

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Education Pre-K - 12 Committee

BILL: SB 1610

INTRODUCER: Senator Dean

SUBJECT: Background Screening

DATE: February 10, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	deMarsh-Mathues	ED	Pre-meeting
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

This bill requires the Department of Education (DOE) to approve a uniform, statewide photo identification badge to be worn by noninstructional contractors indicating that the contractors have been screened.

School districts would be required to issue the contractor badges. To qualify for the badge, the contractor must:

- Be a resident and citizen, or a permanent resident alien of the U.S.;
- Be at least 18 years old; and
- Meet background screening standards.

The badges must be visible at all times when a noninstructional contractor is on school grounds.

The cost for the identification badge, to be determined by the DOE, will be paid by the contractor.

This bill substantially amends section 1012.467 of the Florida Statutes.

II. Present Situation:

Criminal History Background Checks for Noninstructional Contractors (s. 1012.467, F.S.)

A noninstructional contractor is defined as any vendor, person, or entity under school or school board contract who is compensated for services performed for the school or school district, not in

an employee capacity. Noninstructional contractors also include employees of contractors, subcontractors, and subcontractor employees.¹

A criminal history check is required of each noninstructional contractor who is:

- Granted access to school grounds when students are present;
- Whose contract performance with the school or school board is not expected to involve direct contact with students; and
- Expected to have infrequent and incidental student contact.²

The criminal history check, to be conducted every five years, involves a database search for convictions of the following offenses:

- Sexual offender crimes;
- Sexual misconduct with developmentally disabled adults or mental health patients;
- Terrorism;
- Murder;
- Kidnapping;
- Lewdness and indecent exposure;³
- Incest; and
- Child abuse, aggravated child abuse, or neglect of a child.⁴

Noninstructional contractors are under a standing duty to report to an employer within 48 hours any arrests involving disqualifying offenses, or be subject to third-degree felony charges for a failure to notify.⁵

A noninstructional contractor that works in multiple districts is required to notify a school district that he or she has completed a criminal history check in another school district in the last five years. The school district uses a shared system, designed for that purpose, to verify results, without cost to the contractor.⁶ The system is commonly known as the Florida Shared School Results system (FSSR). Over the last five-year period, the Florida Department of Law Enforcement (FDLE) indicates that of the 222,570 records in the FSSR, only 32,309 were viewed by a school district other than the one which submitted the record. This represents just 14.5 percent of the total number of records maintained, which suggests that work in multiple districts may not be that common.⁷

Level 2 Background Screenings

Certain employees, such as instructional personnel and noninstructional personnel who have direct contact with students, are subject to more rigorous background screening. This includes

¹ s. 1012.467(1), F.S.

² s. 1012.467(2)(a), F.S.

³ s. 435.04(1), F.S.

⁴ s. 1012.467(2)(a) and (g), F.S.

⁵ s. 1012.467(6), F.S.

⁶ s. 1012.467(2)(f), F.S.

⁷ Donna Uzell, FDLE, E-mail correspondence on February 10, 2012. On file with the Committee on Education Pre-K – 12.

not only fingerprinting through the FDLE, but also a national criminal history check through the Federal Bureau of Investigation, as well as a more comprehensive list of disqualifying offenses.⁸ These include categories of offenses relating to sexual misconduct against children, abuse against vulnerable populations, violent crimes, certain felony drug crimes, and a range of miscellaneous offenses, such as felony video voyeurism, arson, false imprisonment, and escape.⁹

Level 2 screenings capture not just convictions, but also pending charges, guilty pleas and pleas of nolo contendere (neither admission of, nor denial of guilt.)¹⁰

The DOE indicates that screening standards established in s. 1012.467, F.S., are considered to represent the minimum set of standards, and many districts have adopted their own screening standards for contractors. Some districts apply the same standards to employees and contractors, established by their school boards. Other districts use separate screening standards adopted by their school board or have adopted the provisions in s. 435.04, F.S., as their standards for contractors. This has created great confusion for those contractors who cross districts in their work in multiple districts.¹¹

III. Effect of Proposed Changes:

This bill requires the DOE to approve a uniform, statewide photo identification badge to be worn by noninstructional contractors indicating that the contractors have been screened.

School districts would be required to issue the actual contractor badges. To qualify for the badge, the contractor must:

- Be a resident and citizen, or a permanent resident alien of the U.S.;
- Be at least 18 years old; and
- Meet criminal history background check requirements in s. 1012.467, F.S., and the more rigorous Level 2 background screening standards.

This bill appears to subject noninstructional personnel to both the current requirements of disqualifying offenses found in s. 1012.467, F.S., and the more comprehensive Level 2 screening offenses in s. 435.04, F.S. It is uncertain which one applies. Also, the bill cites s. 1012.32, F.S., as providing description of Level 2 background screening standards. This section of law addresses qualifications of district school personnel, one of which is background screening, but does not contain a description of any disqualifying offenses. If the intent of the bill is to provide more rigorous standards, both in terms of numbers of offenses and broader disposition (i.e., even arrests if charges are pending), then s. 435.04, F.S., needs to be the applicable cross-reference. If, on the other hand, the intent of the bill is to maintain current law, then the list of disqualifying offenses in s. 1012.467, F.S., with its accompanying disposition of the case set at the higher level of an actual conviction should apply.

The badges must be visible at all times when a noninstructional contractor is on school grounds.

⁸ s. 435.04(1), F.S.

⁹ s. 435.04(2), F.S.

¹⁰ s. 435.04(2), F.S.

¹¹ DOE Bill Analysis on SB 1610 (January 17, 2012). On file with the Committee on Education Pre-K – 12.

Although this bill does not take effect until October 1, 2012, which is later than the standard July 1, 2012, effective date, it is unknown whether this will be sufficient time for the DOE to approve the badge, and prepare for distribution.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The cost for the identification badge, to be determined by the DOE, will be paid by the contractor. Presumably the cost would include the cost of screening.

It is unclear what impact the requirement for citizenship or permanent resident alien status could have on private contractor companies.

C. Government Sector Impact:

As the cost of the badge would be borne by the contractor, the DOE should not incur a fiscal impact, other than a small increase in workload from the provisions of this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
