

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 Governmental Operations Committee

BILL: PCS/CS/SB 1712

INTRODUCER: Governmental Operations Committee, Education Pre-K-12 Committee, Education Pre-K-12 Committee and Senator Carlton

SUBJECT: Ethics in Education Act

DATE: March 11, 2008 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carrouth	Matthews	ED	Fav/CS
2.	Wilson	Wilson	GO	Pre-meeting
3.			JU	
4.			EA	
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input 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:

The bill establishes comprehensive changes at the state and local level regarding the screening, hiring, and termination policies for educators and the reporting procedures related to allegations of educator misconduct.

Employment Disqualification

A list of crimes is established that would serve as an absolute bar against any individual, if convicted, from obtaining or retaining a teaching certificate, or instructional employment involving direct contact with students, and requires each school district, charter school, and private schools and providers that accept scholarship students to adhere to the disqualifying offenses when employing instructional personnel.

Educator Employment and Child Care Screening Policies

School districts for educators, and the Department of Children and Family Services for child care personnel, would be required to adopt stringent and effective policies for screening potential instructional employees and terminating these employees for misconduct. The superintendent would be held responsible for communicating to the employees the expected ethical standards of

the teaching profession and the procedures for reporting allegations of teacher misconduct. In addition, every school district would be required to notify the Department of Education (DOE) of the date of hire and date of termination for instructional employees and the DOE, in turn, must include this information on a secure website, or electronically verifiable and accessible by authorized district personnel. Required ethics training is made mandatory for private providers participating in the Voluntary Prekindergarten program and such providers are also governed by the restrictions on employment and conduct for similarly situated public employers.

School districts are prohibited from entering into any form of confidentiality agreement when terminating an employee. Each school district must contact the previous employer of every candidate for employment and access the DOE certification website to determine if a teaching candidate's certificate has been sanctioned or is under investigation. There are significant financial penalties and certification sanctions for non-compliance.

Schools of Choice

Private schools and private Voluntary Prekindergarten (VPK) providers that accept students under certain educational scholarships programs, the Florida School for the Deaf and Blind, and charter schools would be held to the same standards as those required of local school districts. Private schools or VPK providers that fail to comply would be prohibited from accepting funds under these programs for the period of one calendar year and until they comply. Charter schools that fail to comply would have their charter terminated by the charter sponsor.

Education Practices Commission

The membership of the Education Practices Commission is revised to include sworn law enforcement officers, parents of public school students, and an administrator of a private school. The authority of the commission is also expanded to allow for the discipline of an educator who knowingly fails to report suspected or actual child abuse or misconduct by an educator that affects the health, safety, or welfare of a student.

Retirement Benefits

Finally, any public officer or employee convicted of certain crimes involving minors would forfeit their right to any state retirement benefits, except for an individual's accumulated contributions up to the time of the conviction.

This bill creates section 1012.315 and substantially amends the following sections of the Florida Statutes: 24.121, 112.3173, 121.091, 1001.10, 1001.32, 1001.42, 1001.452, 1001.51, 1001.54, 1002.32, 1002.33, 1002.36, 1002.421, 1002.55, 1002.61, 1002.63, 1002.65, 1003.413, 1003.53, 1004.92, 1006.061, 1007.21, 1007.23, 1008.33, 1008.345, 1010.215, 1011.18, 1012.27, 1012.32, 1012.33, 1012.34, 1012.56, 1012.79, 1012.795, 1012.796, 1012.98, and 1013.03.

II. Present Situation:

Complaints Against Educators

Under s. 1012.796, F.S., the Department of Education (DOE) is required to investigate any legally sufficient complaint filed before it or called to its attention if the complaint contains

grounds for a sanction against an educator's certificate.¹ Grounds for sanction against a teaching certificate include, but are not limited to, sexual misconduct, inappropriate student discipline, drug use, credential fraud, and standardized testing violations.² The Bureau of Professional Practices Services (PPS) in the DOE investigates legally sufficient complaints of alleged violations by individuals who currently hold a Florida teaching certificate or by those seeking a teaching certificate. The local school districts maintain jurisdiction over lesser infractions, such as chronic tardiness or minor acts of insubordination.

Provided that an allegation is legally sufficient and the PPS finds that there is probable cause that teacher misconduct has occurred, the PPS will forward its report to the Education Practices Commission (EPC), an appointed board whose members include teachers, administrators, and lay members, many of whom are former educators. If there are disputed issues of material fact, the case is assigned to an administrative law judge in the Division of Administrative Hearings who, after a determination of the merits of the complaint, makes a recommendation to the EPC to either dismiss the complaint or to impose a sanction against the teaching certificate.³ Following its review, the EPC will issue a final order, either clearing the educator or imposing one of several sanctions against the educator's certificate.⁴ Section 1012.796(1)(c), F.S., requires each school district to file all legally sufficient complaints in writing with the DOE within 30 days after the date on which the school district becomes aware of the subject matter of the complaint.⁵

Current Screening Requirements

Florida statutes require all educators to submit fingerprints to the Florida Department of Law Enforcement for criminal background checks to screen for criminal offenses,⁶ and pursuant to s. 1002.42, F.S., all private school owners, but not staff, are required to submit fingerprints as well. All charter schools, and private schools or providers receiving funds under the Corporate Tax Credit Scholarship Program, the Voluntary Prekindergarten Program, or the John M. McKay Scholarships for Students with Disabilities Program must adhere to the background screening provisions required of all public school employees.⁷

Recent Studies and Findings

Multiple news reports have recently been published alleging inconsistent practices and inadequate reporting policies that allow unfit educators who have committed violations of law or professional practices standards to have access to students. Following an investigative series published by a Florida newspaper, the Commissioner of Education conducted a review of the professional practice procedures.⁸ The State Board of Education (SBE) subsequently appointed an advisory council in March, 2007, to review professional practices in Florida and other states and to recommend to the SBE improvements to Florida's professional practices educator system.

¹ Rule 6B-1.001, F.A.C.

² Section 1012.795, F.S., includes a complete list of punishable infractions.

³ The EPC has the authority to contest the recommendation of the administrative law judge.

⁴ Referral to the Recovery Network Program; written reprimand; restriction of scope of practice; probation; administrative fine up to \$2,000; suspension of certificate; revocation of certificate; or denial of certificate application. *See* s. 1012.796(7), F.S.

⁵ Section 1012.796(1)(c), F.S.

⁶ Sections 1012.32 and 1012.56, F.S.

⁷ Sections 1002.421 and 1002.55, F.S.

⁸ *See* <http://www.heraldtribune.com>, March 27, 2007.

The advisory council, comprised of educators, law enforcement officials, child protection services staff, school district human resource personnel, school board attorneys, and professional education association representatives, conducted a survey of other states to gather information on best practices and presented recommendations to the SBE in an effort to strengthen Florida's policies.⁹ Three of the 13 states that responded to the advisory council's survey require local school districts to check a teaching candidate's background with the previous employer,¹⁰ a practice not currently required in Florida law.

The DOE currently provides access by eligible district staff to the Florida Educator Certification database, a secure website that includes what are often referred to as red flags: pending investigations, sanctions against a certificate, or notes of previous allegations of unethical behavior.¹¹ While this site provides invaluable information to potential and existing employers, current law does not require districts to access this information, nor are there systematic procedures in place to ensure that local staff are aware of the screening system.

Senate Interim Report 2008-118

The Committee on Education Pre-K-12 was tasked to review educator misconduct and reporting procedures and, as part of the study, conducted a survey of local school districts to assess current policies and practices. Of the 28 school districts that responded to the committee survey, seven districts reported that they do not access the DOE's secure website when screening new employees. Additionally, three districts reported that they do not contact previous employers and four do not question potential employees about any previous allegations. All districts responding to the survey reported having adopted school board policies; however, few included due diligence on rigorous pre-screening and hiring procedures. While there is no guarantee that an individual will be forthcoming, providing false information to a prospective employer can be grounds for termination.¹²

Automatic Grounds for Termination and Certificate Sanctions

Several states specifically define in law offenses that are grounds for dismissal or an absolute bar from employment in the public school system.¹³ While Florida has a list of disqualifying offenses, the offenses are not a complete bar, with districts retaining some discretion to employ an individual notwithstanding a disqualifying offense.

Confidentiality Agreements with Terminated Employees

Some reports have suggested that school districts often enter into confidentiality or non-disclosure agreements, allowing educators to resign without cause in order to spare the district potentially prohibitive litigation costs and public disgrace.¹⁴ This can result in an unfit

⁹ State Board of Education meetings on June 19, 2007 and August 14, 2007.

¹⁰ Colorado, Connecticut, and Michigan

¹¹ See http://www.fldoe.org/meetings/2007_06_19/Report_Florida.pdf, slides 22-28.

¹² Section 1012.56(2), F.S., requires notice to an applicant for a teaching certificate that giving false information on his or her affidavit subjects the applicant to criminal prosecution.

¹³ Ten of the 13 states responding to the advisory council's survey operate under a list of specific offenses that trigger automatic action on the teaching certificate or deny eligibility for employment (Arizona, California, Colorado, Connecticut, Illinois, Kentucky, Michigan, Minnesota, Ohio, and Oregon).

¹⁴ See Education Week, December 9, 1998.

educator moving from one location to another. Current Florida law does not prohibit such agreements.

Gross Immorality and Moral Turpitude

A complaint against an educator is deemed legally sufficient if it contains ultimate facts that show a violation has occurred as provided in s. 1012.795, F.S., which includes infractions such as obtaining a teaching certificate through fraudulent means, incompetence, conduct which seriously reduces the employee's effectiveness, gross immorality, and acts involving moral turpitude. The determination of action for purposes of reporting a certificate-holder for unethical conduct has been complicated by the use of the terms "gross immorality" and "moral turpitude" in describing acts that meet the legally sufficient standard. Although these terms are defined in rule,¹⁵ there is considerable leeway at the district level in interpreting the definition and, consequently, the determination to report unethical conduct varies from district to district. This lack of uniformity may undermine attempts to notify prospective employing districts of educator misconduct.

Jurisdictional Oversight Provisions

Many school districts may not clearly understand the magnitude of their jurisdictional power over the employment, suspension, or termination of an educator alleged to have committed unethical conduct. The local school district retains the ability to suspend the educator from student contact or to terminate the employee; however, school districts often defer to the final order of the EPC before making a final employment decision on an accused educator. Although the Education Practices Commission may at times be constrained in its efforts to discipline the certificate-holder because of due process rights, some school districts take immediate action in response to an educator accused of misconduct, suspend the educator from student contact or terminate the educator altogether.

Review of Previous Employment

Additionally, school districts with prudent screening and employment policies look diligently at prospective employees for any prior evidence that may signal a breach of conduct such as unexplained mid-year employment changes, individuals holding multiple positions over a short period of time, and questionable lapses in employment.

III. Effect of Proposed Changes:

The bill establishes comprehensive changes at the state and local level regarding the screening, hiring, and termination policies for instructional personnel and the reporting procedures related to allegations of educator misconduct. These reforms are intended to minimize opportunities for unethical educators to have contact with students, support the integrity of the teaching profession, and ensure the safety and welfare of students.

Criminal Acts/Disqualifying Offenses as a Bar Against Teaching

The bill creates a new section of law to establish a list of crimes and offenses that would serve as an absolute bar against any individual, if convicted, from obtaining or retaining a teaching

¹⁵ Rule 6B- 4.009, F.A.C., in turn references Rules 6B-1.001, F.A.C., and 6B-1.006, F.A.C., which address the Code of Ethics of the Education Profession in Florida and the Principles of Professional Conduct for the Education Profession in Florida.

certificate, or instructional employment involving direct contact with students. The list includes the following:

- Offenses listed in s. 435.04, F.S., which is the current statutory framework for the state and national background screening of educators and school employees having direct contact with students;
- Crimes involving moral turpitude;
- s. 787.025, relating to luring or enticing a child;
- s. 794.05, relating to unlawful sexual activity with certain minors;
- s. 810.14, relating to voyeurism;
- s. 810.145, relating to video voyeurism; and
- Any delinquent act that qualified or would have qualified an individual for inclusion on the Registered Juvenile Sex Offender List under s. 943.0435(1)(a)1.d., F.S.

School districts, charter schools, and private schools and private VPK providers, who participate in certain educational scholarship programs would be required to adhere to the established list of disqualifying offenses when employing instructional personnel and prekindergarten instructors.

In order to further strengthen a school district's autonomy to screen and terminate unethical educators based upon local community standards, local school boards are granted authority to determine thresholds for immorality and provisions for just cause termination.

Confidentiality Agreements Prohibited

School districts and other designated providers may not enter into any form of confidentiality agreement when terminating an employee and provides significant financial penalties and certification sanctions for non-compliance. These provisions would prohibit efforts to conceal unethical conduct by educators or allowing them to be passed from one school district to another unsuspecting site.

Forfeiture of State Retirement Benefits

Any public officer or employee who commits a felony pursuant to s. 800.04, F.S., against a child under the age of 16, or a felony against a child under the age of 18 pursuant to ch. 794, F.S., or ss. 800.02 and 800.03, F.S.,¹⁶ shall forfeit his or her right to state retirement benefits, with the exception of the individual's accumulated contributions up to the time of the conviction. Under these provisions, taxpayers would not bear financial responsibility under the Florida Retirement System for an individual who commits one of these crimes against a child.

Stringent Screening, Hiring, and Termination Policies

School districts must contact the previous employer of every candidate for instructional employment, access the secure DOE certification websites to determine if a teaching candidate's certificate has been sanctioned or is under investigation, effectively screen instructional candidates, and document findings. Instructional personnel must be immediately removed from their assigned duties that involve direct contact with students, when allegations involving misconduct that effects the health, safety, or welfare of a student arises. Removal from contact with students would continue, pending the outcome of an investigation either by local law enforcement or the Bureau of Professional Practices.

¹⁶ Chapter 800, F.S., relates to sexual battery; ch. 794, F.S., relates to lewdness and indecent exposure.

Stringent Reporting Requirements

School districts and other designated providers must establish ethical standards for educators, policies and procedures for reporting suspected or actual misconduct, and an explanation of liability protections to those who report. School districts and schools are prohibited from providing a favorable employment recommendation for any individual who resigns in lieu of termination, based on unethical conduct with a student. In addition, the date of hire and the date of termination of all employees must be reported to the DOE to provide employment documentation and additional screening tools to authorized personnel.

Non-Compliance and Accountability Provisions

Failure to comply with the provisions for ethical standards, policies, and procedures would lead to sanctions against an educator's teaching certificate, financial penalties, and ineligibility of applicable private schools or providers from accepting educational scholarship funds for a period of one calendar year and until such time as the school or provider complies. In addition, charter schools that fail to comply could face termination of their charter from the charter sponsor.

A district superintendent who fails to investigate misconduct affecting the health, safety, or welfare of a student, or a school board member who fails to adopt appropriate policies to ensure the investigation and reporting procedures of such misconduct, shall forfeit their right to a salary for a period of one year. The superintendent is held accountable for communicating the policies and procedures to all employees and for providing appropriate professional development for all staff. School districts or other designated providers are required to file a legally sufficient complaint to the governing body when any proscribed conduct is alleged to have occurred by a certificated educator.

Education Practices Commission – Authority and Oversight

The membership of the Education Practices Commission is revised to include sworn law enforcement officers, parents of public school students, and a private school administrator, thus providing their input as to whether a teacher should be allowed back in the classroom.

Application to Schools of Choice

The Florida School for the Deaf and Blind, charter schools, and private schools or private VPK providers that accept students under certain educational scholarship programs are held to the same statutory provisions as those required of local school districts.

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:

Certain private schools and providers may need to conduct more extensive background screening on potential employees.

C. Government Sector Impact:

The Department of Education estimates that an annual increase of \$50,000 would be required to support expanding the membership of the Education Practices Commission, and anticipates the need for two additional staff members for the Bureau of Professional Practices Services, estimated at approximately \$154,000.

Certain local school districts may need to develop more stringent employment screening policies and procedures.

The Department of Management Services, Division of Retirement estimates that approximately 250 individuals face forfeiture of their right to state retirement benefits annually; however, the resulting financial savings to the state are currently indeterminate. On March 11, 2008, the division supplemented this estimate by the addition of another 125 to 150 cases it believed would be generated by CS/SB 1712.

As noted, below, the Educator Employment Information Database does not exist and its construction will require the expenditure of additional resources. Cost estimates at this point are unknown but probably not significant. The other two databases are operational and contain both personally identifying and publicly accessible data. A member of the public may request access to that data and the agency would redact only those portions, such as Social Security numbers, that could compromise a person's financial identity or, as is the case with educator relatives of judicial or law enforcement personnel, their immediate family members. It is possible to take the name and hiring date information and load that onto a separate database, a fairly straightforward process, to achieve the desired result.

VI. **Technical Deficiencies:**

The PCS amends s. 402.316, F.S., to provide for the development of rules by the Department of Children and Family Services on minimum screening standards for child care personnel but does not indicate what criteria are to be used for the rules to be legally sufficient. A cross-reference to the relevant provisions of the PCS is necessary.

VII. **Related Issues:**

Both the Criminal Justice Standards and Training Commission and the Code of Professional Educator Practices promulgated by the Department of Education contain specific provisions on professional misconduct which use the phrase "moral character" or "moral turpitude." Chapter 777, F.S., provides penalties for criminal acts when the parties are principals or accessories or the acts themselves are attempts, solicitations, or conspiracies. Generally, the offenses are punishable at one level below the underlying offense. The rules of the Commission, Chapter 11B-27, FAC, make specific reference to the underlying offenses and their relationship to ch. 777, F.S., while the DOE rules are silent on the subject. This becomes significant because the bill publishes as a disqualifying offense the following act(s): "Conviction of a crime involving moral turpitude . . ." Moral turpitude is defined in the DOE Rule 6B-4.009, FAC, as the following:

(6) . . . (A) crime that is evidenced by an act of baseness, vileness or depravity in the private and social duties, which, according to the accepted standards of the time a man owes to his or her fellow man or to society in general, and the doing of the act itself and not its prohibition by statute fixes the moral turpitude.

Strictly speaking, the provision seems to provide a disqualification for the conviction of a crime which is not a crime. While the context of the phrase appears to reach behavior that is unacceptable but not necessarily criminal, as it does not require its prohibition by law, the direction both these regulatory entities take on this subject is quite different.

The bill analysis prepared by the DOE on February 28, 2008, reported that one of the three educator employment screening tools named in the bill, the Educator Employment Information Database, does not exist.

Section 112.011, F.S., provides a statement that ". . .(e)xcept as provided in s. 775.16, a person shall not be disqualified from employment by the state, any of its agencies or political subdivisions, or any municipality solely because of a prior conviction for a crime." The section further provides an exception to this when ". . . the crime was a felony or first degree misdemeanor directly related to the specific occupation, trade, vocation, profession or business for which the license, permit, or certificate is sought." The employment restrictions contained in new s. 1012.315 in the bill appear supplemental and not contradictory to that exception. For cross-referencing purposes in subsequent editions of the Florida Statutes, some recognition of the cumulative effect of employment restrictions on public employment may need to be taken. The Governor's Office Ex-Offender Task Force was convened in 2005 to study this issue. It completed its report the following year and made a presentation on the subject before the Senate Criminal Justice Committee in late 2007. Senate Bill 922, 2008 Regular Session, requires state agencies to report restrictions on public employment as it relates to ex-offenders.

Various portions of the bill refer to s. 768.095, F.S., which provides civil immunity for government officials who provide employment information on former or current employees.

The bill's prohibition on providing a "favorable recommendation for employment," to persons affected by the proscribed conduct may be highly variable in its enforceability. "Favorable" may

be judged more by the recipient than the sender, since it is the recipient that makes the hiring decision. It would appear that a safer path school districts could follow is the communication of only objective information otherwise available in the public domain such as job title and duties, courses taught, hours of duty, awards received or discipline imposed, and salary. Furthermore, the prohibition extends only to successive employment in another educational setting.

The bill provides disqualification from employment for the commission of named offenses or conduct. Section 443.101, F.S., also renders a person ineligible for unemployment compensation benefits when either voluntarily leaving work or being discharged or suspended for misconduct connected with his or her work.

The bill provides for a forfeiture of public pension benefits for persons convicted of named felony offenses against children when the acts involve the use of public office or employment position. Because this provision amends s. 112.3173, F.S., and is a part of the existing Code of Ethics for Public Officers and Employees, its provisions will reach to all public pension plans in the state and not just the Florida Retirement System. The penalty will not affect amounts held by employees in personally owned tax sheltered accounts, such as IRAs, deferred compensation plans, or annuities as these are purchased with employee funds and are not considered pension plans. But because this provision links the disqualification with the use of the public office or position it may not extend to additional but unrelated employment. A person owning a business or conducting a trade outside of public employment who commits a disqualifying act in that capacity may not have the pension benefits sanctioned. The act in question may prove that the person is disqualified from further employment but its occurrence may also indicate it was wholly removed from the public workplace.

The bill provides a suspension of salary for one year for school officials who knowingly violate the proscribed hiring provisions. It is not clear from the text if that prohibition also extends to salary supplements or bonuses provided education officials. These supplements are titled with a variety of names other than "salary," such as housing, travel, entertainment, performance, insurance, communications, or car allowances. Salary is a subset of compensation, the specific components of which are determined by the public employer. The components of salary for the Florida Retirement System are defined in ss. 121.021(22), F.S.

The bill provides a disqualification from employment "in an instructional position that involves direct contact with students" Strictly speaking, this limits its coverage to only the five classes of instructional personnel listed in ch. 1012, F.S. It does not extend to non-instructional positions or to positions which do not have direct contact with students, although other provisions of the bill may invoke related criteria to reach that same disqualifying result.

VIII. **Additional Information:**

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

CS by Education Pre-K-12 on March 5, 2008:

The committee substitute:

- Revises the list of disqualifying offenses for instructional employment to exclude convictions for delinquent acts with the exception of acts that qualify or would qualify an individual for listing on the Registered Juvenile Sex Offender list under s. 943.0435(1)(a)1.d., F.S.;
- Allows for individuals who forfeit their retirement benefits under the bill as a result of a conviction for certain sex offenses involving minors to recoup their accumulated contributions up to the date of conviction;
- Identifies screening tools to be provided by the Department of Education to authorized public school, private school, VPK providers, and charter school personnel to screen prospective employees;
- Adds charter schools to the investigating, reporting, and employment requirements outlined in the bill and includes provisions for the sponsor of a charter school to terminate the charter of a school that fails to comply;
- Requires school districts, charter schools, VPK providers, and private schools participating in scholarship programs under ch. 1002, F.S., and s. 220.187, F.S., to report to the Department the hire and termination dates of all instructional personnel;
- Deletes the requirement for private schools and private VPK providers to suspend with pay instructional personnel accused of misconduct with students;
- Authorizes the Agency for Workforce Innovation to withhold VPK funds to a private provider that fails to comply with the bill; and
- Provides for a private school administrator to be included as a member of the Education Practices Commission.

B. Amendments:

None.