

Department of Planning and Budget

2017 Fiscal Impact Statement

1. Bill Number: SB1293-S1

House of Origin ☐ Introduced ☒ Substitute ☐ Engrossed
Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. Patron: McDougale

3. Committee: General Laws and Technology

4. Title: Department of Human Resources Management; criminal background checks; state agency positions designated as sensitive; agencies to report to the Department.

5. Summary: Requires each state agency to continue to record in the Personnel Management Information System (PMIS) positions that it has designated as sensitive to ensure that the Department of Human Resources Management has a list of all such positions. The bill clarifies who would be subject to a criminal background investigation in a sensitive position. The bill expands the definition of sensitive position to include those positions (i) responsible for the health, safety, and welfare of citizens or the protection of critical infrastructures; (ii) that have access to sensitive information, including access to Federal Tax Information in approved exchange agreements with the Internal Revenue Service or Social Security Administration; and (iii) that are otherwise required by state or federal law to be designated as sensitive. The bill contains an emergency clause.

6. Budget Amendment Necessary: No.

7. Fiscal Impact Estimates:

7a. Expenditure Impact: Preliminary. See Item 8 below.

7b. Revenue Impact: According to the Department of Taxation (TAX), this bill is not expected to have a revenue impact. However, if state agencies were denied access to Federal Tax Information (FTI) as a result of the failure to meet background check requirements, there could be a revenue loss. TAX relies heavily on federal tax information in conducting audits of state tax returns. If TAX could no longer access this information, TAX estimates the Commonwealth could lose more than \$120 million in general fund revenue annually. The Department of Social Services ("DSS") and the Virginia Employment Commission ("VEC") also rely on FTI to administer their programs. The loss of access to FTI by these agencies could impact unemployment compensation grant funding or child support payments obtained through the U.S. Treasury Offset Program.

8. Fiscal Implications: Various agencies have provided updated estimates on the number of positions that would be declared sensitive due to having access to Federal Tax Information and therefore require a criminal background investigation on the individual filling the

position. Also, the Virginia State Police has advised that the cost for a criminal background check is \$25 per check (not the \$37 reported in the previous fiscal impact statement). It should be noted that if all declared sensitive positions are mandated to have the person filling the position undergo a criminal background investigation, the number of investigations would increase and at least one agency states a fingerprint scanner would be required.

In addition, the substitute adds positions impacted by approved exchange agreements with the Social Security Administration. It is unclear the extent to which the substitute may impact the potential statewide fiscal impact since the number of agencies having approved exchange agreements is unknown at this time. To the extent agencies have approved agreements with the Social Security Administration, the number of positions requiring background checks may increase.

It is estimated that IRS Publication 1075 would require at least 3,567 positions in the first year to be identified as “sensitive” and require those individuals filling the position to undergo the FBI background investigation. The estimated cost in the first fiscal year for these investigations is \$89,175 (3,567 background investigations at \$25 each). These agencies estimated an additional 665 investigations would be required each year thereafter for newly hired staff and seasonal staff/contractors with a cost of \$16,625 (665 at \$25 each).

According to the Department of State Police, the bill is not expected to have a fiscal impact unless the funding provided in the Governor’s introduced bill (House Bill 1500/Senate Bill 900) for additional background investigation staff is removed.

- 9. Specific Agency or Political Subdivisions Affected:** Department of Taxation, Virginia Employment Commission, Department of Social Services, Department of Human Resource Management, Department of State Police, Department of Labor and Industry, Department of Health Professions, and Department of Accounts.

10. Technical Amendment Necessary: No.

11. Other Comments:

Item 475, paragraph W, of HB 1500/SB 900 includes \$1 million the first year and \$3 million the second year for the potential state agency cost of legislative or regulator changes that could impact personnel practices of state government, including mandated background checks. The estimated costs identified in Item 8 above are included in this funding.

SB1293-H1 and HB2391 are identical bills. HB1634 is similar to those bills.

Existing Authority to Conduct Background Investigations

Under existing law (§ 2.2-1201.1), the Department of Human Resource Management (DHRM) is required to develop a statewide personnel policy for designating positions within state agencies as sensitive. Such policy shall provide for a state agency to require any final candidate for a position that has been designated as sensitive to submit to criminal

background checks, including the exchange of fingerprinting and criminal history information with the FBI. Under current law, “sensitive positions” are defined as those positions generally described as directly responsible for the health, safety and welfare of the general populace or protection of critical infrastructures.

Federal Tax Information (FTI) Safeguarding Requirements

IRS Publication 1075 dictates security requirements that federal, state, and local agencies must meet in order to receive FTI. In September 2016, the IRS released an updated Publication 1075, which imposes additional requirements on agencies that receive FTI. These requirements include a mandate that, at a minimum, the agency review FBI fingerprint results to identify possibility suitability issues for all individuals who have access to FTI.

Under Publication 1075, fingerprinting must be conducted by the states using the FBI database. The authority for the FBI to exchange background check information with the states is Public Law ("P.L.") 92-544, which provides that the FBI may exchange such information with state and local officials *if authorized by state statute and approved by the U.S. Attorney General*. Under existing Virginia law, state agencies are permitted to conduct background investigations through the FBI’s Central Criminal Records Exchange for final candidates for positions that are designated as sensitive. Because positions with access to federal tax information can be designated as “sensitive” under Virginia law, authority currently exists for state agencies to conduct the required background checks on final candidates for such positions. However, existing law does not authorize state agencies to conduct such background checks on existing employees and contractors in sensitive positions.

Importance of FTI Access

Access to FTI is very important for several Virginia agencies. TAX relies heavily on federal tax information in conducting audits of state tax returns. The federal information is used to identify taxpayers who failed to file Virginia income tax returns and to make adjustments to Virginia income tax returns based upon federal audit information. The Department receives approximately \$120 million in compliance revenue from audits conducted using FTI. The failure to meet the federal safeguarding requirements would result in the loss of this revenue.

The Department of Social Services (DSS) uses FTI to locate and collect payments from parents who owe child support. DSS certifies past due child support debts to the IRS for parents who have failed to pay their child support obligations. The IRS then intercepts any federal tax refunds that may be due to such parents and forwards the funds to Virginia. The intercepted money goes directly to the custodial parent or to the State to reimburse for the Temporary Aid to Needy Families benefits paid to the custodial parent. A substantial amount of the child support collected by DSS comes from such refund offsets. DSS also obtains address information from the IRS, which is used to help locate parents who owe child support. Under federal law, this information is also considered FTI subject to the safeguarding requirements set forth in IRS Publication 1075.

Virginia Employment Commission (VEC) is required under both state law and federal administrative guidance to participate in the U.S. Treasury Offset Program. Such participation is a requirement of receiving grant funding used to administer the unemployment compensation program. Information received through the Treasury Offset Program is considered federal tax information that is subject to the safeguarding requirements set forth in IRS Publication 1075. The failure to meet these requirements could result in the loss of substantial grant funding.

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