

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill increases agency authority in the Florida Department of Law Enforcement (FDLE) by authorizing that department to adopt rules applicable to the Department of Juvenile Justice (DJJ) that prescribe employment screening procedures and annual fees.

Ensure Lower Taxes – The bill authorizes the FDLE to charge annual fees for its employment screening services.

Promote personal responsibility – The bill clarifies that Level 2, rather than Level 1, employment screenings must be conducted by the DJJ for all personnel, who are either employed or contracted by the department. Level 2 employment screenings are more rigorous than Level 1 screenings, and as such, the bill provides greater personal accountability for unlawful behavior.

B. EFFECT OF PROPOSED CHANGES:

General statutory screening requirements: In 1995, the Legislature codified standards relating to background screenings required by law for employment with its creation of ch. 435, F.S.¹ This chapter provides for two levels of background screening that when required by law serve as a condition of employment or continued employment:

- A Level 1 screening requires, but is not limited to, a statewide criminal history check by the Florida Department of Law Enforcement (FDLE) and an employment history check. At this level, the person must not have been convicted of or pled guilty to enumerated offenses that include sexual, manslaughter, battery, and abuse offenses against certain persons, felony drug offenses, murder, kidnapping, prostitution, vehicular homicide, arson, and felony theft.²
- A Level 2 screening requires, but is not limited to, fingerprint-based state and federal juvenile and criminal records checks by the FDLE and federal criminal records checks by the Federal Bureau of Investigations. At this level, the person must not have been convicted of or pled guilty to enumerated offenses that include those proscribed for level one screenings, as well as resisting arrest with violence, aiding in certain escapes, introducing contraband into certain facilities, depriving officers of protection or communication, and recruiting gang members.³

If an employer believes that grounds exist for the denial or termination of employment as a result of a background screening, the employer must notify the applicant or employee in writing, stating the specific record that indicates noncompliance. The applicant or employee may contest the disqualification on mistaken identity grounds or may request an exemption from disqualification.⁴ In order to obtain an exemption, the crime at issue must be: a felony committed more than three years ago; a misdemeanor; or an act of delinquency or domestic violence. Further, the person seeking the exemption must demonstrate by clear and convincing evidence that he or she should not be disqualified from employment based on evidence of rehabilitation. The decision of an employer regarding whether to grant an exemption may be contested under ch. 120, F.S., the Administrative Procedure Act.⁵

¹ Chapter 95-228, L.O.F.

² Section 435.03, F.S.

³ Section 435.04, F.S.

⁴ Section 435.06, F.S.

⁵ In *Heburn v. Department of Children and Families*, the court indicated that departments have broad discretion in determining whether to grant an exemption and that such discretion will be upheld by an appellate court if it is exercised reasonably. *Heburn v. Department of Children and Families*, 772 So.2d 561, 563-564 (Fla. 1st DCA 2000); See also *Phillips v. Department of Juvenile Justice*, 736 So.2d

Department of Juvenile Justice screening requirements: Section 985.01(2), F.S., requires the Department of Juvenile Justice (DJJ) to conduct Level 2 screenings for personnel in programs for children or youth and specifies that the personnel of contractual providers to the DJJ must be of good moral character.⁶ Conversely, s. 985.407(4), F.S., states that the DJJ shall require Level 1 screenings for personnel in delinquency facilities, services, and programs. Thus, the statutes appear to conflict on the level of screening required. Representatives from the DJJ have indicated that the department in practice applies the more stringent Level 2 screening requirements of s. 985.01(2), F.S., for all employed and contracted personnel.

With regard to the DJJ's ability to grant exemptions from employment disqualification based upon Level 2 employment screenings, statute provides that the DJJ may not grant an exemption for any offense enumerated in the Level 2 screening section, which was disposed of within the last seven years.⁷

Criminal Justice Information Program: Section 943.05, F.S., establishes the Criminal Justice Information Program within the FDLE, which is to include the implementation of a statewide automated fingerprint identification system that is available to all criminal justice agencies. Section 943.051, F.S., requires the following persons to be fingerprinted: (a) adults charged with or convicted of felonies, misdemeanors, or specified ordinances; and (b) minors charged with or found to have committed specified misdemeanors and offenses that would be felonies if committed by an adult. Such fingerprints are used as the basis for criminal history records that are entered into the statewide automated fingerprint identification system.⁸

Effect of bill: The bill amends s. 985.407(4), F.S., to require the DJJ to conduct Level 2, rather than Level 1, screenings for personnel in delinquency facilities, services, and programs. This amendment brings s. 985.407(4), F.S., into conformity with the: (a) Level 2 screening requirements of s. 985.01(2), F.S.; and (b) DJJ's current screening practices. The bill also adds language that clarifies that such Level 2 screenings apply to personnel who are either employed or contracted in delinquency facilities, services, and programs.

The bill creates a new employment screening process for the DJJ and the FDLE. Under the bill, the DJJ is required to electronically submit to the FDLE: (a) fingerprints obtained during background screenings; and (b) by December 15, 2005, fingerprint information for all current personnel employed or contracted in delinquency facilities, services, and programs.⁹ The FDLE must enter fingerprint information submitted by the DJJ into the statewide automated fingerprint identification system and conduct searches to determine whether any arrest records are associated with the fingerprints.¹⁰ Arrest records identified by the FDLE must be reported to the DJJ. The DJJ is required to inform the FDLE of any change in: (a) the employment or contractual status of personnel whose fingerprints are retained by the FDLE; and (b) the place of employment or in the place where contractual services are provided by such personnel.

In exchange for the FDLE's employment screening services, the DJJ is required by the bill to pay an annual fee to the FDLE in accordance with FDLE rule that establishes the procedures for the retention

118, 119 (Fla. 4th DCA 1999)(stating that the court could not substitute its judgment for the department's discretionary decision to deny an exemption).

⁶ The Florida Supreme Court has defined good moral character as, "... acts and conduct which would cause a reasonable man to have substantial doubts about an individual's honesty, fairness, and respect for the rights of others and for the laws of the state and nation." *Florida Board of Bar Examiners, Re: G.W.L.*, 364 So.2d 454, 458 (Fla.1978).

⁷ Section 435.04(3), F.S.

⁸ Section 943.051(4), F.S.

⁹ The bill specifies that the requirement for the DJJ to submit fingerprint information for all current personnel does not apply to law enforcement, correctional, and correctional probation officers, as s. 943.13, F.S., sets forth the employment screening requirements for those persons.

¹⁰ The bill provides that fingerprint information entered into the statewide automated fingerprint identification system shall be available for all purposes and uses authorized for arrest fingerprint information received pursuant to s. 943.051, F.S. Section 943.051, F.S., addresses the type of arrests, charges, and convictions for which fingerprint information must be submitted to the FDLE.

of fingerprints submitted by, and the dissemination of search results to, employing agencies. The FDLE has not yet adopted this rule as it does not have the specific statutory authority required by ch. 120, F.S., for such a rule. The necessary specific statutory authority for the FDLE rule referenced by this bill is currently being considered by the Legislature in Committee Substitute for HB 645.

C. SECTION DIRECTORY:

Section 1. Amends s. 985.407(4), F.S.; requires the DJJ to conduct Level 2, rather than Level 1, employment screenings; requires the DJJ to submit fingerprint information for current personnel to the FDLE by December 15, 2005; requires the FDLE to retain submitted fingerprint information and to input such information in the statewide automated fingerprint identification system; requires the FDLE to search arrest fingerprint information against submitted fingerprint information on an ongoing basis; requires the FDLE to report arrest information identified with the submitted fingerprints to the DJJ; requires the DJJ to pay an annual fee for FDLE employment screening services; requires the DJJ to inform the FDLE of changes in the employment or contractual status of personnel whose fingerprints are retained by the FDLE in the place of employment or place where contractual services are provided by such personnel.

Section 2. Provides an effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill states that the DJJ shall pay an annual fee to the FDLE as established by the FDLE in rule. Representatives from the FDLE have indicated that the DJJ will be charged \$32 for each initial submission of fingerprint information under the bill and \$6 for each fiscal year thereafter for FDLE's retention of that fingerprint information. Of the initial \$32 fee, the FDLE receives \$8 for its statewide criminal history check, while the federal government receives \$24 for its nationwide criminal history check.

Fiscal Year '05—'06: It is estimated that the DJJ and its private providers currently have a total of 15,000 employees whose fingerprint information will be required to be submitted to the FDLE under this bill. Although Level 2 screenings have previously been conducted on these employees, the FDLE indicates that it will be necessary to conduct those screenings again in order to enter the fingerprint records into the statewide automated fingerprint system. Thus, the non-recurring cost to the DJJ and its private providers for Fiscal Year '05—'06 is projected to be \$480,000 (\$32 multiplied by 15,000). Of this amount, the FDLE will receive \$120,000 and the federal government will receive \$360,000.

Future Fiscal Years: Representatives from the DJJ estimate that the department will maintain its current total of 15,000 employees in future fiscal years; however, they state that the department has a 25% turnover rate. As such, it is estimated for future years that the \$6 per year retention fee will be charged for 11,250 employees (75% of the 15,000 total employees); thereby, resulting in an annual recurring revenue to the FDLE of \$67,500 (\$6 multiplied by 11,250 employees). A Level 2 screening fee of \$32 will be charged for the estimated 3,750 new employees. This latter cost is not a result of the bill, however, as the DJJ and its private providers currently conduct and pay for Level 2 screenings.

2. Expenditures:

Fiscal Year '05—'06: As discussed above, the DJJ and its private providers currently have a total of 15,000 employees whose fingerprint information will be required to be submitted to the FDLE under this bill at a non-recurring cost of \$480,000 (\$32 multiplied by 15,000) for Fiscal Year '05—

'06. The DJJ indicates that approximately 10,000 of these employees are with its private providers and that it will bill the private providers for \$320,000 (\$32 fee multiplied by 10,000 employees). Further, as discussed below in the section entitled, "Fiscal Impact on Local Governments," the DJJ, under current law, may shift its cost for detention workers to the counties. It is estimated that 2,200 of the 15,000 employees are detention workers employed by the DJJ and, thus, the DJJ may bill the counties for \$70,400 (\$32 fee multiplied by 2,200). Accordingly, the net non-recurring cost of this bill to the DJJ in Fiscal Year '05-'06 is estimated to be \$89,600.

Future Fiscal Years: Representatives from the DJJ estimate that the department will maintain its current total of 15,000 employees in future fiscal years; however, they state that the department has a 25% turnover rate. As such, it is estimated for future years that the \$6 per year retention fee will be charged for a total of 11,250 employees (75% of the 15,000 total employees); thereby, resulting in an annual recurring cost of \$67,500 (\$6 multiplied by 11,250 employees).

Of the 11,250 employees, approximately 7,500 are employed by private providers and approximately 1,650 are detention workers. Accordingly, the DJJ may bill the private providers for \$45,000 (\$6 fee multiplied by 7,500 employees) and the counties for \$9,900 (\$6 fee multiplied by 1,650 employees). Thus, the net recurring cost of this bill to the DJJ is \$12,600.

A Level 2 screening fee of \$32 will be charged for the estimated 3,750 new employees that the DJJ and its private providers are estimated to hire annually. This cost, however, is not a result of the bill as the DJJ and its private providers currently conduct and pay for Level 2 screenings.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None apparent.

2. Expenditures:

Currently s. 985.2155, F.S., as amended by ch. 2004-263, L.O.F., will require Florida counties effective July 1, 2005, to pay the costs of detention care provided by the DJJ for juveniles during the preadjudication phase. Accordingly, it appears that the costs incurred by the DJJ for fingerprint retention under this bill will be passed on to the counties.

As discussed above, the number of current DJJ detention employees is 2,200. Thus, the DJJ may bill the counties for \$70,400 (\$32 fee multiplied by 2,200) in Fiscal Year '05—'06 and for \$9,900 (\$6 fee multiplied by 1,650 employees) in future fiscal years.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The DJJ indicates that its private providers currently pay the \$32 Level 2 employment screening cost and that the private providers will be responsible for costs resulting from this bill's requirements. As discussed above, the current number of private provider employees is 10,000. Thus, the DJJ may bill the private providers for \$320,000 (\$32 fee multiplied by 10,000 employees) in Fiscal Year '05—'06 and \$45,000 (\$6 fee multiplied by 7,500 employees) in future fiscal years.

D. FISCAL COMMENTS:

Presumably the annual fees permitted to be charged by the FDLE under the bill will only cover costs actually incurred by the FDLE for its fingerprint information retention services under the bill. The bill, however, does not make this statement. In order to insure that annual fees actually charged reflect only those costs incurred by the FDLE, the Legislature may wish to amend the bill to state that the annual fee shall be for the FDLE's costs resulting from its fingerprint information retention services required by the bill.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Pursuant to Art. VII, s. 18 of the Florida Constitution, the provision concerning local mandates, the Legislature may not pass a law requiring a county or municipality to spend funds unless an appropriation of sufficient funding is provided. This bill, however, does not appear to implicate this provision as it does not directly require counties to pay for employment screening costs for detention workers. Instead, s. 985.2155, F.S., as amended by ch. 2004-263, L.O.F., imposes the obligation of paying all detention costs on the counties beginning July 1, 2005. Further, even if this bill were construed as implicating the local mandates provision, the bill is anticipated to have an insignificant fiscal impact on the counties, i.e., less than \$1.6 million, based on the estimate that Fiscal Year '05—'06 non-recurring costs to counties will be \$70,400 and that future costs will be \$9,900 annually. Accordingly, the bill appears to be exempt from the constitutional mandate funding requirements.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides that the DJJ is required to pay an annual fee to the FDLE in accordance with a FDLE rule that establishes the procedures for the retention of fingerprints submitted by, and the dissemination of search results to, employing agencies. The FDLE has not yet adopted this rule as it does not have the specific statutory authority required by ch. 120, F.S., for such a rule. The necessary specific statutory authority for the FDLE rule referenced by this bill is currently being considered by the Legislature in Committee Substitute for HB 645. In the event this bill is enacted and Committee Substitute for HB 645 is not enacted, the FDLE will not have specific rulemaking authority for the rule referenced in this bill. The Legislature may wish to consider amending this bill to contain the necessary specific rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill uses the terms, "fingerprints" and "fingerprint information," and "background screening" and "employment screening," as well as the phrases, "electronically submit" and "submit fingerprints electronically," interchangeably. The Legislature may wish to amend the bill to use these terms and phrases consistently.

In paragraph (4)(a), the bill requires the FDLE to retain all fingerprint information submitted by the DJJ for its *current* personnel and to input that information into the statewide automated fingerprint identification system. The bill, however, does not contain this same requirement for fingerprint information submitted by the DJJ for *prospective* personnel. If it is the Legislature's intent that this requirement be applicable to current and prospective personnel, the Legislature may wish to amend the bill to contain this specification.

In paragraph (4)(a), the bill provides that the FDLE shall search fingerprint information submitted by the DJJ "on an ongoing basis." It is unclear what "on an ongoing basis" means with regard to a time frame for such searches, e.g., daily, weekly, or monthly. The Legislature may wish to clarify this provision of the bill by specifying the required frequency for searches.

Presumably the annual fees to be charged by the FDLE will only cover costs actually incurred by the FDLE for its fingerprint information retention services under the bill. The bill, however, does not make this statement. In order to insure that annual fees actually charged reflect only those costs incurred by

the FDLE, the Legislature may wish to amend the bill to state that the annual fee shall be for the FDLE's costs resulting from its fingerprint information retention services required by the bill.

See *also* Section III, B. of this analysis entitled, "Rule-Making Authority."

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES