

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 21 Background Screening for Noninstructional Contractors on School Grounds

SPONSOR(S): Perry and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 318

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) K-12 Subcommittee	12 Y, 0 N	Beagle	Ahearn
2) Education Appropriations Subcommittee	13 Y, 0 N	Seifert	Heflin
3) Education Committee	16 Y, 0 N	Beagle	Mizereck

SUMMARY ANALYSIS

The bill requires the Department of Education (DOE) to create a uniform, statewide identification badge signifying that a noninstructional contractor has satisfied the specified background screening requirements. School districts are responsible for issuing the badges, which must include a photograph of the contractor. A contractor must be issued a badge if he or she is a U.S. resident and citizen or permanent resident alien, 18 years of age or older, and meets the specified background screening requirements.

The badge must be recognized by each Florida school district, visibly worn by the noninstructional contractor when on school grounds, and is valid for five years. DOE must determine a uniform cost that may be charged to a contractor for the badge. Contractors who are exempt from background screening requirements are not required to obtain a badge.

Currently, there is no required uniform, statewide identification badge that signifies that a noninstructional contractor has satisfied background screening requirements. School districts generally issue their own identification badges or proof of clearance.

Noninstructional contractors will be charged a fee for the statewide identification badge, as set by DOE. Currently school districts that issue identification badges set their own fee. There is no way to know at this time whether DOE's set fee will be higher or lower than that currently charged by the districts. However, noninstructional contractors who work in multiple school districts would only be required to obtain and pay for one identification badge, rather than obtaining a badge and paying a fee in each individual district. This may result in reduced costs for noninstructional contractors.

School districts that issue their own identification badges will have to redesign their current system in order to issue the uniform, statewide identification badge. The costs associated with this process are indeterminate. Districts that contract with a vendor for this process may incur costs associated with re-negotiating the contract. Also, a school district that does not originate the background screening and issuance of the statewide identification badge will no longer be able to issue its own badge and charge a corresponding fee.

The bill has an indeterminate fiscal impact. See Fiscal Comments.

The bill requires DOE to determine a uniform cost that may be charged to a contractor for the statewide identification badge, but does not specify an amount or provide standards for determining the amount of the fee. Florida courts have held that the Legislature, when delegating authority to executive agencies or other entities, must establish minimal standards and guidelines ascertainable by reference to the legislation. See Drafting Issues or Other Comments.

The bill takes effect July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Background Screening

Florida law requires individuals who work in, or provide services to, public schools and school districts to undergo a fingerprint-based background screening before being permitted access to school grounds.¹ The individuals who must undergo background screening fall under three personnel classifications - instructional and noninstructional personnel,² noninstructional school district employees and contracted personnel,³ and noninstructional contractors.⁴ The background screening requirements for each personnel classification vary depending upon the individual's duties, whether or not the individual is a school district employee, and the degree of contact the individual has with students.⁵

Noninstructional contractors are vendors of services and contractors who are permitted access to school grounds when students are present, do not have direct contact with students, and are not school district employees.⁶ The noninstructional contractor's fingerprints are submitted to the Florida Department of Law Enforcement (FDLE) for statewide criminal and juvenile records checks. FDLE is responsible for forwarding the fingerprints to the Federal Bureau of Investigation (FBI) for federal criminal records checks.⁷ FDLE provides the results of the criminal records checks to the school district, which must then screen the records against a statutorily prescribed list of disqualifying offenses.⁸ Noninstructional contractors must be screened against nine disqualifying offenses:⁹

- Offenses regarding registration as a sexual offender;¹⁰
- Sexual misconduct with certain developmentally disabled clients;¹¹
- Sexual misconduct with certain mental health patients;¹²
- Terrorism;¹³
- Murder;¹⁴
- Kidnapping;¹⁵
- Offenses related to lewdness and indecent exposure;¹⁶
- Incest;¹⁷ and

¹ Sections 1012.32, 1012.465, and 1012.467, F.S. Private schools participating in educational choice scholarship programs must also submit fingerprints of employees and contracted personnel with direct student contact to FDLE. *See* ss. 943.0542 and 1002.421(2)(i), F.S.

² Instructional and noninstructional personnel are individuals who are hired or contracted to fill positions that require direct contact with students in any public school. Section 1012.32(2), F.S.

³ Noninstructional school district employees and contracted personnel are individuals who are permitted access to school grounds when students are present; who have direct contact with students; or who have access to, or control of, school funds. Section 1012.465(1), F.S.

⁴ Section 1012.467(2)(a), F.S.

⁵ Sections 1012.32(2), 1012.465(2), and 1012.467(2)(a), F.S.

⁶ Section 1012.467(1)(a) and (2)(a) and (g), F.S.

⁷ Sections 1012.32(2) and 1012.467(2)(a), F.S.

⁸ Section 1012.32(2), F.S. (flush-left provisions at end of subsection; instructional and noninstructional personnel); s. 1012.465(3), F.S. (noninstructional school district employees); s. 1012.467(3), F.S. (noninstructional contractors).

⁹ Section 1012.467(2)(g), F.S.

¹⁰ Section 943.0435(1)(a)1., F.S.

¹¹ Section 393.135, F.S.

¹² Section 394.4593, F.S.

¹³ Section 775.30, F.S.

¹⁴ Section 782.04, F.S.

¹⁵ Section 787.01, F.S.

¹⁶ Chapter 800, F.S.

- Child abuse, aggravated child abuse, or neglect of a child.¹⁸

If the noninstructional contractor has not been convicted of any of the nine disqualifying offenses, the school district may permit him or her to work on school grounds. School districts generally issue their own identification badges or proof of clearance. School districts are not currently prohibited from disqualifying a noninstructional contractor based upon additional offenses.¹⁹

Background screening is not required for noninstructional contractors who are:

- On school grounds while under the direct supervision of a school district employee or contractor who has been screened;
- Required to undergo level 2 background screening²⁰ for licensure, certification, employment, or other purposes;
- Law enforcement officers;
- Employees or medical directors of an ambulance service;
- Confined to an area where students are not permitted if the site is separated from school grounds by a chain link fence;
- Providing pick-up or delivery services involving only brief visits on school grounds when students are present; and
- Investigators for the Florida High School Athletic Association that have undergone level 2 background screening.²¹

Noninstructional contractors who are exempt from background screening must have their name searched in the FDLE and national sex offender registries. The individual may not be permitted on school grounds if he or she is identified as a sexual predator or sexual offender in the registry search. The school district may not charge the individual a fee for the search.²²

Each noninstructional contractor's fingerprints are retained in the statewide automated fingerprint identification system for five years, at which time the individual must be rescreened.²³ The statewide system enables school districts to screen noninstructional contractors who are new to the district, but who have already had a criminal history check by another district, without having to initiate a new criminal history check. In such cases, the school district checks the database to see if the noninstructional contractor has any new arrests or convictions since the initial screening.²⁴

Additionally, FDLE must periodically search all new arrest fingerprint cards received against the fingerprints retained in the system. If these periodic searches reveal a new arrest on a noninstructional contractor's record, FDLE must notify any school districts that have screened the contractor.²⁵

Each noninstructional contractor must inform his or her employer (or other party to the contract) and the school district within 48 hours if he or she is arrested for any of the nine disqualifying offenses. Willful failure to do so is a third degree felony. If the employer (or other party to the contract) knows of such offense and allows the contractor access to school grounds when students are present, he or she commits a third degree felony.²⁶

¹⁷ Section 826.04, F.S.

¹⁸ Section 827.03, F.S.

¹⁹ Section 1012.467(4), F.S.

²⁰ Level 2 background screening requires individuals to be screened against a statutorily prescribed list of 51 offenses. Instructional and noninstructional personnel and noninstructional school district employees and contractors must undergo level 2 screening. *See ss.* 435.04, 1012.32(2), 1012.465(1), and 1012.56(10), F.S.

²¹ Section 1012.468(2), F.S.

²² Section 1012.468(3), F.S.

²³ Section 1012.467(2)(a) and (e), F.S.; rule 11C-6.010(7), F.A.C.

²⁴ Section 1012.467(2) (d) and (7)(a) F.S.

²⁵ Section 1012.467(2)(c) and (d), F.S.; rule 11C-6.010(4), F.A.C.

²⁶ Section 1012.467(6), F.S. A third degree felony is punishable by a term of imprisonment not exceeding 5 years or fine not exceeding \$5000. Sections 775.082, and 775.083, F.S.

Effect of Proposed Changes

The bill requires the Department of Education (DOE) to create a uniform, statewide identification badge signifying that a noninstructional contractor has satisfied the specified background screening requirements. School districts are responsible for issuing the badges, which must include a photograph of the contractor. A contractor must be issued a badge if he or she is a U.S. resident and citizen or permanent resident alien, 18 years of age or older, and meets the specified background screening requirements.

The identification badge must be recognized by each Florida school district, visibly worn by the noninstructional contractor when on school grounds, and is valid for five years. DOE must determine a uniform cost that may be charged for the badge to a contractor. Contractors who are exempt from background screening requirements are not required to obtain a badge.

Current law requires each noninstructional contractor to inform his or her employer (or other party to the contract) and the school district within 48 hours if he or she is arrested for a disqualifying offense. If the noninstructional contractor provides notification of a disqualifying offense, the bill requires that contractor to return his or her identification badge to the issuing school district within 48 hours.

Currently, when a school district screens noninstructional contractors who are new to the district, but who have already had a criminal history check conducted by another district, the school district uses the statewide automated fingerprint identification system to check for new arrests or convictions that may have occurred since the initial criminal history check. The school district is prohibited from charging the contractor a fee for verifying the results of his or her criminal history check,²⁷ but is not prohibited from charging a fee for issuance of an identification badge. Under the bill, a school district that does not originate the background screening and issuance of the badge will no longer be able to issue its own badge and charge a corresponding fee.

The bill appears to prevent a school district's discretion to disqualify a noninstructional contractor for offenses that are not currently listed as disqualifying offenses. Furthermore, the bill does not require a contractor who is fired by his or her employer to return the badge to the school district or employer.

Finally, the bill requires DOE to determine the cost to a noninstructional contractor for receipt of an identification badge, which must be borne by the recipient of the badge. Currently, the amount school districts charge for the identification badges varies, as does the length of time such badges are valid.

B. SECTION DIRECTORY:

Section 1. Amends s. 1012.467, F.S., relating to background screening of noninstructional contractors on school grounds; requires DOE to create a statewide photo identification badge for noninstructional contractors; requires Florida school districts to accept the badge as proof of the contractor's compliance with specified background screening requirements; provides criteria for issuance of the badge by school districts; provides that the badge is valid for five years; requires return of the badge if a contractor commits a disqualifying offense; requires DOE to determine a uniform cost of the badge charged to contractors; provides an exemption.

Section 2. Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

²⁷ Section 1012.467(2)(f), F.S.
STORAGE NAME: h0021e.EDC
DATE: 3/25/2013

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Noninstructional contractors will be charged a fee for the identification badge, as set by DOE. Currently school districts that issue identification badges set their own fee. There is no way to know at this time whether DOE's set fee will be higher or lower than that currently charged by the districts. However, noninstructional contractors who work in multiple school districts would only be required to obtain and pay for one identification badge, rather than obtaining a badge and paying a fee in each individual district. This may result in reduced costs for noninstructional contractors.

D. FISCAL COMMENTS:

School districts that issue their own identification badges will have to redesign their current system in order to issue the uniform, statewide identification badge. The costs associated with this process are indeterminate. Districts that contract with a vendor for this process may incur costs associated with re-negotiating the contract. Also, a school district that does not originate the background screening and issuance of the statewide identification badge will no longer be able to issue its own badge and charge a corresponding fee.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 44-47: The bill requires DOE to determine a uniform cost that may be charged to a contractor for the statewide identification badge, but does not specify an amount or provide standards for determining the amount of the fee. Florida courts have held that the Legislature, when delegating authority to executive agencies or other entities, must establish minimal standards and guidelines ascertainable by reference to the legislation.²⁸

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.