

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** PCS for HB 707 Background Screening

**SPONSOR(S):** K-12 Subcommittee

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: K-12 Subcommittee		Brink	Ahearn

**SUMMARY ANALYSIS**

The PCS reorganizes language relating to background screening for all personnel and contractors who have direct contact with students or access school campuses, eliminating reference to the term “level 2 background screening.”

The PCS revises requirements relating to virtual instruction programs and reduces the cost of repeated background screening for virtual instruction program instructional personnel by allowing screening results to be shared between school districts. The PCS amends other requirements relating to virtual instruction program personnel.

The PCS amends the list of disqualifying criminal offenses against which personnel who have direct contact with students are screened to be consistent with Florida Department of Law Enforcement (FDLE) rule.

The PCS requires the FDLE to enroll fingerprints received for background screening for school districts in the national retained arrest print notification program once the program is operational and the FDLE begins participation. The PCS requires the FDLE to enroll the fingerprints of instructional and noninstructional personnel in the national retained print arrest notification program within two years after the FDLE begins participation in the program. The FDLE must notify a school district whenever an arrest record is identified with the retained fingerprints of one of the district’s employees or contractors in the national retained print arrest notification program.

The PCS provides that rescreening for a certified educator at the time of the educator’s five-year certification renewal is necessary only if his or her fingerprints have not yet been enrolled in the national retained print arrest notification program.

The PCS requires the FDLE to identify in rule the fee assessed by the FBI for participation in the national retained arrest print notification program.

The PCS reenacts certain sections of law for the purpose of incorporating by reference the list of disqualifying offenses amended by the PCS.

The PCS does not appear to have a fiscal impact on the state or local governments.

The PCS provides an effective date of July 1, 2014.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Present Situation**

##### Virtual Instruction Programs

Virtual instruction programs are programs 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.<sup>1</sup> The purpose of these programs is to make instruction available to students using online and distance learning technology in the nontraditional classroom.<sup>2</sup>

In order to provide its students with the opportunity to participate in a school district virtual instruction program, a school district may:

- Contract with the Florida Virtual School (FLVS) or establish a franchise of the FLVS.<sup>3</sup>
- Contract with a provider approved by the Department of Education (DOE) for full-time school district virtual instruction program.<sup>4</sup>
- Enter into an agreement with another school district to allow its students to participate in a virtual instruction program provided by the other school district.<sup>5</sup>
- Establish school district operated part-time or full-time kindergarten through grade 12 virtual instruction programs for students enrolled in the school district.<sup>6</sup>
- Enter into an agreement with a virtual charter school authorized by the school district.<sup>7</sup>

In order for a virtual instruction program provider to be approved by the DOE, the provider must document that it, among other things, requires all instructional staff to be Florida-certified teachers and conducts background screenings for all employees or contracted personnel using state and national criminal history records.<sup>8</sup>

Currently, virtual instruction provider instructional employees are subject to the background screening requirements of certified educators.<sup>9</sup>

##### Background Screening

Individuals who work in, or provide services to, school districts, charter schools, and private schools that participate in state school choice scholarship programs must undergo a fingerprint-based background screening before being permitted access to school grounds.<sup>10</sup> The individuals who must undergo background screening fall under three personnel classifications: instructional and noninstructional personnel,<sup>11</sup> noninstructional school district employees and contracted personnel,<sup>12</sup> and

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<sup>1</sup> Section 1002.45(1)(a)2., F.S.

<sup>2</sup> Section 1002.45(1)(b), F.S. In 2008, the Florida Legislature required all school districts to provide a virtual instruction program beginning with the 2009-10 academic year. Section 4, ch. 2008-147, L.O.F.

<sup>3</sup> Section 1002.45(1)(c)1., F.S.

<sup>4</sup> Section 1002.45(1)(c)2., F.S..

<sup>5</sup> Section 1002.45(1)(c)3., F.S.

<sup>6</sup> Section 1002.45(1)(c)4., F.S.

<sup>7</sup> Section 1002.45(1)(c)5., F.S.

<sup>8</sup> Section 1002.45(2)(a)3., F.S. The virtual instruction program provider staff must undergo the same background screening as school instructional and noninstructional personnel *See supra* text accompanying note 2.

<sup>9</sup> Section 1002.45(2)(a)3., F.S.

<sup>10</sup> Sections 1012.32(2), 1012.465(2), and 1012.467(2)(a), F.S.

<sup>11</sup> Instructional and noninstructional personnel are individuals who are hired or contracted to fill positions that require direct contact with students in any public school. Section 1012.32(2), F.S. Employees and contracted personnel of virtual instruction programs must also undergo background screening pursuant to s. 1012.32(2), F.S. Section 1002.45(2)(a)3., F.S.

noninstructional contractors.<sup>13</sup> Candidates for educator certification must also undergo background screening.<sup>14</sup>

The background screening requirements for each personnel classification vary depending upon the individual's duties, whether or not the individual is a school district employee, and the degree of contact the individual has with students.<sup>15</sup> Because they are more likely to have direct contact with students, candidates for educator certification, instructional and noninstructional personnel, and noninstructional school district employees and contracted personnel must undergo Level 2 background screening. Level 2 background screening requires individuals to be screened against a statutorily prescribed list of over 50 disqualifying offenses.<sup>16</sup> In contrast, noninstructional contractors, individuals who are not school district employees and have no direct contact with students, are screened against a statutory list of nine disqualifying offenses.<sup>17</sup>

Fingerprints taken for a background screening are 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.<sup>18</sup> The cost of the background screening may be borne by the district school board, the charter school, the employee, the contractor, or other person subject to the screening requirements.<sup>19</sup>

The FDLE enters and retains the fingerprints in the Automated Fingerprint Identification System (AFIS), and retains them in the Applicant Fingerprint Retention and Notification Program (AFRNP) database.<sup>20</sup> Any arrest fingerprints the FDLE receives through the Criminal Justice Information Program<sup>21</sup> must then be searched against the fingerprints retained in the AFRNP. Any arrest record that is identified with the retained fingerprints of a person subject to the background screening must be reported to the employing or contracting school district.<sup>22</sup>

Fees<sup>23</sup> are charged for each initial background screening and each five-year renewal thereafter.<sup>24</sup> In addition, each school district must participate in the search process and pay an annual fee of \$6 for each record retained in the AFRNP database.<sup>25</sup> The initial entry of an applicant's fingerprints into the AFRNP database must be accompanied by a state or a state and national criminal history records check.<sup>26</sup> For noninstructional contractors, fingerprints are purged from the AFRNP database five years after the date they are initially submitted, and the annual retention fee for the five-year period must be paid in total at the time of submission.<sup>27</sup>

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<sup>12</sup> Noninstructional school district employees and contracted personnel are individuals who are permitted access to school grounds when students are present; who have direct contact with students; or who have access to, or control of, school funds. Section 1012.465(1), F.S.

<sup>13</sup> Noninstructional contractors are vendors or contractors who are not school district employees but are permitted access to school grounds when students are present. Section 1012.467(1)(a), F.S.

<sup>14</sup> Sections 1012.32(2)(a) and 1012.56(10)(a), F.S.

<sup>15</sup> Sections 1012.32(2), 1012.465(2), and 1012.467(2)(a), F.S.

<sup>16</sup> See ss. 435.04, 1012.32(2), 1012.465(1), and 1012.56(10), F.S. The disqualifying offenses for level 2 background screening are listed under s. 1012.315, F.S.

<sup>17</sup> See s. 1012.467(2)(g), F.S.

<sup>18</sup> Section 1012.32(2), F.S.

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

<sup>20</sup> Section 1012.32(3)(a), F.S.; s. 943.05(2), F.S.; rule 11C-6.010(1), F.A.C.

<sup>21</sup> Section 943.051, F.S.

<sup>22</sup> Section 1012.32(3)(b), F.S.

<sup>23</sup> The fee charged for the state-level background check is \$24 per name submitted. Section 943.053(3)(b), F.S. The fee for the federal background check is \$16.50. Florida Department of Law Enforcement, *Criminal History Record Checks/Background Checks Fact Sheet*, <http://www.fdle.state.fl.us/Content/getdoc/1acc7c3e-dac7-45d4-8739-0d221749d8ce/FAQ.aspx#13> (last visited Feb. 18, 2014). The total level 2 background check fee is \$40.50 per name submitted, not including any annual fee for fingerprint retention in the AFRNP. *Id.*

<sup>24</sup> Sections 1012.56(10)(b), 1012.465(2), and 1012.467(2)(a), F.S.

<sup>25</sup> *Id.*

<sup>26</sup> Rule 11C-6.010(6), F.A.C.

<sup>27</sup> Rule 11C-6.010(7), F.A.C.

Before employing instructional personnel or school administrators in any position that requires direct contact with students, school districts, charter schools, and private schools participating in a state school choice scholarship program must:

- Conduct an employment history check of the individual's previous employer. If unable to contact a previous employer, efforts to contact the employer must be documented;
- Screen the individual through use of the Department of Education's (DOE) Professional Practices' Database of Disciplinary Actions Against Educators and Teacher Certification Database,<sup>28</sup> and
- Document the findings.<sup>29</sup>

Currently, fingerprints submitted by states are not retained by the FBI for purposes of national background screening.<sup>30</sup> However, a national retained print arrest notification program is in development and should be operational sometime during 2014.<sup>31</sup> The program will allow applicant fingerprints to be retained by the FBI and searched against incoming arrest fingerprints nationwide in a manner similar to the AFRNP in Florida. Participation in the program will allow the FDLE to be notified when a school district employee or contractor subject to background screening requirements is arrested in another state.<sup>32</sup> Participation in the national retained print arrest notification program is subject to a one-time \$13.00 fee per each set of retained fingerprints.

Screening results for contractors, both those who have direct contact with students and those who simply have access to school property when students are present, are entered into the Florida Shared School Results (FSSR) system,<sup>33</sup> which allows the results to be shared with other school districts through a secure internet website or other secure electronic means.<sup>34</sup> However, the screening results for instructional personnel hired or contracted through a virtual instruction provider are not included in the system. As a result, virtual instruction personnel may be required to undergo background screening by each school district using their instructional services.<sup>35</sup>

### Effect of Proposed Changes

The PCS requires each virtual instruction program, in order to be included in the list of approved programs, to submit an affidavit stating that all instructional personnel have undergone background screening and hold a valid educator certificate in good standing.

In addition, the PCS clarifies that the FDLE must enter background screening results for virtual instruction program instructional personnel and school district noninstructional personnel and contractors into the FSSR. As a result, virtual instruction program instructional personnel will no longer have to bear the expense of undergoing background screening for each district in which they are providing instruction.

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<sup>28</sup> See s. 1001.10(5), F.S.; see also Florida Department of Education, *Employment Screening Tools*, <http://www.fldoe.org/edstandards/est.asp> (last visited Feb. 20, 2014) (includes links to the Professional Practices' Database of Disciplinary Actions Against Educators and the Teacher Certification Database). The Teacher Certification Database is also known as the Bureau of Educator Certification's Partnership Access and Services System (BEC-PASS). Florida Department of Education, *Technical Assistance Paper, Senate Bill 1712, No. K12: 2008-129*, at 4 (July 31, 2008), available at <http://www.fldoe.org/edstandards/pdfs/SB1712TAP.pdf>.

<sup>29</sup> Sections 1002.33(12)(g)4. (charter schools), 1002.421(4)(c) (private schools), and 1012.27(6), F.S.

<sup>30</sup> Florida Department of Law Enforcement, *Criminal History Record Checks/Background Checks Fact Sheet*, <http://www.fdle.state.fl.us/Content/getdoc/1acc7c3e-dac7-45d4-8739-0d221749d8ce/FAQ.aspx#13> (last visited Feb. 18, 2014).

<sup>31</sup> Staff of the Florida Department of Law Enforcement, *FDLE Legislative Bill Analysis for HB 707* (2014).

<sup>32</sup> *Id.*

<sup>33</sup> Florida Department of Law Enforcement, *Criminal History Record Checks/Background Checks Fact Sheet*, <http://www.fdle.state.fl.us/Content/getdoc/1acc7c3e-dac7-45d4-8739-0d221749d8ce/FAQ.aspx#13> (last visited Feb. 18, 2014).

<sup>34</sup> Section 1012.467(7)(a), F.S.; Telephone interview with Bureau Chief, Office of Professional Practices, Florida Department of Education (Feb. 20, 2014).

<sup>35</sup> *Id.*

The PCS includes employees of virtual instruction providers in the list of public school, charter school, and public school employees who are immune from civil and criminal liability for any good faith conduct that occurs during the performance of and within the scope of responsibilities related to a background check. The PCS requires that a virtual instruction program file a complaint with the DOE if a certified employee has engaged in conduct which would subject the certificate to discipline by the Education Practices Commission as provided by state law.<sup>36</sup> The PCS also requires a law enforcement agency to provide notice to a virtual instruction program provider within 48 hours after one of its screened employees is charged with a disqualifying offense.

The PCS reorganizes language relating to background screening for all personnel and contractors who have direct contact with students or who access school campuses while students are present, eliminating reference to the vague term “level 2 background screening.”

The PCS adds the following crimes to the list of disqualifying criminal offenses against which personnel who have direct contact with students are screened:

- Section 39.205, F.S., relating to failure to report child abuse;
- Section 775.085, F.S., relating to evidencing prejudice while committing offense, if reclassified as a felony;
- Section 782.051, F.S., relating to attempted felony murder;
- Section 782.09(1), F.S., relating to killing of unborn quick child by injury to mother;
- Section 787.06, F.S., relating to human trafficking;
- Section 790.166, F.S., relating to weapons of mass destruction;
- Section 838.015, F.S., relating to bribery;
- Section 859.01, F.S., relating to poisoning food or water; and
- Section 876.32, relating to treason.

The PCS requires the FDLE to enroll in the national retained print arrest notification program the fingerprints it has already retained within two years after the FDLE begins participation in the program. Furthermore, the PCS provides that rescreening is necessary for a certified educator at the time of the educator’s five-year certification renewal only if his or her fingerprints have not yet been enrolled in the national retained print arrest notification program.

In addition, the PCS requires the FDLE to enroll fingerprints received in performing background checks for school districts in the national retained arrest print notification program once the program is operational and the FDLE begins participation. Once participating in the national retained arrest print notification program, the FDLE must notify school districts whenever the FBI identifies an arrest record with the retained fingerprints of a school district employee or contractor.

The PCS requires the FDLE to identify in rule the fee assessed by the FBI for participation in the national retained arrest print notification program. The PCS also provides that the fee charged by school districts to virtual instruction program instructional personnel and noninstructional school district personnel and contractors who are in direct contact with students may not exceed 30 percent of the total fee assessed by the FDLE and FBI for background screening.

The PCS eliminates an obsolete provision relating to reciprocity of level 2 background screening for Florida High School Athletic Association officials. Such officials are not contracted by school districts, thus reference to reciprocity is unnecessary. The PCS also makes various conforming changes.

The PCS reenacts the following sections for the purpose of incorporating by reference the list of disqualifying offenses added by the PCS:

- Section 1001.42(7), F.S.;

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<sup>36</sup> Section 1012.795, F.S., permits the Education Practices Commission to take disciplinary action against an educator’s certificate if the educator is found to have engaged in behavior or conduct specified by statute.

- Section 1002.33(12)(g), F.S.;
- Section 1002.36(7)(g);
- Section 1002.421(4)(a), F.S.;
- Section 1012.32(1) and (2), F.S.;
- Section 1012.56(1)(a) and (c), F.S.; and
- Section 1012.795(1)(n), F.S.

## B. SECTION DIRECTORY:

Section 1. Amends s. 1002.45, F.S., revising the requirement relating to background screening of instructional personnel in virtual instruction programs.

Section 2. Amends s. 1012.315, F.S., providing additional offenses that determine ineligibility for educator certification or employment in a position that requires direct contact with students.

Section 3. Amends s. 1012.32, F.S., revising requirements for the retention, search, and reporting of fingerprints of school personnel; providing for Department of Law Enforcement participation in the national retained print arrest notification program; providing for fees.

Section 4. Amends s. 1012.465, F.S., providing background screening requirements for certain school district employees, certain contractual personnel, and instructional personnel in virtual instruction programs.

Section 5. Amends s. 1012.467, F.S., requiring the fingerprints of certain noninstructional contractors to be enrolled in the national retained print arrest notification program; requiring arrest fingerprints to be searched against state and federal retained fingerprints; providing for fees to be established in rule.

Section 6. Amends s. 1012.56, F.S., revising provisions relating to background rescreening for educator certification.

Section 7. Amends s. 1012.796, F.S., including persons employed by virtual instruction providers against which complaints may be filed.

Section 8. Amends s. 1012.797, F.S., revising provisions relating to notification to education providers of charges against school district employees.

Section 9. Reenacts s. 1001.42(7), F.S., relating to district school board powers and duties, to incorporate the amendment made to s. 1012.315, F.S., in reference thereto.

Section 10. Reenacts s. 1002.33(12)(g), F.S., relating to charter schools, to incorporate the amendment made to s. 1012.315, F.S., in reference thereto.

Section 11. Reenacts s. 1002.36(7)(g), F.S., relating to the Florida School for the Deaf and the Blind, to incorporate the amendment made to s. 1012.315, F.S., in reference thereto.

Section 12. Reenacts s. 1002.421(4)(a), F.S., relating to accountability of private schools participating in state school choice scholarship programs, to incorporate the amendment made to s. 1012.315, F.S., in reference thereto.

Section 13. Reenacts s. 1012.32(1) and (2), F.S., relating to qualifications of personnel, to incorporate the amendment made to s. 1012.315, F.S., in reference thereto.

Section 14. Reenacts s. 1012.56(10)(a) and (c), relating to educator certification requirements, to incorporate the amendment made to s. 1012.315, F.S., in reference thereto.

Section 15. Reenacts s. 1012.795(1)(n), F.S., relating to Education Practices Commission authority to discipline, to incorporate the amendment made to s. 1012.315, F.S., in reference thereto.

Section 16. Provides an effective date of July 1, 2014.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may lessen the long-term cost of background screening for personnel required to undergo background screening. This is because FDLE participation in the national retained print arrest notification program requires payment of a one-time fee of \$13 for retention of each set of fingerprints, so long as the person is employed by or contracting with the school district, instead of a \$16.50 fee at each five-year rescreening.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This PCS does not appear to affect county or municipal governments.

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

The PCS adds to FDLE rulemaking authority the requirement that FDLE identify by rule the amount of the fee assessed by the FBI for participation in the national retained print arrest notification program.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.