and every ten years thereafter, state expenditures increase for fingerprint and background checks as shown in Table 5. This assumes a cost of \$49.50 per employee per background check. Of this \$10 is for fingerprinting and \$39.50 is for the CBI background check. Costs in FY 2018-19 and other years are also shown in Table 5. For FY 2018-19, it is assumed that state agencies with impacts of less than \$5,000 and the institutions of Higher Education can accomplish this cost within existing appropriations.

Workload for these state agencies increases to review the results of fingerprint-based background checks to determine if employees should be allowed to have access to FTI. Workload further increases to the extent that access is denied to reassign the employee or fill an open position if the employee is terminated. Workload may also increase to update employee recruitment and hiring policies, procedures, and timelines related to positions with access to FTI. It is assumed this workload can be handled within existing appropriations and that agencies will request additional appropriations, if needed, for additional background checks, staff to review the results of the background check, or fingerprinting equipment through the annual budget process.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance and supplemental employee retirement payments, are estimated to be \$13,125 in FY 2018-19 and \$2,119 in FY 2019-20.

Local Government

To the extent that written agreements requiring applicants, contractors, employees, or other individuals with access to FTI provided by a state agency and shared with the county are entered into, county costs will increase to pay for fingerprinting and background checks. At the time of this writing, 700 county department of human services employees were known to need fingerprint background checks for a cost of \$34,650. Because public assistance and child support services programs are state programs run by each county, one-time FY 2019-20 state funds to cover this cost have been included in the Department of Human Services appropriation and will either be paid directly by the department or dispersed to the counties. Beginning in FY 2019-20, counties will be responsible for these costs. Workload also increases to review the results of each background check to determine if the employee should be able to access FTI. Workload may also increase to reassign the employee or fill an open position if the employee is terminated as a result of the background check and to update hiring policies and procedures. These impacts have not been estimated.

Effective Date

The bill takes effect July 1, 2018.

State Appropriations

This bill requires appropriations totaling \$231,887 to multiple state agencies.

For FY 2018-19, this bill requires an appropriation of \$121,748 and an allocation of 0.6 FTE to the Department of Public Safety from the Identification Unit Fund, of which \$39,770 is passed through to the federal government for FBI background checks.

For FY 2018-19, this bill also requires the following state agency appropriations.

- \$41,580 to the Department of Revenue from the General Fund;
- \$36,630 to the Department of Human Services from the General Fund;
- \$11,633 to the Department of Personnel and Administration from the General Fund;
- \$7,425 to the Department of Labor and Employment from the Employment Support Cash Fund;
- \$6,683 to the Department of Local Affairs from the General Fund; and
- \$6,188 to the Office of Information Technology from the General Fund.

Departmental Difference

The Department of Revenue estimates that it will have General Fund costs of \$187,353 and 1.5 FTE in FY 2018-19 and \$133,506 and 1.5 FTE in FY 2019-20 to implement this bill. This is for staff and equipment to collect, process, and evaluate fingerprint background checks on 840 department employees. Legal expenses, training, and staff time to support human resource decisions resulting from the background checks are also included. However, this fiscal note does not include these costs because this analysis assumes all state agencies will be able to implement this bill with fingerprints being taken by local law enforcement agencies and that the review of the CBI background check and any necessary human resources decisions can be done by staff within existing appropriations.

State and Local Government Contacts

All State Agencies