

STORAGE NAME: h0705a.jo.doc
DATE: January 30, 2002

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
JUDICIAL OVERSIGHT
ANALYSIS**

BILL #: HB 705
RELATING TO: Local Govt. Employees & Contractors
SPONSOR(S): Select Committee on Security and Representative Gelber and others
TIED BILL(S): None

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

- (1) SELECT COMMITTEE ON SECURITY YEAS 8 NAYS 0
 - (2) JUDICIAL OVERSIGHT YEAS 11 NAYS 0
 - (3) COUNCIL FOR SMARTER GOVERNMENT
 - (4)
 - (5)
-

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

This bill authorizes counties and municipalities to enact ordinances requiring state and national security background investigations of county and municipality employees in positions deemed to be critical to security or public safety by the governing body of the county or municipality. This bill would give such entities authority to require security background investigations on any private contractor or private contractor's employee, vendor, repair person, or delivery person with access to any public facility that is deemed to have critical security or public safety status by the municipality's or county's governing body.

This bill provides that the exceptions in s. 112.011, F.S., that remove certain disqualifications for employment are not applicable to the hiring practices of any county or municipality for positions that are critical to security or public safety and permits counties and municipalities to decline to hire persons who have been convicted of a crime for such positions..

There could be a minor fiscal impact on either the local government or the employee/applicant for the cost of the security background investigation depending on how the local ordinance is written.

On January 30, 2002, the Committee on Judicial Oversight adopted an amendment providing that this bill does not prevent or preempt other background screenings that counties and municipalities may lawfully undertake. The amendment is traveling with the bill.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

This bill does not support the principle of Less Government, because it gives cities and counties the authority to enact ordinances requiring criminal history background checks on certain employees.

By potentially exposing more individuals to federal and state criminal background checks, which could preclude them from obtaining certain employment opportunities, this bill does not support the principle of Individual Freedom.

B. PRESENT SITUATION:

STATE LAW

Employment screening is addressed in chapter 435, F.S. This chapter establishes levels 1 and 2 screening standards. Section 435.03, F.S., establishes level 1 checks as employment history checks and statewide criminal checks through the Florida Department of Law Enforcement (FDLE). Level 1 screenings may also include local criminal records checks through local law enforcement agencies.

Level 2 checks are set forth in s. 435.04, F.S., and entail security background investigations. These investigations include fingerprinting, statewide criminal and juvenile records checks through the FDLE, and federal criminal records checks through the Federal Bureau of Investigation (FBI). Level 2 checks may also include criminal records checks through local law enforcement agencies.

The level 2 security background investigations under s. 435.04, F.S., are completed to ensure that no person subject to the investigation has been found guilty of, regardless of adjudication, or entered a nolo contendere plea to, any of an enumerated lists of crimes.

The procedures for conducting a security background investigation are set forth in s. 435.05, F.S. This section requires the new employee to submit to the employer the necessary information to conduct a screening within his or her first 5 days of work. For level 2 screening, the employer then has 5 working days to submit the screening information to the FDLE. The FDLE is then required to search its criminal and juvenile records and request the FBI to conduct a search of FBI records. The FDLE will then respond to the employer with the results of the federal and state screenings. The employer is responsible for notifying the employee whether the screening has revealed any disqualifying information.

Section 435.08, F.S., requires either the employer or the employee to pay for the costs of employment screening. Payments are submitted to the FDLE with the initial request for screening. Currently, FDLE charges a \$15 fee for a state background check and the FBI charges \$24 for a national check.

Part I of chapter 125, F.S., and part I of chapter 166, F.S., sets forth the various powers and duties of county commissioners and municipalities, respectively. Both chapters have an identical provision relating to background screenings. Sections 125.581 and 166.0443, F.S., provide in pertinent part:

(1) Except as authorized by law, no county or municipality shall enact or enforce any ordinance, . . . which requires the registration or background screening of any individual engaged in or applying for a specific type or category of employment in the county or municipality . . .

* * *

(2) This act shall not be construed to prohibit any employer, including a local government, from investigating the background of employees or prospective employees . . .

FEDERAL LAW

Federal law permits the Department of Justice to exchange FBI identification records with state and local governments for purposes of employment and licensing pursuant to Public Law 92-544, 86 Stat. 1115. See also 28 CFR 20.33 and 50.12.

C. EFFECT OF PROPOSED CHANGES:

This bill creates s. 125.580, F.S., which authorizes counties to enact ordinances establishing certain county positions as critical to security or public safety. With such designation, the county will require applicants for such positions to be fingerprinted. These fingerprints will be submitted to FDLE for a state criminal history record check and to the FBI for a national criminal history record check. Such information obtained through these criminal history checks may be used by the county to determine the applicant's eligibility for employment.

An identical provision is created in s. 166.0442, F.S., which gives municipalities the same ability to designate security or public safety positions that require an applicant to be fingerprinted and those prints submitted to the FDLE and FBI for a state and national criminal history records check..

These two new provisions permit municipalities and counties to require certain employees, private contractors, contractor's employees, vendors, repair persons, or delivery persons who have access to public facilities or publicly operated facilities that have critical security or public safety status to pass both state and federal background screening as a condition of employment.

This bill provides that the exceptions in s. 112.011, F.S., that remove certain disqualifications for employment, are not applicable to the hiring practices of any county or municipality for positions that are critical to security or public safety. This will permit counties and municipalities to decline to hire persons convicted of a crime in positions deemed critical to security or public safety.

D. SECTION-BY-SECTION ANALYSIS:

See "Present Situation" and "Effect of Proposed Changes".

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. The FDLE charges a \$15 fee for its background checks. This cost is designed to cover FDLE's expenses associated with maintaining and accessing its database.

2. Expenditures:

None. Any expenses incurred by FDLE in conducting state or federal background checks are passed on to the employer requesting the check or the employee pursuant to s. 435.08, F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Section 435.08, F.S., requires either the employer or the employee to pay for the cost of the state and federal background checks. Thus, depending on how the ordinance of the county or municipality is written, there could be a cost to the local government.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If municipalities and counties enact ordinances that require the employee/applicant to pay for the cost of the security background investigation, there would be a minor fiscal impact on the employee/applicant. A level 2 background check would cost \$39 (the FBI charges a \$24 fee for its national background check and the FDLE charges \$15 for a state check).

D. FISCAL COMMENTS:

None.

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 to take 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. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On January 30, 2002, the Committee on Judicial Oversight adopted an amendment providing that this bill does not prevent or preempt other background screenings that counties and municipalities may lawfully undertake. The bill, as amended, was reported favorably.

VII. SIGNATURES:

COMMITTEE ON SECURITY, SELECT:

Prepared by:

Randy L. Havlicak

Staff Director:

Thomas Randle/Richard Hixson

AS REVISED BY THE COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

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