

Department of Planning and Budget 2017 Fiscal Impact Statement

1. Bill Number: SB1293

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

2. Patron: McDougle

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 create and annually update a list of the positions that it has designated as sensitive and submit the list to the Department of Human Resources Management by July 1 of each year. The bill clarifies that a state agency may require any employee, contractor, or final candidate for employment in a position that has been designated as sensitive to be subject to a criminal background investigation. 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 information obtained from the Internal Revenue Service; 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: The fiscal impact of this proposal has yet to be determined. Various agencies have been contacted to provide estimates of how many positions would be identified as sensitive and be mandated to have the individual filling the position undergo a criminal background investigation.

At this point it is estimated that IRS Publication 1075 would require at least 3,563 positions statewide to be deemed “sensitive” and therefore require those individuals filling the position to undergo the FBI background investigation. At a cost of \$37 per investigation, the estimated first year cost would be \$131,831. The second year cost is expected to be considerably lower as only newly hired staff and seasonal staff/contractors are expected to need the background check. The second year estimated number of FBI background investigations is 710, with an estimated cost of \$26,270.

9. Specific Agency or Political Subdivisions Affected:

Department of Taxation
Virginia Employment Commission
Department of Social Services
Department of Human Resource Management
Virginia State Police

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.

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.