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**HOUSE OF REPRESENTATIVES
COMMITTEE ON
EDUCATION K-12
ANALYSIS**

BILL #: HB 543
RELATING TO: School Personnel
SPONSOR(S): Representative Wasserman Schultz
COMPANION BILL(S): SB 324

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) EDUCATION K-12
 - (2) JUDICIARY
 - (3) EDUCATION APPROPRIATIONS
 - (4)
 - (5)
-

I. SUMMARY:

This bill requires that all instructional and noninstructional personnel hired or contracted to work in a district school system or laboratory school file fingerprints. Under current law, only employees who have direct contact with students must submit to fingerprint checks.

The bill authorizes school districts who have terminal access to the Florida Crimes Information Telecommunications Network (FCITN) to use the equipment to conduct background checks of employees in the school system. It specifies that such background checks may not be used in lieu of currently required fingerprint checks conducted through the Florida Department of Law Enforcement (FDLE). The bill authorizes school districts to have access to FCITN for the purpose of conducting background checks on volunteers.

The bill specifies that employees found through fingerprint processing to have been convicted of, or having entered a plea of guilty or nolo contendere, regardless of adjudication, to crimes involving moral turpitude and other crimes as specified in s. 435.04, F.S., may not be employed except as approved by the school board and in accordance with chapter 435, F.S., relating to employment screening. Current law prohibits the employment of individuals convicted of moral turpitude if the position requires direct contact with students.

The fiscal impact of this bill is indeterminate. Beginning in fiscal year 1999-2000, the cost of background checks on school volunteers is to be borne as provided in the annual appropriations act (General Appropriations Act (GAA)).

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Section 231.02, F.S., prescribes school district personnel qualifications. To be eligible for appointment in any position in any district school system, a person must be of good moral character; must be at least 18 years old, if he or she is to be employed in an instructional capacity; and must, when required by law, hold a certificate or license issued under rules of the State Board of Education or the Department of Health and Rehabilitative Services (now the Department of Health), except as otherwise excepted.

Instructional and noninstructional personnel who are hired to fill positions requiring direct contact with students in any district school system or laboratory school must, upon employment, file a complete set of fingerprints taken by an authorized law enforcement officer or an employee of the school or district who is trained to take fingerprints. These fingerprints must be submitted to FDLE for state processing and to the Federal Bureau of Investigation (FBI) for federal processing. New employees must be on probationary status pending fingerprint processing and determination of compliance with standards of good moral character. Employees found through fingerprint processing to have been convicted of a crime involving moral turpitude may not be employed in any position requiring direct contact with students. Probationary employees terminated because of their criminal record have the right to appeal such decisions. The cost of the fingerprint processing may be borne by the school board or the employee.

Personnel who have been fingerprinted or screened and who have not been unemployed for more than 90 days are not required to be reprinted or rescreened.

Section 435.04, F.S., prescribes Level 2 screening standards. All employees in positions designated by law as positions of trust or responsibility are required to undergo security background investigations as a condition of employment and continued employment. Security background investigations must include employment history checks, fingerprinting, statewide criminal and juvenile records checks through FDLE, and federal criminal records checks through the FBI, and may include local criminal records checks through local law enforcement agencies.

The security background investigations must ensure that no subject individuals have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense prohibited under any of the following provisions of the Florida Statutes or under any similar statute of another jurisdiction:

Section 415.111, F.S., relating to adult abuse, neglect, or exploitation of aged persons or disabled adults.

Section 782.04, F.S., relating to murder.

Section 782.07, F.S., relating to manslaughter, aggravated manslaughter of an elderly person or disabled adult, or aggravated manslaughter of a child.

Section 782.071, F.S., relating to vehicular homicide.

Section 782.09, F.S., relating to killing of an unborn child by injury to the mother.

Section 784.011, F.S., relating to assault, if the victim of the offense was a minor.

Section 784.021, F.S., relating to aggravated assault.

Section 784.03, F.S., relating to battery, if the victim of the offense was a minor.

Section 784.045, F.S., relating to aggravated battery.

Section 787.01, F.S., relating to kidnapping.

Section 787.02, F.S., relating to false imprisonment.

Section 794.011, F.S., relating to sexual battery.

Former s. 794.041, F.S., relating to prohibited acts of persons in familial or custodial authority.

Chapter 796, F.S., relating to prostitution.

Section 798.02, F.S., relating to lewd and lascivious behavior.

Chapter 800, F.S., relating to lewdness and indecent exposure.

Section 806.01, F.S., relating to arson.

Chapter 812, F.S., relating to theft, robbery, and related crimes, if the offense is a felony.

Section 817.563, F.S., relating to fraudulent sale of controlled substances, only if the offense was a felony.

Section 825.102, F.S., relating to abuse, aggravated abuse, or neglect of an elderly person or disabled adult.

Section 825.1025, F.S., relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled adult.

Section 825.103, F.S., relating to exploitation of an elderly person or disabled adult, if the offense was a felony.

Section 826.04, F.S., relating to incest.

Section 827.03, F.S., relating to child abuse, aggravated child abuse, or neglect of a child.

Section 827.04, F.S., relating to contributing to the delinquency or dependency of a child.

Section 827.05, F.S., relating to negligent treatment of children.

Section 827.071, F.S., relating to sexual performance by a child.

Chapter 847, F.S., relating to obscene literature.

Chapter 893, F.S., relating to drug abuse prevention and control, only if the offense was a felony or if any other person involved in the offense was a minor.

Until 1998, school districts were allowed to use FCITN, but the statutory language, which was removed by HB 4837 (Ch. 98-281, L.O.F), did not specify that such screenings could not be performed in lieu of fingerprinting.

B. EFFECT OF PROPOSED CHANGES:

This bill requires that all instructional and noninstructional personnel hired or contracted to work in a district school system or laboratory school file fingerprints. Under current law, only employees who have direct contact with students must submit to fingerprint checks.

The bill authorizes school districts who have terminal access to FCITN to use the equipment to conduct background checks of employees in the school system. It specifies that such background checks may not be used in lieu of currently required fingerprint checks conducted through FDLE. The bill authorizes school districts to have access to FCITN for the purpose of conducting background checks on volunteers with the cost of such screening to be borne as provided in the GAA.

The bill specifies that employees found through fingerprint processing to have been convicted of, or having entered a plea of guilty or nolo contendere, regardless of adjudication, to crimes involving moral turpitude and other crimes as specified in s. 435.04, F.S., may not be employed except as approved by the school board and in accordance with chapter 435, F.S., relating to employment screening. Current law prohibits the employment of individuals convicted of moral turpitude if the position requires direct contact with students.

This language reinstates similar language that was removed in 1998. It affords school districts the option of running a background check on a new employee or volunteer via FCITN while waiting for fingerprint results.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

An agency or program is not eliminated or reduced.

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

The bill does not purport to provide services to families or children.

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

The bill does not create or change a program providing services to families or children.

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

- (3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Section 231.02, F.S., is amended.

E. SECTION-BY-SECTION ANALYSIS:

Section 1 requires that all instructional and noninstructional personnel hired or contracted to work in a district school system or laboratory school file fingerprints. It authorizes school districts who have terminal access to FCITN to use the equipment to conduct background checks of employees in the school system. It specifies that such background checks may not be used in lieu of currently required fingerprint checks conducted through FDLE. It authorizes school districts to have access to FCITN for the purpose of conducting background checks on volunteers, the cost of which is to be borne as specified in the GAA. It specifies that employees found through fingerprint processing to have been convicted of, or having entered a plea of guilty or nolo contendere, regardless of adjudication, to crimes involving moral turpitude and other crimes as specified in s. 435.04, F.S., may not be employed except as approved by the school board and in accordance with chapter 435, F.S. It specifies that such background checks may not be used in lieu of currently required fingerprint checks conducted through FDLE.

Section 2 specifies that the bill will take effect upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Indeterminate. If access to the FCITN is provided to all school districts, there could be a recurring fiscal impact to FDLE, depending on how the costs of screening volunteers will be addressed in the GAA.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Indeterminate. If access to the FCITN is provided to all school districts, there could be a recurring fiscal impact to the districts. Under current law, districts may request a public records name search through FDLE at a cost of \$15 per search.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

See above.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A technical amendment is needed on page 2, line 16 to change "Communications" to "Telecommunications". A technical amendment to clarify that the FCITN background check is intended only as a screening tool, not as a replacement for fingerprint analyses by both FDLE and the FBI, is recommended. An amendment to clarify the appropriations provision is needed. The bill does not presently specify how much money is needed, which agency or program is to be granted the funds, nor exactly what activities are to be covered by the appropriation. A reference to "annual appropriations act" should be changed to "General Appropriations Act".

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON EDUCATION K-12:

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