

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**May 22, 2009**

**TO:** Honorable Dan Branch, Chair, House Committee on Higher Education

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: SB2046** by Williams (relating to requiring criminal history background checks for employees of public institutions of higher education.), **Committee Report 2nd House, Substituted**

**Estimated Two-year Net Impact to General Revenue Related Funds** for SB2046, Committee Report 2nd House, Substituted: a positive impact of \$3,939,128 through the biennium ending August 31, 2011.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five-Year Impact:**

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2010	\$1,967,543
2011	\$1,971,585
2012	\$1,975,050
2013	\$1,975,050
2014	\$1,975,050

**All Funds, Five-Year Impact:**

Fiscal Year	Probable Revenue Gain from <i>General Revenue Fund</i> 1	Probable Revenue (Loss) from <i>General Revenue Fund</i> 1
2010	\$3,959,918	(\$1,992,375)
2011	\$3,963,960	(\$1,992,375)
2012	\$3,967,425	(\$1,992,375)
2013	\$3,967,425	(\$1,992,375)
2014	\$3,967,425	(\$1,992,375)

**Fiscal Analysis**

Under provisions of the bill, institutions of higher education would be required to subscribe to the criminal history clearing house as provided by Government Code 411.0845 or obtain criminal history record information from a private vendor that offers comparable services, and would be allowed to obtain criminal history record information that relates to a specific applicant for employment or current employee.

The bill requires institutions to condition offers of employment on obtaining a criminal history record and to reject applicants who fail to consent to the background check or provide finger prints needed to obtain the information.

Applicants would be rejected if the information obtained indicates conviction of a felony of the second

degree, a felony of the first degree, a capital felony or an offense for which registration as a sex offender is required. Applicants whose records indicate other convictions or arrests could be considered for employment after an analysis is conducted as outlined in the bill and could be employed if recommended by the person in charge of the department or division to which the applicant has applied and approved by the chief executive officer of the institution.

Institutions would be required to conduct background checks of employees within the institution for promotions and transfers, and otherwise as necessary to maintain the integrity of the institution's faculty and staff. Institutions would require that every employee provide the information necessary to conduct background checks and would be allowed to terminate the employment of anyone who fails to provide it.

Institutions would be required to reject applicants and would be allowed take disciplinary action against employees who knowingly fail to provide or falsify criminal history record information. Applicants would be required by the institutions to report arrests subsequent to submission of an application and employees would be required by the institution to report arrests, charges, or convictions for offenses other than misdemeanor traffic offenses punishable by a fine only as early as possible.

The bill would repeal section 51.215 of Education Code.

The Act would take effect September 1, 2009.

### **Methodology**

Calculations assume that implementation of the bill would require criminal record history information (CHRI) checks that would include FBI fingerprint-based checks be performed in each fiscal year. It is not known whether institutions would use DPS or private vendors to obtain the criminal history background checks. For the purpose of this fiscal note, it is assumed that institutions of higher education would subscribe to the criminal history clearing house maintained by the Department of Public Safety (DPS). To the extent that institutions of higher education chose to use a private vendor, rather than DPS, the revenue gain would be reduced proportionally.

Calculations assume 115,500 criminal history checks would be submitted per fiscal year, based on an estimated 330,000 current employees, a 15% new hire rate (49,500) and a 15% promotions and transfers rate (49,500) in addition to an estimated 16,500 checks to maintain integrity of faculty and staff. Calculations also assume that 3.5% of the total records retained by DPS will be updated per year. The number of records retained by DPS would total 115,500 in fiscal year 2010, 231,000 in fiscal year 2011 and 330,000 in subsequent fiscal years.

Both DPS and Federal Bureau of Investigation (FBI) CHRI checks would be required. DPS CHRI checks would generate \$15.00 each. FBI CHRI checks would generate \$17.25 each. The DPS FBI processing fee would generate \$2.00 each, while updates would generate \$1.00 each.

Fees assessed by the DPS would result in a total increase in revenue of \$3,959,918 in fiscal year 2010, \$3,963,960 in fiscal year 2011 and \$3,967,425 per year in fiscal years 2011 through 2014. However, a portion of the DPS fee revenue (\$1,992,375 in fiscal years 2010 through 2014) would be returned to the FBI for professional services. It is assumed that other costs to DPS associated with the background checks can be absorbed within available resources.

It is assumed that provisions of the bill will be implemented by institutions of higher education within existing resources.

### **Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 405 Department of Public Safety, 710 Texas A&M University System Administrative

and General Offices, 720 The University of Texas System Administration, 758 Texas State University System, 769 University of North Texas System Administration, 781 Higher Education Coordinating Board

**LBB Staff:** JOB, KK, ESi, RT, SSh