

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2006

SPONSOR: Education Committee and Senator Clary

SUBJECT: Education Practices Commission; Educator Certification

DATE: March 26, 2003

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dormady</u>	<u>O'Farrell</u>	<u>ED</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>AED</u>	_____
3.	_____	_____	<u>AP</u>	_____
4.	_____	_____	<u>RC</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

SB 2006 makes certain changes to the Education Practices Commission, to procedures for complaints and disciplinary actions against educators and administrators, and to related penalties. The changes outlined in the bill generally strengthen disciplinary procedures against educators and streamline or clarify administrative procedures in this regard.

This bill creates a new section of the Florida Statutes and amends the following sections of the Florida Statutes: 1012.79, 1012.795, 1012.796, 1012.798, 943.0585, and 943.059.

The bill will take effect upon becoming law.

## II. Present Situation:

The Education Practices Commission (the Commission) is tasked with investigating complaints against certified educators and investigating applicants for educator certification. According to the Department of Education (DOE), the Commission performs over 2,500 investigations every year. In 2002, more than 500 investigations resulted in prosecution of educators or denial of certification.

## III. Effect of Proposed Changes:

SB 2006 makes changes to sections of the Florida Statutes regarding the Education Practices Commission and educator discipline as follows:

S. 1012.56. The bill changes an existing requirement of certification that applicants must submit a written statement attesting to certain facts. The new requirement set forth in the bill is that an applicant must file an affidavit swearing to uphold laws and swearing that the information

contained in the application for certification is true and complete. The bill also stipulates the form for the affidavit.

S. 1012.79. The bill reduces the number of Commission members required to serve on disciplinary hearing panels from seven to five. The Commission exercises final agency action in educator certificate discipline matters for teachers or administrators through these panels. This change has been proposed to reduce costs and the current backlog of these hearings.

S. 1012.795. Section 1012.795, F.S., addresses the Education Practices Commission and its authority to discipline educators. SB 2006 makes the following changes to this section:

- Increases the maximum suspension period of an educator's certificate to five years from three years and provides that educator suspensions apply to employment in any capacity that requires direct contact with students.
- Provides that the revocation of an educator certificate, either permanently or with the possibility of reinstatement, denies a person the privilege of employment in a public school in any capacity that requires direct contact with students.
- Provides additional grounds for discipline of educators, including:
  - attempts to obtain an educator certificate by fraudulent means;
  - having had a certificate sanctioned in another state;
  - having been convicted of a crime in any jurisdiction other than a minor traffic violation (which includes, in addition to findings of guilt or pleas of not guilty, pleas of nolo contendere or entering a pretrial intervention program, whether or not there has been a formal adjudication of guilt);
  - failing to maintain a current address with the Bureau of Educator Certification; and
  - having been the subject of a court order or plea agreement in any jurisdiction which requires the educator to relinquish his or her educator's certificate. Any relinquishment under this part constitutes a permanent revocation of the certificate; however, a person cannot relinquish his or her certificate prior to a finding of probable cause by the Commissioner as provided in s. 1012.796.
- Adds, as prima facie proof of grounds for revocation, a finding of guilt or other plea of nolo contendere to any crime in any jurisdiction other than a minor traffic violation, whether or not there is a formal adjudication of guilt, or entering a pretrial intervention program concerning any crime in any jurisdiction.
- Revises and clarifies the grounds for schools to report educator misconduct to the DOE to state that any person who has been convicted of a crime in any jurisdiction, other than a minor traffic violation, must be reported. Provides that "conviction" includes findings of guilt, pleas of guilty, pleas of nolo contendere, and entering a pretrial intervention program, whether or not there is a formal adjudication of guilt.
- Clarifies that, when an individual violates any provision of a final order of the Commission, an order to show cause will be issued by the clerk of the Commission upon the request of the DOE. Clarifies that the Commission has the power to fashion further penalties after considering the show cause order.
- Deletes several statutorily-listed conditions for mandatory revocation of an educator's certificate set forth in the statute and provides instead that mandatory revocation shall

occur if the individual has been the subject of sanctions by the Commission on two previous occasions.

Section 1012.796. Section 1012.796, F.S., addresses complaints against teachers and administrators and related procedures and penalties. SB 2006 makes the following changes to this section:

- Adds a requirement that all law enforcement agencies, state attorneys, social service agencies, district school boards, and the Division of Administrative Hearings must fully cooperate with and upon request provide unredacted documents to the DOE to further investigations and prosecutions conducted as authorized by the section. These documents may not then be redisclosed except as permitted by law.
- Provides that the Commissioner of Education must prosecute a formal complaint pursuant to the provisions of chapter 120, the Administrative Procedure Act, except as provided in s. 1012.561 (a new section of the Florida Statutes added by the bill, as further described below).
- Provides that educators who are placed on probation by the Commission must (1) notify the Bureau of Educator Standards upon their employment or termination of employment in the state in any position that requires an educator's certificate; (2) have performance reports submitted to the Bureau of Educator Standards; (3) pay the administrative costs of monitoring probation as assessed; (4) not violate any law, rule or policy; (5) satisfactorily perform all assigned duties; and (6) bear all costs of complying with the terms of a final order of the Commission.
- Adds as a possible penalty that the educator may be referred to the Recovery Network Program.
- Clarifies that violations of a final order will result in an order to show cause when such order is requested by the DOE.

Section 1012.798. Section 1012.798, F.S., addresses the Recovery Network Program for educators. The bill makes the following changes to this section:

- States that persons who have applied for an educator certificate, in addition to those who already hold a certificate, are eligible for participation in the Recovery Network Program.
- Provides that individuals may enter the program voluntarily or may be directed to participate in the program through a deferred prosecution agreement with the Commissioner of Education or a final order of the Commission.
- Removes limitation that persons who had previously been under investigation by the DOE may not be enrolled in treatment through the Recovery Network Program.
- Provides that determinations of ineligibility to participate in the program will be made by the program administrator or his or her designee, rather than the Commissioner of Education.
- Provides that, if treatment is a condition of a final order with the Commission, the program administrator's determination of ineligibility constitutes a finding that the person failed to comply with the final order. Previously, the Commissioner's determination of ineligibility constituted probable cause that the person failed to comply with the order, not a definitive finding. The bill states that the clerk of the Commission shall issue to the

educator an order to show cause upon request of the DOE or that the Commissioner may issue an administrative complaint in such a situation.

- Makes technical changes.

Section 943.0585. Section 943.0585, F.S., addresses court-ordered expunctions of criminal history records. This section permits persons who have had criminal history records expunged to lawfully deny or fail to acknowledge the arrests covered by the expunged record, but excludes certain categories of persons from being able to do this. The bill revises the section to provide that such denials will not be permitted by persons seeking to be employed or licensed by (1) the DOE (not just persons employed or licensed by the Office of Teacher Education, Certification, Staff Development and Professional Practices of the DOE, as the law previously required); (2) any university laboratory school; (3) any charter school; or (4) any private or parochial school.

Section 943.059. Section 943.059, F.S., addresses court-ordered sealing of criminal history records. The section permits a person who has had a criminal history record sealed to lawfully deny or fail to acknowledge the arrests covered by the sealed record, with certain exceptions. SB 2006 revises the section to provide that such denials will not be permitted by any person seeking to be employed or licensed by (1) the DOE (not just persons employed or licensed by the Office of Teacher Education, Certification, Staff Development and Professional Practices of the DOE, as the law previously required); (2) any university laboratory school; (3) any charter school; or (4) any private or parochial school.

The bill also creates a new section of the Florida Statutes, s. 1012.561, which:

- Requires educators to keep the Bureau of Educator Certification apprised of current mailing addresses and provides penalties for failure to do so.
- Permits all official communication to educators or applicants from the DOE, the Education Practices Commission, or the Recovery Network for Educators to be sent by regular mail, rather than certified mail, newspaper publication or process servers. The DOE anticipates that this change will save Professional Practices and the Education Practices Commission approximately \$20,000 and \$10,000 per year, respectively, in certified mail fees. This change will likely reduce to some degree, however, the certainty of delivery and receipt of such communications.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:**

The bill streamlines disciplinary procedures to increase efficiency and cost savings; a reduction of procedures, however, may sometimes foster claims of violations of procedural due process as required by case law developed under the Fourteenth Amendment to the U.S. Constitution.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The proposed changes may offer certain cost savings in the administration of disciplinary procedures. Data are not available to estimate the total cost savings that may be effected by this bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.