

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1059 Background Screening for Noninstructional Contractors on School Grounds

SPONSOR(S): Perry

TIED BILLS: **IDEN./SIM. BILLS:** SB 1610

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) K-20 Competitiveness Subcommittee		Beagle	Ahearn
2) PreK-12 Appropriations Subcommittee			
3) Education Committee			

SUMMARY ANALYSIS

The bill requires the Department of Education (DOE) to approve a uniform, statewide identification badge signifying that a noninstructional contractor has satisfied the specified background screening requirements. The badge must include a photograph of the contractor and be recognized by each Florida school district. School districts must issue the badge to a contractor if he or she is a U.S. resident and citizen or permanent resident alien; 18 years of age or older; and meets level 2 background screening requirements. The badge must be visibly worn by all noninstructional contractors at all times while on school grounds. DOE must determine the cost that may be charged to a noninstructional contractor for the badge.

Currently, there is no required uniform, statewide identification badge that signifies that a noninstructional contractor has satisfied background screening requirements.

Florida law requires individuals who work in, or provide services to, public schools and school districts to undergo a fingerprint-based state and federal criminal background check before being permitted access to school grounds. The background screening standards vary depending upon the individual's duties, whether or not the individual is a school district employee, and the degree of contact the individual has with students. School district employees or contracted personnel who have a high-degree of contact with students or who have access to district funds, e.g., teachers, principals, and cafeteria workers, must satisfy level 2 screening requirements which include 51 disqualifying offenses. On the other hand, noninstructional contractors, i.e., outside vendors and contractors who do not have direct contact with students, are subject to less stringent background screening standards. Their results are screened against only nine disqualifying offenses. Additionally, some noninstructional contractors are exempt from background screening requirements.

It is unclear whether the bill requires DOE to approve the issuance of a statewide identification badge to each individual noninstructional contractor who performs services for Florida's 67 school districts or if DOE is simply required to design a badge that school districts must issue to eligible contractors. If the former, the bill will have a significant fiscal impact on DOE. If the later, school districts currently issuing badges and charging fees for those badges will have to meet the design criteria and fee requirements established by DOE. The cost associated with school district implementation of a new badge design and fee provision is unknown. Also, a school district that does not originate the background screening and issuance of the statewide identification badge will no longer be able to issue its own badge and charge a corresponding fee.

Private sector noninstructional contractors who are currently exempt from background screening requirements will experience increased costs because the bill requires, without exception, all noninstructional contractors to wear an identification badge while on school grounds. These individuals (or their employers) will be required to pay for level 2 background screening in order to receive a badge.

See Direct Economic Impact on the Private Sector and Fiscal Comments and Drafting Issues and Other Comments.

The bill takes effect July 1, 2012.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1059.KCOS

DATE: 1/23/2012

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Background Screening

Florida law requires individuals who work in, or provide services to, public schools and school districts to undergo a fingerprint-based background screening before being permitted access to school grounds.¹ The individuals who must undergo background screening fall under three personnel classifications - instructional and noninstructional personnel,² noninstructional school district employees and contracted personnel,³ and noninstructional contractors.⁴ The background screening requirements for each personnel classification vary depending upon the individual's duties, whether or not the individual is a school district employee, and the degree of contact the individual has with students.⁵

Noninstructional contractors are vendors of services and contractors who are permitted access to school grounds when students are present, do not have direct contact with students, and are not school district employees.⁶ The noninstructional contractor's fingerprints are submitted to the Florida Department of Law Enforcement (FDLE) for statewide criminal and juvenile records checks. FDLE is responsible for forwarding the fingerprints to the Federal Bureau of Investigation (FBI) for federal criminal records checks.⁷ FDLE provides the results of the criminal records checks to the school district, which must then screen the records against a statutorily prescribed list of disqualifying offenses.⁸ Noninstructional contractors must be screened against nine disqualifying offenses:⁹

- Offenses regarding registration as a sexual offender;¹⁰
- Sexual misconduct with certain developmentally disabled clients;¹¹
- Sexual misconduct with certain mental health patients;¹²
- Terrorism;¹³
- Murder;¹⁴
- Kidnapping;¹⁵
- Offenses related to lewdness and indecent exposure;¹⁶
- Incest;¹⁷ and

¹ Sections 1012.32, 1012.465, and 1012.467, F.S. Private schools participating in educational choice scholarship programs must also submit fingerprints of employees and contracted personnel with direct student contact to FDLE. *See* ss. 943.0542 and 1002.421(2)(i), F.S.

² Instructional and noninstructional personnel are individuals who are hired or contracted to fill positions that require direct contact with students in any public school. Section 1012.32(2), F.S.

³ Noninstructional school district employees and contracted personnel are individuals who are permitted access to school grounds when students are present; who have direct contact with students; or who have access to, or control of, school funds. Section 1012.465(1), F.S.

⁴ Sections 1012.32(2), 1012.465(2), and 1012.467(2)(a), F.S.

⁵ Sections 1012.32(2), 1012.465(2), and 1012.467(2)(a), F.S.

⁶ Section 1012.467(1)(a) and (2)(a) and (g), F.S.

⁷ *Id.*

⁸ Section 1012.32(2), F.S. (flush-left provisions at end of subsection; instructional and noninstructional personnel); s. 1012.465(3), F.S. (noninstructional school district employees); s. 1012.467(3), F.S. (noninstructional contractors).

⁹ Section 1012.467(2)(g), F.S.

¹⁰ Section 943.0435(1)(a)1., F.S.

¹¹ Section 393.135, F.S.

¹² Section 394.4593, F.S.

¹³ Section 775.30, F.S.

¹⁴ Section 782.04, F.S.

¹⁵ Section 787.01, F.S.

¹⁶ Chapter 800, F.S.

¹⁷ Section 826.04, F.S.

- Child abuse, aggravated child abuse, or neglect of a child.¹⁸

If the noninstructional contractor has not been convicted of any of the nine disqualifying offenses, the school district may permit him or her to work on school grounds. School districts generally issue their own identification badges or proof of clearance. School districts are not currently prohibited from disqualifying a noninstructional contractor based upon additional offenses.¹⁹

Background screening is not required for noninstructional contractors who are:

- On school grounds while under the direct supervision of a school district employee or contractor who has been screened;
- Required to undergo level 2 background screening²⁰ for licensure, certification, employment, or other purposes;
- Law enforcement officers;
- Employees or medical directors of an ambulance service;
- Confined to an area where students are not permitted if the site is separated from school grounds by a chain link fence; and
- Providing pick-up or delivery services involving only brief visits on school grounds when students are present.²¹

Noninstructional contractors who are exempt from background screening must have their name searched in the FDLE and national sex offender registries. The individual may not be permitted on school grounds if he or she is identified as a sexual predator or sexual offender in the registry search. The school district may not charge the individual a fee for the search.²²

Each noninstructional contractor's fingerprints are retained in the statewide automated fingerprint identification system for five years, at which time the individual must be rescreened.²³ The statewide system enables school districts to screen noninstructional contractors who are new to the district, but who have already had a criminal history check by another district, without having to initiate a new criminal history check. In such cases, the school district checks the database to see if the noninstructional contractor has any new arrests or convictions since the initial screening.²⁴

Additionally, FDLE must periodically search all new arrest fingerprint cards received against the fingerprints retained in the system. If these periodic searches reveal a new arrest on a noninstructional contractor's record, FDLE must notify the school district that conducted the initial criminal history check.²⁵

Each noninstructional contractor must inform his or her employer (or other party to the contract) and the school district within 48 hours if he or she is arrested for any of the nine disqualifying offenses. Willful failure to do so is a third degree felony. If the employer (or other party to the contract) knows of such offense and allows the contractor access to school grounds when students are present, he or she commits a third degree felony.²⁶

¹⁸ Section 827.03, F.S.

¹⁹ Section 1012.467(4), F.S.

²⁰ Level 2 background screening requires individuals to be screened against a statutorily prescribed list of 51 offenses. Instructional and noninstructional personnel and noninstructional school district employees and contractors must undergo level 2 screening. *See ss.* 435.04, 1012.321012.32(2), 1012.465(1), and 1012.56(10), F.S.

²¹ Section 1012.468(2), F.S.

²² Section 1012.468(3)(a)-(b), F.S.

²³ Section 1012.467(2)(e), F.S.; Rule 11C-6.010(7), F.A.C.

²⁴ Section 1012.467(2) (d) and (7)(a) F.S.

²⁵ Section 1012.467(2)(c), F.S.; Rule 11C-6.010(4), F.A.C.

²⁶ Sections 1012.467(6), 775.082, and 775.083, F.S.

Effect of Proposed Changes

The bill requires the Department of Education (DOE) to approve a statewide identification badge signifying that a noninstructional contractor has satisfied the background screening requirements for noninstructional contractors and level 2 screening requirements. The badge must bear a photograph of the contractor. The badge must be recognized by each Florida school district and must be visible at all times a noninstructional contractor is on school grounds. School districts must issue the badge to a contractor if he or she:

- Is a U.S. resident and citizen or permanent resident alien;
- Is 18 years of age or older; and
- Meets the level 2 background screening standards.

It is unclear whether the bill requires DOE to approve the issuance of a statewide identification badge to each individual noninstructional contractor who performs services for Florida's 67 school districts or if DOE is simply required to design a badge that school districts must issue to eligible contractors. If the former, the bill will impose significant new workload demands on DOE. If the later, school districts currently issuing badges will have to meet the design criteria established by DOE. The cost associated with school district implementation of a new badge design is unknown.

Currently, school district employees or contracted personnel who have a high-degree of contact with students or who have access to district funds, e.g., teachers, principals, cafeteria workers, district administrators, must undergo level 2 background screening. Noninstructional contractors are held to a lesser standard because they have little or no contact with students. The bill's requirement that noninstructional contractors satisfy level 2 background screening requirements in order to be issued an identification badge significantly expands existing background screening requirements. Level 2 background screening includes 51 disqualifying offenses, whereas only nine disqualifying offenses are required to be applied to noninstructional contractors.

The bill further significantly changes existing law, which exempts certain noninstructional contractors from background screening requirements, by requiring, without exception, that all noninstructional contractors wear an identification badge while on school grounds; and, additionally, that a level 2 background screening is required to receive a badge. Thus, noninstructional contractors who are currently exempt from background screening requirements altogether, e.g., those providing pick-up or delivery services involving only brief visits on school grounds when students are present, appear to have to clear a level 2 background screening in order to receive a badge.

Currently, when a school district screens noninstructional contractors who are new to the district, but who have already had a criminal history check conducted by another district, the district uses the statewide automated fingerprint identification system. The contractor's records are checked for new arrests or convictions that may have occurred since the initial criminal history check. The school district is prohibited from charging the contractor a fee for verifying the results of his or her criminal history check,²⁷ but is not prohibited from charging a fee for issuance of a badge.

Because the bill states that the identification badge must be recognized by school districts as proof the noninstructional contractor has cleared his or her background screening, it appears to preclude a school district from disqualifying the individual for new arrests and convictions. This also would preclude a district's discretion to disqualify a noninstructional contractor based upon offenses not currently covered by level 2 screening. Furthermore, a school district that does not originate the background screening and issuance of the identification badge will no longer be able to issue its own badge and charge a corresponding fee.

²⁷ Section 1012.467(2)(f), F.S.

Furthermore, the bill does not require a noninstructional contractor, who is fired by his or her employer, or who is arrested for one of the nine disqualifying offenses,²⁸ to return the badge to the school district or employer. This may cause security concerns for school districts.

Finally, the bill requires DOE to determine the cost to a noninstructional contractor for receipt of an identification badge, which must be borne by the recipient of the badge. Currently, how much school districts charge for the identification badges vary, as does the length of time such badges are valid.

B. SECTION DIRECTORY:

Section 1. Amends s. 1012.467, F.S., relating to background screening of noninstructional contractors who are permitted access to school grounds; requires DOE to approve a statewide photo identification badge for noninstructional contractors; requires Florida school districts to accept the badge as proof of the noninstructional contractor's compliance with certain background screening requirements; provides criteria for issuance of the badge by school districts; requires DOE to determine the cost of the badge charged to noninstructional contractors.

Section 2. Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Private sector noninstructional contractors who are currently exempt from background screening requirements will experience increased costs because the bill requires, without exception, all noninstructional contractors to wear an identification badge while on school grounds. Because level 2 background screening is required to receive a badge, these individuals or their employers will be required to pay for background screenings. The cost of a state and federal criminal history check is \$43.25 and school districts are authorized to impose an additional fee which may not exceed 30 percent of this amount.²⁹

Noninstructional contractors will be charged a fee for the identification badge, as set by DOE. Currently school districts that issue identification badges set their own fee. There is no way to know at this time whether DOE's set fee will be higher or lower than that currently charged by the districts. However, the

²⁸ See *infra* text accompanying notes 19-21 for discussion of the nine disqualifying offenses.

²⁹ Florida Department of Law Enforcement, *Criminal History Record Check Fact Sheet*, at 13 (Jan. 20, 2012), available at http://www.fdle.state.fl.us/Content/getdoc/769edeba-2969-45dd-ad8f-6739dc24aded/BackgroundChecks_FAQs_01202012_Final.aspx.

bill eliminates the practice of other districts, not initially conducting the background screening and issuing the identification badge, from also requiring a badge and charging a fee.

Some noninstructional contractors who are currently eligible to work on school grounds may experience loss of employment or revenue if they are unable to clear a level 2 screening.

D. FISCAL COMMENTS:

It is unclear whether the bill requires DOE to approve the issuance of a statewide identification badge to each individual noninstructional contractor who performs services for Florida's 67 school districts or if DOE is simply required to design a badge that school districts must issue to eligible contractors. If the former is true, the bill will have a significant fiscal impact on DOE.

Additionally, school districts that issue their own identification badges will have to retool their current system in order to issue the uniform, statewide identification badge. The costs associated with this process are indeterminate. Districts that contract this process out may incur costs associated with re-negotiating its contract.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 23-27: It is unclear whether the bill requires DOE to approve the issuance of a statewide identification badge to each individual noninstructional contractor who performs services for Florida's 67 school districts or if DOE is simply required to design a badge that school districts must issue to eligible contractors.

Lines 27 and 36-37: The bill requires noninstructional contractors to satisfy level 2 background screening standards in order to be issued an identification badge. This significantly expands existing background screening requirements because level 2 background screening includes 51 disqualifying offenses, whereas only nine disqualifying offense currently apply to noninstructional contractors.

Additionally, the bill does not address how long the statewide badge is valid. Currently, contractors must be rescreened every five years. However, the length of time school district issued badges are valid varies from district to district.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not Applicable.