

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/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	13 Y, 0 N, As CS	Beagle	Ahearn
2) PreK-12 Appropriations Subcommittee			
3) Education Committee			

### SUMMARY ANALYSIS

The bill requires the Department of Education (DOE) to create 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 the specified background screening requirements.

The badge is valid for five years and must be visibly worn at all times. DOE must determine a uniform cost that may be charged to a contractor for the badge. Contractors who are exempt from background screening requirements are not required to obtain a badge.

Current law requires each noninstructional contractor to 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 a disqualifying offense. If the contractor provides notification of a disqualifying offense, the bill requires the contractor to return his or her identification badge to the issuing school district within 48 hours.

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

School districts currently issuing identification 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.

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: h1059a.KCOS

DATE: 1/30/2012

# 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.<sup>1</sup> The individuals who must undergo background screening fall under three personnel classifications - instructional and noninstructional personnel,<sup>2</sup> noninstructional school district employees and contracted personnel,<sup>3</sup> and noninstructional contractors.<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup> Noninstructional contractors must be screened against nine disqualifying offenses:<sup>9</sup>

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

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<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> Sections 1012.32(2), 1012.465(2), and 1012.467(2)(a), F.S.

<sup>5</sup> Sections 1012.32(2), 1012.465(2), and 1012.467(2)(a), F.S.

<sup>6</sup> Section 1012.467(1)(a) and (2)(a) and (g), F.S.

<sup>7</sup> *Id.*

<sup>8</sup> 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).

<sup>9</sup> Section 1012.467(2)(g), F.S.

<sup>10</sup> Section 943.0435(1)(a)1., F.S.

<sup>11</sup> Section 393.135, F.S.

<sup>12</sup> Section 394.4593, F.S.

<sup>13</sup> Section 775.30, F.S.

<sup>14</sup> Section 782.04, F.S.

<sup>15</sup> Section 787.01, F.S.

<sup>16</sup> Chapter 800, F.S.

<sup>17</sup> Section 826.04, F.S.

- Child abuse, aggravated child abuse, or neglect of a child.<sup>18</sup>

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.<sup>19</sup>

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 screening<sup>20</sup> 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.<sup>21</sup>

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.<sup>22</sup>

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.<sup>23</sup> 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.<sup>24</sup>

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 any school districts that have screened the contractor.<sup>25</sup>

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.<sup>26</sup>

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<sup>18</sup> Section 827.03, F.S.

<sup>19</sup> Section 1012.467(4), F.S.

<sup>20</sup> 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.

<sup>21</sup> Section 1012.468(2), F.S.

<sup>22</sup> Section 1012.468(3)(a)-(b), F.S.

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

<sup>24</sup> Section 1012.467(2) (d) and (7)(a) F.S.

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

<sup>26</sup> Section 1012.467(6), F.S. A third degree felony is punishable by a term of imprisonment not exceeding 5 years or fine not exceeding \$5000. Sections 775.082, and 775.083, F.S.

## **Effect of Proposed Changes**

The bill requires the Department of Education (DOE) to create 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:

- Is a U.S. resident and citizen or permanent resident alien;
- Is 18 years of age or older; and
- Meets the background screening requirements for noninstructional contractors.

The badge is valid for five years and must be visibly worn at all times. DOE must determine a uniform cost that may be charged to a noninstructional contractor for the badge. Contractors who are exempt from background screening requirements are not required to obtain a badge.

Current law requires each noninstructional contractor to 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 a disqualifying offense. If the contractor provides notification of a disqualifying offense, the bill requires the contractor to return his or her identification badge to the issuing school district within 48 hours.

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,<sup>27</sup> but is not prohibited from charging a fee for issuance of a badge. Under the bill, 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.

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 contractor based upon offenses not currently listed as disqualifiers for such contractors. Furthermore, the bill does not require a contractor who is fired by his or her employer to return the badge to the school district or employer. Although this enhances the portability of the badge, it 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 create a statewide photo identification badge for noninstructional contractors; requires Florida school districts to accept the badge as proof of the contractor's compliance with specified background screening requirements; provides criteria for issuance of the badge by school districts; provides that the badge is valid for five years; requires return of the badge if a contractor commits a disqualifying offense; requires DOE to determine a uniform cost of the badge charged to contractors; provides an exemption.

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

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<sup>27</sup> Section 1012.467(2)(f), F.S.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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 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. This may result in reduced costs for noninstructional contractors.

### D. FISCAL COMMENTS:

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. 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.

## 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:

None.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 25, 2012, the K-20 Competitiveness Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment:

- Clarified that DOE is only required to create a uniform identification badge for noninstructional contractors, rather than approve each contractor's receipt of a badge.
- Required issuance of the badge to noninstructional contractors meeting screening standards specific to contractors rather than Level 2 screening standards.
- Added provisions establishing a five-year validity period for the badge.
- Added provisions requiring noninstructional contractors who are arrested for disqualifying offenses to return the badge to the issuing school district within 48 hours of such offense.
- Clarified that noninstructional contractors who are exempt from background screening requirements are not required to obtain a badge.