

**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 Committee on Education

BILL: SB 318

INTRODUCER: Grimsley

SUBJECT: Background Screening for Noninstructional Contractors on School Grounds

DATE: March 6, 2013

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hand	Klebacha	ED	<b>Favorable</b>
2.	_____	_____	AED	_____
3.	_____	_____	AP	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

SB 318 creates a uniform, statewide photo identification badge to signify that a noninstructional contractor meets background screening and other requirements. The badge must be worn and visible at all times when a noninstructional contractor is on school grounds. All school districts shall recognize the badge.

The bill takes effect July 1, 2013.

The bill substantially amends s. 1012.467 of the Florida Statutes.

**II. Present Situation:**

**Initial Background Screening**

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, but who is not otherwise considered an employee of the school district.<sup>1</sup> Noninstructional contractors also include employees of contractors, subcontractors, and employees of subcontractors.<sup>2</sup> A criminal history check is required of each noninstructional contractor:

- Who is granted access to school grounds when students are present;

<sup>1</sup> Section 1012.467(1)(a), F.S. This bill does not address other classifications of personnel who must undergo background screening, such as instructional and noninstructional personnel, and noninstructional school district employees and contracted personnel. See also, ss. 1012.32, 1012.465, 1012.467, F.S.

<sup>2</sup> *Id.*

- 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.<sup>3</sup>

Unless otherwise exempt,<sup>4</sup> noninstructional contractors are required to undergo background screening before being permitted to access school grounds.<sup>5</sup> School districts must compare the results of the background screening against a statutorily prescribed list of the following nine disqualifying offenses:

- Offenses regarding registration as a sexual offender;
- Sexual misconduct with certain developmentally disabled clients;
- Sexual misconduct with certain mental health patients;
- Terrorism;
- Murder;
- Kidnapping;
- Offenses related to lewdness and indecent exposure;
- Incest; and
- Child abuse, aggravated child abuse, or neglect of a child.<sup>6</sup>

A school district that has reasonable cause to believe that grounds exist for denial of access to school grounds is required to notify the contractor in writing and identify the specific conviction that the school district believes is a disqualifying offense.<sup>7</sup> The contractor may only contest on the grounds of mistaken identity or that the specified conviction is not a disqualifying offense.<sup>8</sup>

### **Subsequent Disqualifying Arrests and Inter-District Background Screening**

Noninstructional contractors are under a standing duty to self-report to an employer any arrests involving disqualifying offenses within 48 hours,<sup>9</sup> or be subject to third-degree felony charges.<sup>10</sup>

Additionally, the Florida Department of Law Enforcement (FDLE) must search all new arrests against the statewide automated fingerprint identification system.<sup>11</sup> The FDLE must notify a school district if its noninstructional contractor has been arrested.<sup>12</sup>

<sup>3</sup> Section 1012.467(2)(a), F.S.

<sup>4</sup> Section 1012.468, F.S. These exemptions are for noninstructional contractors who are: under direct supervision of a school district employee; required by law to undergo a level 2 background screening; a law enforcement officer; an employee or medical director of an ambulance provider; separated from students by a 6 foot high chain-link fence; providing pick-up or delivery services; and an investigator for the Florida High School Athletic Association.

<sup>5</sup> Section 1012.476(2), F.S. Additionally, noninstructional personnel must be rescreened every five years. *Id.*

<sup>6</sup> *See* ss. 1012.467(2)(a) and (g), F.S.

<sup>7</sup> Section 1012.467(5), F.S.

<sup>8</sup> *Id.*

<sup>9</sup> Section 1012.467(6), F.S.

<sup>10</sup> *Id.* A third degree felony is punishable by a term of imprisonment not exceeding 5 years or fine not exceeding \$5000. *See* ss. 775.082, and 775.083, F.S.

<sup>11</sup> *See* ss. 1012.467(2)(a) and (e), F.S.; Rule 11C-6.010(7), F.A.C. Noninstructional contractor fingerprints are maintained in this system for 5 years, when a new background check may be performed that resets the 5 year period. *Id.*

<sup>12</sup> *See* ss. 1012.467(2)(c) and (d), F.S.; Rule 11C-6.010(4), F.A.C.

A noninstructional contractor who works in multiple districts must notify a school district if he or she has completed a background check in another school district within the last five years.<sup>13</sup> School districts use a shared system to verify the background check, commonly known as the Florida Shared School Results system (FSSR).<sup>14</sup> A school district may not charge the noninstructional contractor a fee for verifying the results of the background check.<sup>15</sup> From 2007-2011, 32,309 of the 222,570 records in the FSSR were viewed by more than one school district.<sup>16</sup> This represents approximately 14.5 percent of the records maintained.<sup>17</sup>

### **District Identification Badge**

Generally, a school district issues its own identification badge.<sup>18</sup> School districts do not accept badges issued by other school districts.<sup>19</sup> The badge's appearance, expiration date, and information presented varies among school districts.<sup>20</sup> Each school district charges a fee for issuing the badge.<sup>21</sup> The fee will vary among school districts.<sup>22</sup> Thus, a noninstructional contractor who works for several school districts may be required to obtain and pay for multiple identification badges.<sup>23</sup>

### **III. Effect of Proposed Changes:**

This bill requires the DOE to create a uniform, statewide photo identification badge signifying that a contractor meets certain requirements.

The DOE determines a uniform cost that a school district may charge for a badge. Under this bill, a school district that does not originate the background screening and issue the badge would no longer be able to issue its own badge and charge a corresponding fee.

The bill requires a school district to issue the badge if a noninstructional contractor:

- Is a resident and citizen, or a permanent resident alien of the U.S.;
- Is at least 18 years old; and
- Meets the background screening standards in s. 1012.467, F.S.

The bill requires a badge to be worn and visible at all times when a noninstructional contractor is on school grounds. The bill requires all school districts shall recognize the badge. Thus,

<sup>13</sup> Section 1012.467(2)(f), F.S.

<sup>14</sup> See ss. 1012.467(2)(d) and (f), and (7)(a), F.S.

<sup>15</sup> Section 1012.467(2)(f), F.S.

<sup>16</sup> E-mail correspondence with FDLE on February 10, 2012. On file with the Senate Committee on Education.

<sup>17</sup> *Id.*

<sup>18</sup> Department of Education *Agency Legislative Analysis for Senate Bill 318* (January 31, 2013). On file with the Senate Committee on Education.; E-mail from the Department of Education (March 1, 2013). On file with the Senate Committee on Education.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

noninstructional contractors who work for multiple districts would no longer have to obtain and pay for multiple identification badges.

The badge is valid for five years. However, a noninstructional contractor is required to return the badge to the school district within 48 hours of self-reporting an arrest for any disqualifying offense. The 48 hours is cumulative to the initial 48 hour period for self-reporting required in s. 1012.467(6), F.S., which would allow up to 96 hours from the arrest to return the badge.

According to the DOE, many school districts have adopted their own screening standards that identify disqualifying offenses in addition to the statutorily prescribed disqualifying offenses in s. 1012.467(2)(g), F.S.<sup>24</sup> Because all school districts would be required to accept a uniform, statewide photo identification badge when issued from another school district, the bill appears to prevent a school district from disqualifying a noninstructional contractor for offenses that are not currently listed as disqualifying offenses in s. 1012.467(2)(g), F.S.

The bill does not apply to noninstructional contractors who are exempt from background screening requirements in s. 1012.468, F.S.

#### **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:**

Currently, school districts that issue their own badges set their own badge fee. The bill requires the DOE to set a single fee, which can only be charged by the school district that issues the badge. 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.

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<sup>24</sup> Department of Education, *Agency Legislative Analysis for Senate Bill 318* (January 31, 2013). On file with the Senate Committee on Education. School districts view the disqualifying offenses identified in s. 1012.467(2)(g), F.S. as being the “floor,” not the “ceiling” for a noninstructional contractor. *Id.*

**C. Government Sector Impact:**

A school district that does not originate the background screening and issue the badge will no longer be able to charge a badge fee.

Without knowing the types of badges that may be issued, the current technology each district has in place, and the badge fee that the DOE will authorize the school district to charge the noninstructional contractor, the cost for the school district to issue a badge is indeterminable.

The cost for DOE to design a badge is indeterminable.

**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.