

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

Reduce Government

The bill requires a state agency or governmental subdivision, prior to making any decision to appoint or employ a person to work, either for compensation or as a volunteer, at any park, playground, day care center, or other place where children regularly congregate, to conduct a search of that person's name or other identifying information against the registration information regarding sexual predators and sexual offenders maintained by the FDLE.

B. EFFECT OF PROPOSED CHANGES:

Florida Department of Law Enforcement (FDLE) Sexual Offender Registry

Section 943.0435, F.S., requires a convicted sexual offender to register with the FDLE.

Subsections 943.043(1) and (2), F.S., provides the following for the FDLE:

- (1) The department **may** notify the public through the Internet of any information regarding sexual predators and sexual offenders which is not confidential and exempt from public disclosure under s. 119.07(1) and s. 24(a), Art. I of the State Constitution.
- (2) The department **shall** provide, through a toll-free telephone number, public access to registration information regarding sexual predators and sexual offenders and may provide other information reported to the department which is not exempt from public disclosure.

HB 891 creates an undesignated section of statute requiring a state agency or governmental subdivision, prior to making any decision to appoint or employ a person to work, either for compensation or as a volunteer, at any of the following:

- park,
- playground,
- day care center, or
- other place where children regularly congregate

to conduct a search of that person's name or other identifying information against the registration information regarding sexual predators and sexual offenders maintained by the Department of Law Enforcement . The bill further states that the agency or governmental subdivision may conduct the search using the FDLE toll-free phone line or the FDLE Internet site.

The bill does not give the agency or governmental subdivision direction of what to do with the results of the sexual offender search. For example, it does not require the agency or subdivision to disqualify an applicant if they are identified as a sexual offender. The bill does not contain a penalty for failing to make the required background check, and the bill does not appear to require those already appointed, employed, or volunteering in parks, playgrounds, daycares, and other places where children congregate to be subject to a background check.

Examples of Current Screening Required by Statute

Subsection 110.1127(1), F.S., requires state agencies to designate positions that, because of special trust or responsibility or sensitive location, require the applicant to be subject to a security background check, including fingerprinting, as a condition of employment. Paragraph 110.1127(3)(a), F.S., provides that all positions in programs providing care to children for 15 hours or more per week are deemed to be positions of special trust or responsibility and require employment screening pursuant to the level two standards in Chapter 435, F.S. The level two standards contained in Chapter 435, F.S., allow an agency access to criminal history records. Criminal history records provide the agency with more detailed information than that contained in the Florida Department of Law Enforcement's registry of sexual offenders and sexual predators.

Additionally, s. 39.001(2)(a), F.S., requires all facility personnel for providers for children who contract with Department of Children and Families (DCF) to be of good moral character.¹ "Personnel" is defined as owners, operators, employees, and volunteers. A volunteer is exempted from employment screening if they work on an intermittent basis for less than 40 hours per month and is under direct and constant supervision by persons who meet the screening requirements. Section 39.001(2)(b), F.S., requires all facility personnel for providers for children who contract with DCF to undergo employment background screening, and rescreening no less than once every 5 years, pursuant to the level two standards in Chapter 435, F.S.

Section 402.305, F.S., which addresses child care facilities, provides that child care center employees are required to be of good moral character and shall be screened using the level two standards for screening set forth in Chapter 435, F.S. Chapter 402, F.S., defines

"Screening" means the act of assessing the background of child care personnel and includes, but is not limited to, employment history checks, local criminal records checks through local law enforcement agencies, fingerprinting for all purposes and checks in this subsection, statewide criminal records checks through the Department of Law Enforcement, and federal criminal records checks through the Federal Bureau of Investigation; except that screening for volunteers included under the definition of personnel includes only local criminal records checks through local law enforcement agencies for current residence and residence immediately prior to employment as a volunteer, if different, and statewide criminal records correspondence checks through the Department of Law Enforcement.²

¹ "Good moral character" is not defined in this section, but elsewhere in statute, it is defined as having a personal history of honesty, fairness, and respect for the rights and property of others and for the laws of this state and nation. [See s. 493.6101(7), F.S.]

² See s. 402.302(13), F.S.

The following preliminary data was compiled by the FDLE:

Parks

Of the 158 state parks, there are 1, 034 regular employees, 400 OPS employees, 6,000 volunteers for a total of 7,434 persons working in Florida's state parks.

There are 1,397 county parks that have been reported by **17** of **67** counties (at this time).

There are 2,974 regular employees and 17,400 volunteers for a total of 20,374 persons working in county parks that have been reported by **3** out of the **17** counties (at this time).

There is no data regarding municipal parks at this time.

Playgrounds

There is no information regarding playgrounds at this time.

Day care centers

There are 15,454 state-licensed facilities with a minimal *estimate* of 29,826 employees. Volunteer data is not available at this time.

Other places where children regularly congregate

There are 3,492 public schools in the state. After school programs and summer camp data, as well as volunteer data, is not available at this time.

C. SECTION DIRECTORY:

Section 1. Creates an undetermined section of statute addressing search of registration information regarding sexual predators and sexual offenders prior to appointment or employment.

Section 2. Provides that the act take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Indeterminate for the entities conducting the background checks.

The Florida Department of Law Enforcement (FDLE) predicts that for the toll-free line there will need to be one Crime Intelligence Technician (CIT) to answer, research, and otherwise assist in the increase to the toll-free line. The non-recurring expenditure for FY 04-05 is estimated at \$40,023, and recurring expenditures for FY 05-06 and FY 06-07 are estimated at \$35,420 per fiscal year.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Indeterminate for the entities conducting the background checks. The fiscal impact on local governments could be considerable. At the time of publication of this analysis, three out of 67 counties had reported that there are 20,374 persons working in paid or volunteer positions in county parks in the state. This figure does not include municipal parks, and the other 64 counties' totals. Nor does it include playgrounds, day cares or any other places where children congregate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

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

The bill could possibly require a city or county to expend funds or to take action requiring the expenditure of funds. Since the data is incomplete from the 67 counties in Florida, it is indeterminate at this time. If the expenditure is in an amount not greater than the estimated statewide population³ for FY 04-05 times ten cents⁴, then the expenditure will be considered "insignificant" and the mandate provision will not apply.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

See Effects of Proposed Changes section.

³ The estimated statewide population for FY 04-05 is 17.4 million people.

⁴ Based on the estimated statewide population figure of 17.4 million people for FY 04-05, the expenditure must be greater than \$1.74 million to be considered significant.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

An amendment has been filed that removes reference to the FDLE hot-line, and directs the state agency or governmental subdivision to utilize the FLDE Internet website of sexual predators and sexual offenders as a source for these screenings. Adoption of this amendment would eliminate the significant fiscal impact on the FDLE.

The amendment also eliminates duplicitous screenings for positions or appointments that are already subject to required state and national criminal history background checks.