

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 Budget Subcommittee on Education Pre-K - 12 Appropriations

BILL: CS/CS/SB 1610

INTRODUCER: Budget Subcommittee on Education Pre-K - 12 Appropriations, Committee on Education
Pre-K - 12 and Senator Dean

SUBJECT: Education

DATE: February 28, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>deMarsh-Mathues</u>	<u>ED</u>	<u>Fav/CS</u>
2.	<u>Armstrong</u>	<u>Hamon</u>	<u>BEA</u>	<u>Fav/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

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|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="checked" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill requires the Department of Education (DOE) to create a uniform, statewide photo identification badge to be worn by noninstructional contractors indicating that the contractors have had a criminal history background check.

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.

The badge would be valid for a period of five years, unless the contractor is required to return the badge due to a new offense.

Badgeholders who commit a disqualifying offense are required to relinquish their badges to the issuing school district within 48 hours of self-reporting the incident.

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 employees of subcontractors.¹

A criminal history check is required of each noninstructional contractor:

- Who is granted access to school grounds when students are present;
- Whose performance of the contract is not anticipated to result in direct contact with students; and
- For whom any unanticipated contact is infrequent or incidental.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

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.

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 districts use 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 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

Exemption to Screening

Section 1012.468, F.S., provides an exemption from fingerprinting and criminal history checks to certain noninstructional contractors. The statute defines a noninstructional contractor as a person, entity, or vendor under contract with a school or the school board who receives remuneration for services performed for the school district or a school, but is not an employee of the district. The exemption applies as follows:

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.

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.

- To those under direct supervision of a school employee or contractor who has been screened pursuant to s. 1012.467, F.S. (which provides the list of disqualifying offenses that have resulted in a conviction); or
- To those who are not under direct supervision, but have been screened through the more stringent s. 435.04, F.S.¹²

Noninstructional contractors that are exempt from screening are still required to be screened through the sexual predator and sexual offender database maintained by the Florida Department of Law Enforcement and the National Sex Offender Public Registry maintained by the U.S. Department of Justice.¹³

III. Effect of Proposed Changes:

This bill requires the DOE to create 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..

This bill specifies that the validity of the badge is for a period of five years. This is identical to the amount of time that background checks remain valid. Also, the bill clarifies that the exemption from background screening provided in s. 1012.468, F.S., would still apply. These provisions are consistent with current law.

The badges must be visible at all times when a noninstructional contractor is on school grounds. Presumably, the badgeholder would wear the badge.

If a disqualifying offense occurs and the noninstructional contractor self-reports the offense as is required within 48 hours, the badge must be returned to the issuing school district within 48 hours of notification. This appears to be cumulative to the initial 48 hour period for self-reporting required in s. 1012.467(6), F.S., which would mean that the criminal offender would have up to four days from the date of the charge to return the badge.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹² s. 1012.468(2), F.S.

¹³ s. 1012.468(3), F.S.

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:

For the screening of noninstructional contractors, the cost for the identification badge, to be determined by the DOE, will be paid by the contractor.

C. Government Sector Impact:

The Department of Education will have minimal cost to implement the provisions of the bill. The cost of the identification badges will be passed on to the contractors.

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.)

CS/CS by the Budget Subcommittee on Education Pre-K – 12 Appropriations on February 28, 2012:

- The committee substitute removes all provisions in the bill related to juvenile justice education for youth in Department of Juvenile Justice programs.

CS by the Committee on Education Pre-K – 12 on February 14, 2012:

The committee substitute:

- Ensures students in residential programs have access to virtual instruction or instruction offered by volunteers during evenings and weekends;
- Provides clarity to the individual student outcomes in the bill and includes occupational completion points throughout;

- Provides that a provider who maintains at least an adequate rating will be given autonomy to hire instructors;
- Requires that State Board of Education rule includes provisions for uniform contracts between the school districts and private providers;
- Increases from 90 percent to 95 percent the amount of funding generated by juvenile justice students that must go directly to student instruction;
- Provides that the applicable background screening law for noninstructional contractors is s. 1012.467, F.S.;
- Provides that identification badges remain valid for a five-year period;
- Specifies that if a disqualifying offense occurs and the noninstructional contractor self-reports the offense as is required, the badge must be returned to the issuing school district within 48 hours of notification; and
- Clarifies that the provision addressing the exemption from background screening for certain noninstructional contractors continues to apply.

B. Amendments:

None.