

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1127 Educational Employees
SPONSOR(S): Duggan
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1444

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) PreK-12 Quality Subcommittee	12 Y, 0 N	McAlarney	Guy
2) PreK-12 Appropriations Subcommittee		Seifert	Potvin
3) Education Committee			

SUMMARY ANALYSIS

The bill requires the Florida Department of Education (DOE) to create and maintain an electronic employment disqualification list (DQ list) with the intent of preventing individuals subject to disciplinary action from working or serving in an education environment. Individuals who may not be subject to extensive criminal background checks would be exposed by the DQ list.

The DQ list must be used by all public schools, including charter schools, and private schools that accept students who participate in a state scholarship program listed in chapter 1002, F.S., to screen potential employees, contract employees, board members, or owners for past bad conduct that would disqualify them from being in an educational environment. Screening against the DQ list acts to supplement current criminal background screenings required by Florida law.

The bill authorizes the Educational Practices Commission (EPC) and the Commissioner of Education (Commissioner) to place an individual on the DQ list. "Individuals" include: public school employees, public school contracted personnel, charter schools, charter school governing boards, and private schools that accept students who participate in a state scholarship program listed in chapter 1002, F.S.

The DOE must place individuals on the DQ list when directed to do so by the EPC for reasons such as an individual has had their education certificate permanently revoked by the EPC, a private school owner's authority to own or operate has been revoked by the Commissioner, or a private school operator's authority to own or operate has been revoked by the Commissioner.

The bill requires certain individuals to report and investigate credible allegations of misconduct. Those with duties to report or investigate include: superintendents of schools who must investigate all allegations; the DOE, which must investigate legally sufficient complaints involving misconduct; and the Commissioner who must, at a minimum, suspend and remove from direct student contact any individuals with credible allegations of misconduct.

The bill will have a fiscal impact on the Department of Education that is indeterminate, but can be absorbed within existing departmental resources. See Fiscal Comments.

The bill provides an effective date of July 1, 2019.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Florida schools have had problems with school personnel, substitute teachers, or contractors who have committed crimes of moral turpitude and have gone on to continue serving in positions that require direct contact with students.¹ Many times these individuals resign before the completion of an investigation. This has the practical effect of allowing them to continue working because they were never formally charged. For example, in Hillsborough County, five former teachers who resigned while under investigation for wrongdoing later returned to the classroom through a company that provides temporary workers for the school district. Of those five, two were found to be working as substitute teachers after resigning.²

Current Situation

Instructional personnel and noninstructional personnel who are hired or contracted to fill positions that require direct contact with students must undergo background screening.³ An individual may not be employed, engaged to provide services, or serve in any position that requires direct contact with students⁴ if the individual has been found through a background screening to have been convicted of any crime involving moral turpitude.⁵ To be employed in an instructional capacity, the person must be 18 years or older and hold a certificate or license issued by the State Board of Education (SBE) or the Department of Children and Families, except in specific circumstances.⁶

To be eligible for an educator certificate or appointment to many positions in a school district, a person must be of good moral character and submit to fingerprinting and background screening, and not have a criminal history that requires the applicant's disqualification from certification or employment.⁷ To be eligible for employment as a contractor or vendor who is permitted access to school grounds when students are present, the individual must pass a fingerprint based criminal background check. Criminal history checks on these contractors and vendors must be performed at least once every 5 years.⁸

To be an educator in a traditional public school, charter school, virtual school, or other publicly operated school, a person must hold a certificate issued by the Florida Department of Education (DOE).⁹ Persons seeking employment at a public school as a school supervisor, principal, teacher, library media specialist, counselor, athletic coach, or in another instructional capacity must be certified.¹⁰ The purpose of certification is to require school-based personnel to "possess the credentials, knowledge, and skills necessary to allow the opportunity for a high-quality education in the public schools."¹¹

¹ Jarrod Holbrook, *I-Team: Hillsborough School Supervisors Lacked Oversight on Substitute Teachers who Misbehave*, Aug. 15, 2017, <https://www.abcactionnews.com/news/local-news/i-team-investigates/i-team-hillsborough-school-supervisors-lacked-oversight-on-substitute-teachers-who-misbehave> (last visited Mar. 18, 2019).

² Marlene Sokol, *Company in Charge of Hillsborough Substitute Teachers Weighs in on Problem Cases*, Tampa Bay Times, https://www.tampabay.com/news/education/k12/Company-in-charge-of-Hillsborough-substitute-teachers-weighs-in-on-problem-cases_168478343 (last visited May 18, 2019).

³ Section 1012.32(2)(a), F.S.

⁴ Section 1012.32(2)(a)-(4), F.S.

⁵ Rule 6A-5.056(7), F.A.C., provides a list of offenses that are considered crimes involving moral turpitude, including the offenses listed in s. 1012.315, F.S.

⁶ Section 1012.32(1), F.S.

⁷ Section 1012.56(2)(a)-(f), F.S.

⁸ Section 1012.467(2)(a), F.S.

⁹ Sections 1012.55(1) and 1002.33(12)(f), F.S.

¹⁰ Sections 1002.33(12)(f) (charter school teachers) and 1012.55(1), F.S. District school boards and charter school governing boards are authorized to hire non-certified individuals who possess expertise in a given field to serve in an instructional capacity. Rule 6A-1.0502, F.A.C.; ss. 1002.33(12)(f) and 1012.55(1)(c), F.S. Occupational therapists, physical therapists, audiologists, and speech therapists are not required to be certified educators. Rule 6A-1.0502(10) and (11), F.A.C.

¹¹ Section 1012.54, F.S.; Rule 6A-4.001(1), F.A.C.

Employment Disqualifiers

A person is ineligible for educator certification or employment in any position that requires direct contact with students in a district school system, charter school, or private school that accepts scholarship students who participate in a state scholarship program listed in chapter 1002, F.S., if the person has been convicted of any of the felony or misdemeanor offenses listed in s. 1012.315, F.S.¹² The offenses listed are similar to Level 2 screening standards.¹³

DOE Investigations of Alleged Misconduct

The DOE's Office of Professional Practice Services (OPPS) administers the state grievance process regarding certified educators, investigates alleged misconduct by certified educators, and pursues disciplinary actions against certified educators who are found to have committed acts of misconduct.¹⁴ The DOE must expeditiously investigate a filed complaint which, if legally sufficient,¹⁵ contains grounds for the revocation or suspension of a certificate or any other appropriate penalty.¹⁶ Complaints can be filed by any person or entity, and the OPPS can self-generate complaints on their own using media reports or other sources. Legally sufficient complaints of misconduct that affect the health, safety, or welfare of a student must be given priority over other pending complaints.¹⁷

For complaints originated by a school district, the district must file with the DOE a legally sufficient complaint within 30 days after the date on which the subject of the complaint comes to the attention of the school district.¹⁸ The report must include all information relating to the complaint known to the school district. Each district school board must adopt policies and procedures for reporting legally sufficient complaints of misconduct to the DOE.¹⁹

Complaints and materials relating to an investigation of a complaint are confidential and exempt from public records laws until the conclusion of the preliminary investigation or until the investigation is considered inactive.²⁰ A preliminary investigation is active so long as it is continuing with a reasonable, good faith anticipation that an administrative finding will be made in the near future. An investigation is presumed to be inactive if no finding relating to probable cause is made within 60 days after the complaint is made.²¹ Once the OPPS finds probable cause, the case is turned over to the Education Practices Commission (EPC) for an administrative hearing.

Education Practices Commission

The State Board of Education (SBE) has adopted standards for educator conduct, referred to as the Principles of Professional Conduct for the Education Profession.²² The EPC interprets and applies the principles.²³ At least once each year, the EPC must report to and meet with the State Board of

¹² Section 1012.315(1)(a)-(vv), (3), and (4), F.S.

¹³ Section 435.04, F.S.

¹⁴ Florida Department of Education, *Professional Practices*, <http://www.fldoe.org/teaching/professional-practices/> (last visited Mar. 10, 2019).

¹⁵ A complaint is legally sufficient if it contains "ultimate facts that show a violation has occurred" as provided in law and state board rule. Section 1012.796(1)(d), F.S.

¹⁶ Section 1012.796(1)(a), F.S.

¹⁷ Section 1012.796(1)(b), F.S.

¹⁸ Section 1012.796(1)(d), F.S.

¹⁹ *Id.*

²⁰ Section 1012.31(3)(a)1., F.S.

²¹ *Id.*

²² Section 1012.795(1)(j), F.S.; Rule 6A-10.081, F.A.C.

²³ Section 1012.79(7)(a), F.S.

Education (SBE).²⁴ The EPC is authorized to revoke or suspend an educator certificate or take other appropriate action as provided in law.²⁵

Specifically, the EPC may revoke or suspend an educator's certificate if a person, among other things, has been:²⁶

- Found guilty of gross immorality or an act involving moral turpitude as defined by SBE rule.
- Convicted or found guilty of, or entered a plea of guilty to, regardless of adjudication of guilt, a misdemeanor, felony, or any other criminal charge, other than a minor traffic violation.
- Disqualified from educator certification based on a conviction for certain criminal offenses.

The EPC may impose one or more of the following penalties against a person with an educator certificate:

- Denial of an application, including prohibiting reapplication for a period of up to ten years or permanently.
- Revocation or suspension of a certificate.
- Imposition of an administrative fine not to exceed \$2,000 for each count or separate offense.
- Probation.
- Restriction of the authorized scope of practice.
- Written reprimand.
- Referral to the recovery network program.²⁷

The DOE may deny certification if it has satisfactory evidence that an applicant has committed an act or acts, or that a situation exists, for which the EPC would be authorized to revoke a teaching certificate.²⁸ The DOE's decision is subject to review by the EPC upon the filing of a written request from the applicant within 20 days after receipt of notice of denial.²⁹

Teacher Certification and Disciplinary Databases

The DOE provides authorized staff of school districts, charter schools, the Florida School for the Deaf and the Blind, and private schools that accept scholarship students who participate in a state scholarship program listed in chapter 1002, F.S., with access to electronic verification of information from the *Professional Practices' Database of Disciplinary Actions Against Educators*³⁰ and the *DOE's Teacher Certification Database*.³¹ The *Professional Practices' Database of Disciplinary Actions Against Educators* is a database that lists the outcomes of administrative hearings conducted by the EPC on actions brought against an educator by the OPPS. The *DOE's Teacher Certification Database* is a database that lists the certificate status of instructional personnel and school administrators and the types of certificates held. The DOE does not give unlimited access to these databases, only enough access to the data necessary for performing employment history checks of the instructional personnel and school administrators included in the databases.

Standards of Ethical Conduct for Instructional Personnel and School Administrators

Public Schools

²⁴ Section 1012.79(7)(c), F.S.

²⁵ Section 1012.79(7)(b), F.S.

²⁶ Section 1012.795(1), F.S.

²⁷ Section 1012.798, F.S.

²⁸ Section 1012.56(12)(a), F.S.

²⁹ Section 1012.56(12)(b), F.S.

³⁰ Florida Department of Education, Office of Professional Practices, Discipline against Educator Licenses, <http://www.myfloridateacher.com/discipline/summary.aspx> (last visited Mar. 10, 2019).

³¹ Florida Department of Education, Online Licensing Service, License Verification, <https://flcertify.fldoe.org/datamart/selSearchType.do> (last visited Mar. 10, 2019).

Florida law requires each district school board to adopt policies establishing standards of ethical conduct of instructional personnel and school administrators.³² Among other things, the policies must establish the duty of instructional personnel and school administrators to report, and procedures for reporting, alleged misconduct by other instructional personnel and school administrators which affects the health safety, or welfare of a student.³³ If a school board member intentionally does not adopt policies that require instructional personnel and school administrators to report he or she forfeits his or her salary for one year.³⁴ Furthermore, a district school superintendent who does not investigate or who knowingly fails to report forfeits his or her salary for one year.³⁵

Charter Schools

Florida law requires charters schools to employ or contract with employees after the applicant has undergone background screening as provided in s. 1012.32, F.S. Also, members of a charter school's governing board must undergo a similar background screening.³⁶ A charter school must disqualify instructional personnel and school administrators from employment in any position that requires direct contact with students if the applicant has been convicted of a crime listed in s. 1012.315.³⁷

All charter schools must adopt policies establishing standards of ethical conduct. The policies must inform all instructional personnel and school administrators that they have a duty to report alleged misconduct by other instructional personnel and school administrators which affects the health, safety, or welfare of a student. Furthermore, the school may not enter into a confidentiality agreement regarding terminated or dismissed instructional personnel or school administrators, or personnel or administrators who resign in lieu of termination. The school may not provide instructional personnel or school administrators with employment references or discuss the personnel's or administrators' performance with prospective employers in another educational setting, without disclosing the personnel's or administrators' misconduct. Any agreement that has the effect of concealing misconduct that affects the health, safety, or welfare of a student is void may not be enforced.³⁸

Private Schools Participating in an Educational Scholarship Program

Florida law requires all private schools accepting students participating in a state scholarship program listed in chapter 1002, F.S., to be registered and in compliance with all scholarship program laws. A private school must screen all potential instructional personnel and administrators before employing them in any position that requires direct contact with students. The school must conduct employment history checks of each previous employer, screen the applicant using the *Professional Practices' Database of Disciplinary Actions Against Educators*³⁹ and the *DOE's Teacher Certification Database*,⁴⁰ and document the findings. If a school knowingly fails to screen, the DOE will suspend the payment of funds to the school and prohibit the school from enrolling new scholarship students for one fiscal year and until the school complies. If the school continues to screen potential hires improperly, the Commissioner may prohibit the school from participating in scholarship programs.⁴¹

³² Section 1001.42(6), F.S. The terms "instructional personnel" and "school administrators" are defined under s. 1012.01(2) and (3)(c), F.S. *See also* s. 1012.796(1)(d), F.S. (requiring school district policies to include standards of ethical conduct for instructional personnel and school administrators).

³³ *Id.*

³⁴ Section 1001.42(7)(b), F.S.

³⁵ Section 1001.51(12), F.S.

³⁶ Section 1002.33(12)(g)1., F.S.

³⁷ Section 1002.33(12)(g)2., F.S.

³⁸ Section 1002.33(12)(g)3., F.S.

³⁹ Florida Department of Education, Office of Professional Practices, Discipline against Educator Licenses, <http://www.myfloridateacher.com/discipline/summary.aspx> (last visited Mar. 10, 2019).

⁴⁰ Florida Department of Education, Online Licensing Service, License Verification, <https://flcertify.fdoe.org/datamart/selSearchType.do> (last visited Mar. 10, 2019).

⁴¹ *Id.*

The Commissioner may immediately suspend the payment of scholarship funds to a private school⁴² if he or she has determined that there is probable cause to believe that there is an imminent threat to the health, safety, or welfare of the students, a previous pattern of failure to comply with state or federal laws, or fraudulent activity on the part of the private school.⁴³ The Commissioner's order suspending payment may be appealed by the private school.⁴⁴

Effects of Proposed Changes

The bill requires the Department of Education (DOE) to maintain an electronic employment disqualification list (DQ list) with the intent of preventing individuals subject to disciplinary action from working or serving in an education environment. Individuals who may not be subject to extensive criminal background checks would be exposed by the DQ list.

The bill removes the term "instructional personnel or school administrators" from current law and replaces it with the term "individual." The use of the term "individual" expands the class of persons who are subject to the DQ list including: public school employees, public school contracted personnel, charter schools, charter school governing boards, and private schools accepting education choice scholarships.

The bill authorizes the Educational Practices Commission (EPC) to place individuals on the DQ list. The DQ list would include the names of individuals who have been put on the list at the direction of the EPC, individuals who have had their education certificate permanently revoked by the EPC, private school owners whose authority has been revoked by the Commissioner, and private school operators whose authority has been revoked by the Commissioner.

The bill requires all public schools, including charter schools, and private schools that accept students who participate in a state scholarship program listed in chapter 1002, F.S., to use the DQ list to screen potential employees, contract employees, board members, operators, and owners. This screening is in addition to current criminal background checks required in Florida law.

The bill requires certain entities or individuals to report or investigate credible allegations against an individual. Those with duties to report or investigate include the:

- DOE which must investigate any legally sufficient complaint involving misconduct of individuals.
- Commissioner who must, at a minimum, suspend and remove from direct student contact any individual with credible allegations listed in s. 1012.315, F.S.

The bill also:

- Provides that a school superintendent who does not investigate allegations of misconduct by an individual on the DQ list forfeits his or her salary for a year.
- Requires the governing board of a charter school to establish the duty of instructional personnel and school administrators to report alleged misconduct by individuals and prohibiting a person on the DQ list from being a charter school employee, contract employee, or governing board member.
- Requires private schools that accept students who participate in a state scholarship program listed in chapter 1002, F.S., to deny employment to individuals on the DQ list.
 - Authorizes the Commissioner to permanently revoke an owner's or operator's authority to establish or operate a private school in Florida.
- Provides that a person on the DQ list is ineligible for an educator certificate or employment in a position that requires direct contact with students.

⁴² Section 1002.421(3)(d)-(3)(d)3.c., F.S.

⁴³ *Id.*

⁴⁴ *Id.*

The bill provides an effective date of July 1, 2019.

B. SECTION DIRECTORY:

- Section 1:** Amending s. 1001.10(4) and (5), F.S., relating to the Commissioner of Education; general powers and duties.
- Section 2:** Amending s. 1001.51(12), F.S., relating to the duties and responsibilities of district school superintendent.
- Section 3:** Amending s. 1002.33(12)(g), F.S., relating to charter schools and employees of charter schools.
- Section 4:** Redesignating s. 1002.421(3)(c) and (d), F.S., as s. 1002.421(3)(d) and (e), F.S.; amending s. 1002.421(1)(o), F.S., and s. 1002.421(3)(d), F.S.; adding s. 1002.421(3)(c), F.S., relating to state school choice scholarship program accountability and oversight.
- Section 5:** Amending s. 1012.315, F.S., relating to disqualification from employment.
- Section 6:** Amending s. 1012.79(10), F.S., relating to Education Practices Commission; organization.
- Section 7:** Amending s. 1012.795(1), F.S., relating to Education Practices Commission; authority to discipline.
- Section 8:** Renumbering s. 1012.796(8) and (9), F.S., as s. 1012.796, F.S., (9) and (10); amending 1012.796(5), F.S.; adding 1012.796(1)(g), F.S., adding 1012.796(7)(i), F.S.; creating 1012.796(8), F.S., relating to complaints against teachers and administrators; procedure; penalties.
- Section 9:** Provides an effective date of July 1, 2019.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

According to the Department of Education can be absorbed within existing departmental resources.⁴⁵

B. None. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

⁴⁵ Email from Bethany Swanson, Legislative Affairs, Florida Department of Education, RE: HB 1127 (March 29, 2019).
STORAGE NAME: h1127b.PKA
DATE: 3/29/2019

D. FISCAL COMMENTS:

The cost associated with the responsibilities assigned to the Department of Education in Sections 1 and 8 and the responsibilities assigned to the Educational Practices Commission in Sections 6 and 7 can be absorbed within existing resources.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.