

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 Appropriations Subcommittee on Education

BILL: CS/SB 1386

INTRODUCER: Education Committee and Senator Diaz

SUBJECT: School Personnel

DATE: February 15, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brick</u>	<u>Bouck</u>	<u>ED</u>	<u>Fav/CS</u>
2.	<u>Grace</u>	<u>Elwell</u>	<u>AED</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1386 addresses requirements for school personnel. Specifically, the bill:

- Adds criminal penalties for failing to report offenses against students by authority figures.
- Shifts from the district school board to the employing entity the entity with whom a complete set of fingerprints must be filed to complete the background screening required upon employment for personnel in a virtual instruction program, an alternative school, or a charter school other than a school of hope.
- Provides that the procedures established by the district school superintendent for evaluating the performance of instructional, administrative, and supervisory personnel set the standards of service to be offered to the public and are not subject to collective bargaining.

The fiscal impact of the bill is indeterminate. *See* Section V. Fiscal Impact Statement.

The bill takes effect upon becoming a law.

II. Present Situation:

Offenses Against Students by Authority Figures

The Department of Education (DOE) is required to maintain a disqualification list to include:

- The identity of any person who has been permanently denied an educator certificate or whose certificate was permanently revoked and has been placed on the list.

- The identity of any person who has been permanently disqualified by the Commissioner of Education as an owner or operator of a private school participating in a state scholarship program.
- The identity of any person who has been terminated, or has resigned in lieu of termination, from employment as a result of sexual misconduct with a student.
- The identity of any person who is ineligible for educator certification or employment under educator screening standards.¹

An individual on the disqualification list is prohibited from serving or applying to serve as an employee or contracted personnel at any public school, charter school, or private school participating in a state scholarship program.²

An individual who violates the requirements of the disqualification list commits a third-degree felony.³ In addition, it is a second-degree felony for an authority figure in a school to solicit or engage in sexual conduct, a relationship of a romantic nature, or lewd conduct with a student.⁴

Criminal History Background Screening

Instructional and noninstructional personnel who are hired or contracted to fill positions that require direct contact with students in an alternative school⁵ or any public school, including a charter school, and instructional staff of any approved virtual instruction program⁶ must file with the district school board for the district in which the school serves or is located a complete set of fingerprints. The fingerprints must be:

- Taken by an authorized law enforcement agency or an employee of the school or district school board who is trained to take fingerprints.
- Submitted to the Florida Department of Law Enforcement (FDLE) for statewide criminal and juvenile records checks and to the Federal Bureau of Investigation (FBI) for national criminal records checks.

The screening cost is borne by the district school board, the charter school, the employee, the contractor, or other person subject to the screening requirements. A district school board is required to reimburse a charter school the cost of background screening if it does not notify the charter school of the eligibility of a governing board member or instructional or noninstructional personnel within the earlier of 14 days after receipt of the background screening results from the FDLE or 30 days of submission of fingerprints by the governing board member or instructional or noninstructional personnel.⁷

¹ Section 1001.10(4)(b), F.S.

² Sections 1002.33(12)(g)1., 1002.421(1)(o), F.S., 1012.315, F.S.

³ Section 1012.796(10), F.S.

⁴ Section 800.101(3), F.S.

⁵ An alternative school is a school that provides dropout prevention and academic intervention services. Section 1008.341(2), F.S.

⁶ Section 1002.45(2)(a)3., F.S. A virtual instruction program is a program of instruction provided in an interactive learning environment created through technology in which students are separated from their teachers by time or space, or both. Section 1002.45(1)(a)2., F.S.

⁷ Section 1012.32, F.S.

A person is ineligible for employment if the person has committed certain disqualifying offenses specified in law⁸ or rule⁹ of the state board of education. FBI criminal history record information may be used solely for the purpose requested and cannot be disseminated outside the receiving departments, related agencies, or other authorized entities.¹⁰

Retention of Applicant Fingerprints

The FDLE must retain the fingerprints and report any arrest record of a person that is identified with the retained fingerprints to the employing or contracting district school board or the district school board with which the person is affiliated.¹¹ Employees and contracted personnel subject to these fingerprinting requirements must be rescreened every five years.¹²

Each school district is required to participate in this search process by payment of an annual fee to the FDLE and by informing the FDLE of any change in the affiliation, employment, or contractual status or place of affiliation, employment, or contracting of its instructional and noninstructional personnel whose fingerprints are retained. The FDLE is required to set the amount of the annual fee to be imposed upon each school district for performing these searches and establishing the procedures for the retention of instructional and noninstructional personnel fingerprints and the dissemination of search results. The fee may be borne by the district school board, the contractor, or the person fingerprinted.¹³

Evaluation System Approval and Reporting

It is the right of the public employer to determine unilaterally the purpose of each of its constituent agencies, set standards of services to be offered to the public, and exercise control and discretion over its organization and operations.¹⁴

The district school superintendent is required to establish procedures for evaluating the performance of duties and responsibilities of all instructional, administrative, and supervisory personnel employed by the school district. The district school superintendent must also:

- Provide instructional personnel the opportunity to review their class rosters for accuracy and to correct any mistakes.
- Report accurate class rosters for the purpose of calculating district and statewide student performance and annually report the evaluation results of instructional personnel and school administrators to the DOE.¹⁵

⁸ See s. 1012.315, F.S., for a list of disqualifying offenses.

⁹ Rule 6A-5.056(8), F.A.C.

¹⁰ 28 C.F.R. s. 50.12(b).

¹¹ Section 1012.32(3), F.S.

¹² Sections 1012.465 and 1012.56(10), F.S.

¹³ Section 1012.32(3)(b), F.S.

¹⁴ Section 447.209, F.S.

¹⁵ Section 1012.34(1)(a), F.S.

III. Effect of Proposed Changes:

CS/SB 1386 addresses requirements for school personnel, including penalties related to offenses against students by authority figures, background screening requirements, and district school board personnel evaluation procedures and criteria.

Offenses Against Students by Authority Figures

The bill addresses penalties for failing to report offenses against students by authority figures. Specifically, the bill provides that:

- A person who is required to make a report regarding an incident of sexual misconduct with a student which could impact an educator's inclusion on the disqualification list maintained by the Department of Education and knowingly or willfully fails to make such report, or knowingly or willfully prevents another person from doing so, commits a misdemeanor of the first degree.
- A person who knowingly or willfully submits inaccurate, incomplete, or untruthful information with respect to a report regarding an incident of sexual misconduct with a student which could impact an educator's inclusion on the disqualification list commits a misdemeanor of the first degree.
- A person who knowingly or willfully coerces or threatens any other person with the intent to alter testimony or a written report regarding an incident of sexual misconduct with a student which could impact an educator's inclusion on the disqualification list commits a misdemeanor of the first degree.

School Personnel Background Screening Requirements

The bill shifts from the district school board to the employing entity the entity with whom the complete set of fingerprints must be filed to complete the background screening required upon employment for personnel in a virtual instruction program, an alternative school, or a charter school other than a school of hope. Consequently, the bill provides that:

- The cost of background screening is borne by the employing entity.
- The FDLE must report arrests of school personnel to the employing entity instead of the school district.
- Unless a person is otherwise disqualified by law, the employing entity has the sole authority for determining a person's employment eligibility.

The bill defines "employing entity" as a district school board, charter school, alternative school, or any other entity that requires employees to complete a background screening to provide services in a district school system.

The shift in screening responsibilities to the employing entity may reduce the time to complete the background screening process for employers other than district school boards. In addition, redundant background screenings for employing entities that contract with or provide services in more than one school district may be reduced or eliminated.

Evaluation System Approval and Reporting

The bill provides that the procedures established by the district school superintendent for evaluating the performance of instructional, administrative, and supervisory personnel set the standards of service to be offered to the public and are not subject to collective bargaining.

The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The Florida Constitution prohibits public employees from striking.¹⁶ To balance that prohibition, public employees have a constitutional right to bargain collectively.¹⁷ However, the Florida Supreme Court has stated, “in the sensitive area of labor relations between public employees and public employer, it is requisite that the Legislature enact appropriate legislation setting out standards and guidelines and otherwise regulate the subject within the limits of [the constitutional right to work.]”¹⁸

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

¹⁶ Art. I, s. 6, Fla. Const., provides, “[t]he right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged. Public employees shall not have the right to strike.”

¹⁷ *Orange County Classroom Teachers Ass’n v. Sch. Dist. of Orange County*, No. CA18050, at 41 (Fla. PERC May 27, 2021) (Supplemental Recommended Order), *adopted with exceptions* (Fla. PERC Sept. 24, 2021) (Final Order No. 21U-285), available at <http://perc.myflorida.com/co/allorderresults.aspx?CaseID=37365>, *appeal docketed*, No. 5D21-2607 (Fla. 5th DCA Oct. 22, 2021).

¹⁸ *Dade County Classroom Teachers’ Ass’n v. Ryan*, 225 So. 2d 903, 906 (Fla. 1969).

B. Private Sector Impact:

The fiscal impact to the private sector is indeterminate. The Florida Department of Law Enforcement (FDLE) reports that there will be a one-time increase in background checks as individuals will be required to be rescreened under the new employing entity holding the fingerprints. Employers or their employees that provide services in only one school district may experience an indeterminate negative fiscal impact associated with the initial rescreening. Employers that contract with or provide services in more than one school district may experience a cost savings due to the reduction of redundant background screenings.

C. Government Sector Impact:

The fiscal impact is indeterminate. FDLE reports that there will be a one-time increase in background checks as individuals will be required to be rescreened under the new employing entity holding the fingerprints. Charter schools that are public employers or their employees that provide services in only one school district may experience an indeterminate negative fiscal impact associated with the initial one-time rescreening.¹⁹

Charter schools that are public employers that contract with or provide services to more than one district school board may experience a cost savings due to the reduction of redundant background screenings.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 800.101, 1012.32, and 1012.34 of the Florida Statutes.

IX. 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 on February 1, 2022:

The committee substitute:

- Adds penalties for failing to report offenses against students by authority figures.
- Provides that the procedures established by the district school superintendent for evaluating the performance of instructional, administrative, and supervisory personnel set the standards of service to be offered to the public and are not subject to collective bargaining.

¹⁹ Florida Department of Law Enforcement, 2022 *FDLE Legislative Bill Analysis for SB 1386*.

- Makes the bill effective upon becoming law.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
