

Department of Legislative Services
 Maryland General Assembly
 2016 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 164

(Chair, Appropriations Committee)(By Request -
 Departmental - Comptroller)

Appropriations

Finance

**State Personnel Management System - Background Investigation and Criminal
 History Records Check - Prospective and Current Employees**

This departmental bill authorizes an appointing authority to require a prospective or current employee in a position in the State Personnel Management System (SPMS) involving access to confidential or sensitive federal tax information to provide information for a background investigation, including the prospective or current employee’s address, employment, and education history spanning back at least five years. An appointing authority may also request a State and national criminal history records check (CHRC) from the Criminal Justice Information System (CJIS) Central Repository of the Department of Public Safety and Correctional Services (DPSCS).

The bill takes effect July 1, 2016.

Fiscal Summary

State Effect: General fund expenditures for the Comptroller’s Office increase by \$92,300 in FY 2017, to cover the cost of CHRCs and purchase two fingerprinting machines. Future year estimates assume fewer CHRCs are necessary, annual maintenance, and no change in applicable fees. The Department of Labor, Licensing, and Regulation (DLLR) can handle any additional CHRCs with existing budgeted resources. The bill protects against the Comptroller’s Office losing access to federal tax information for enforcement purposes by ensuring that Maryland law conforms to forthcoming changes in federal guidelines.

(in dollars)	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	92,300	21,700	21,700	21,700	21,700
Net Effect	(\$92,300)	(\$21,700)	(\$21,700)	(\$21,700)	(\$21,700)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: The Comptroller's Office has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary: When applying for a CHRC, the appointing authority must submit specified fees and two complete sets of fingerprints to the CJIS Central Repository. The CJIS Central Repository must forward the results to the appointing authority and the prospective or current employee. A CHRC is confidential, may not be redisseminated, and may be used only for specified employment purposes. If criminal history record information is reported to the CJIS Central Repository after the initial CHRC, the CJIS Central Repository must provide a revised printed statement of the prospective or current employee's criminal history record to the appointing authority. A prospective or current employee may contest the results of the CHRC. A prospective or current employee who refuses to comply with or fails the background investigation or CHRC is deemed unqualified for employment and, if a current employee, subject to disciplinary action. The Secretary of Budget and Management is authorized to adopt implementing regulations, guidelines, and policies.

Current Law: An appointing authority within SPMS may request, for a prospective employee or for a current employee that is being recommended for a transfer, promotion, or reassignment, a CHRC from the CJIS Central Repository. When applying for a CHRC, the appointing authority must submit specified fees and two complete sets of fingerprints to the CJIS Central Repository. The CJIS Central Repository must forward the results to the appointing authority and the prospective or current employee. A CHRC is confidential, may not be redisseminated, and may be used only for specified employment purposes. The subject of a CHRC may contest the results.

The CJIS Central Repository collects, manages, and disseminates Maryland criminal history record information for criminal justice and noncriminal justice (*e.g.*, employment and licensing) purposes. The CJIS Central Repository uses a fingerprint-supported system for positive identification. When a state mandates a national check, the Federal Bureau of Investigation requires that the requirement for a national check be set in statute. The CJIS Central Repository is authorized by law to collect a fee for providing a CHRC for purposes other than criminal justice.

The cost for a full State and national CHRC is \$32.75, *plus* an additional \$20 fee for the cost for fingerprints taken by the CJIS Central Repository and an additional \$15 fee for the federal “rap back” program. An applicant may have fingerprinting performed by a private provider, in which case fingerprinting fees may vary.

Background: The federal Treasury Inspector General of Tax Administration audited the Office of Safeguards within the Internal Revenue Service (IRS) in 2014 and found that the IRS does not set specific background investigation requirements for outside agencies with access to federal tax information. Nonfederal agencies that receive federal tax information are able to set their own background investigation policies and requirements. Meanwhile, federal agencies are required to conduct a background investigation on all potential employees designated as moderate risk, including individuals hired to access or use federal tax information. The background investigation required for federal employees with access to federal tax information includes fingerprinting, citizenship requirement checks, and checks at local law enforcement agencies where the subject has lived, worked, and/or attended school within the last five years.

In response to recommendations in the audit, the IRS is revising Publication 1075, *Tax Information Security Guidelines for Federal, State, and Local Agencies*, to establish and ensure that background investigation requirements for all agency employees and contractors that have access to federal tax information are consistent with IRS background investigation requirements for those with access to federal tax information. The Office of Safeguards audits the Comptroller’s Office triennially to ensure compliance with Publication 1075. Failure to comply with Publication 1075 could jeopardize the State’s access to federal tax information.

While the Comptroller’s Office already has the authority to perform a State and national CHRC under current law on prospective employees and current employees who are eligible for a transfer, promotion, or reassignment, it does not currently exercise that authority. When hiring prospective employees, the Comptroller’s Office performs an internal case search and a tax clearance to ensure that there are no outstanding tax matters.

State Fiscal Effect: The bill expands the authority for an appointing authority to request a State and national CHRC on a current employee within SPMS who accesses confidential or sensitive federal tax information since current law only authorizes a CHRC on a current employee who is eligible for a transfer, promotion, or reassignment. Additionally, the CJIS Central Repository must provide a revised CHRC to the appointing authority if criminal history record information is reported after the initial CHRC, which effectively enrolls each applicant in the CJIS “rap back” program. There is no fee for the State rap back program as it is included in the cost of the initial State CHRC, but the fee for the federal rap back program is approximately \$15 for each CHRC.

As a result of the pending IRS requirements of Publication 1075, the Comptroller's Office plans to exercise its authority under the bill to require State and national CHRCs of prospective and current employees with access to federal tax information. The Comptroller's Office advises that approximately 80% of its employees have access to confidential federal tax information. Accounting for turnover and temporary employees during the tax processing season, the Comptroller's Office estimates 1,200 State and national CHRCs are performed in fiscal 2017 and 350 State and national CHRCs are performed annually thereafter.

Thus, general fund expenditures increase by \$92,300 in fiscal 2017, which accounts for the bill's July 1, 2016 effective date. This estimate includes the cost of the Comptroller's Office requesting 1,200 State and national CHRCs, at a cost of \$47.75 per employee, totaling \$57,300 in fiscal 2017. The estimate also includes \$35,000 for two fingerprinting machines. While the CJIS Central Repository can perform the fingerprinting at a fee of \$20 per applicant, the Comptroller's Office advises that the machines are warranted to ensure control over the process and for long-term cost savings of not having to pay a fee for every CHRC. The Comptroller's Office reports DPSCS has agreed to provide training to employees within the Comptroller's Office to operate the fingerprinting machines.

In future years, general fund expenditures increase by approximately \$21,713 for the Comptroller's Office to request 350 CHRCs (\$16,713) and annual maintenance on the fingerprinting machines (approximately \$5,000 each year).

DLLR employs individuals with access to federal tax information within its Financial Regulation and Unemployment Insurance divisions. Employees within the Financial Regulation Division already undergo State and national CHRCs, but approximately 50 employees within the Unemployment Insurance Division may be subjected to State and national CHRCs. DLLR reports that performing, at most, 50 CHRCs in fiscal 2017 and fewer CHRCs in future years does not have a material fiscal or operational effect on the department. Moreover, federal funds would likely be used for that purpose.

The bill may protect against losing federal tax information by ensuring that Maryland law conforms to the forthcoming changes in Publication 1075. The Comptroller's Office generates approximately \$150 million annually through the use of federal tax information.

Additional Comments: DPSCS notes that submitting two complete sets of legible fingerprints is an antiquated practice with the advent of electronic fingerprinting.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Comptroller's Office; Department of Budget and Management; Department of Labor, Licensing, and Regulation; Department of Public Safety and Correctional Services; Internal Revenue Service; Department of Legislative Services

Fiscal Note History: First Reader - February 5, 2016
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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Background Investigations for Current and Prospective Employees

BILL NUMBER: HB 164

PREPARED BY: Matthew Minson

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS