

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 954
 SPONSOR: Senator Smith
 SUBJECT: County and Municipal Employees and Contractors
 DATE: January 30, 2002 REVISED: 02/04/02 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cooper</u>	<u>Yeatman</u>	<u>CA</u>	<u>Favorable</u>
2.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/2 amendments</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill authorizes a county or municipality to require, by ordinance, screening of employee applicants or appointments if the position is found to be critical to security or public safety, or screening of any private contractor, employee of a private contractor, vendor, repair person, or delivery person who has access to any public facility or publicly operated facility if the facility is found to be critical to security or public safety.

This bill creates new unspecified sections of Florida Law.

II. Present Situation:

Employment Background Screening: Local Governments

“Home rule” is defined as the unrestricted ability of a local government to control local matters. While Florida’s counties and municipalities have a relatively low degree of fiscal home rule, they do enjoy a high degree of functional, structural and personnel home rule. [See Article VIII, ss. 1 and 2 of the State Constitution.] Personnel home rule allows county and municipal governments to set rules governing the employment of their personnel, the rates of remuneration, the conditions of employment, and collective bargaining and personnel related issues.

While it is recognized that counties and municipalities have home rule authority to require background screening of prospective employees, s. 125.581 and s. 166.0443, F.S., specifically state that local governments are not prohibited “from investigating the background of employees or prospective employees...”

In some cases, local government employees are required by statute to obtain a background screening as a condition of employment. Section 943.133(3), F.S., requires all law enforcement

officers employed by the state, municipalities, or other political subdivisions of the state, to undergo a thorough background investigation in accordance with procedures established by the Criminal Justice Standards and Training Commission. Section 633.34, F.S., requires firefighters employed by the state, municipalities, or other government entities in the state to undergo a background investigation as a condition of employment.

FDLE's Criminal Justice Information Service

The Florida Department of Law Enforcement (FDLE) operates the state's criminal identification screening system through the department's Criminal Justice Information Service. The FDLE is the central repository of criminal history records for the state of Florida and provides criminal identification screening to criminal justice agencies, non-criminal justice agencies, and private citizens to identify persons with criminal warrants, arrests, and convictions that affect employment, licensing, eligibility to purchase a firearm, and a variety of criminal justice functions.

Chapter 435, F.S., provides for two levels of employment screening of state employees, persons licensed or regulated by the state, or other persons as specified by statute. One level of screening requires an employment history check and **statewide** criminal correspondence check through FDLE. A second level of screening requires fingerprinting, a statewide criminal and juvenile records check through FDLE, a **federal** criminal records check through the Federal Bureau of Investigation (FBI), and may include local criminal records checks through local law enforcement agencies.

Local governments use FDLE's Criminal Justice Information Service for a variety of purposes. Local law enforcement has extensive access to both the state and national crime databases through the system, including databases maintained by the FBI. Local governments may access FDLE's screening system for Level 1 employment screening. However, federal law does not allow local governments to access the FBI databases (Level 2 screenings) for employment or licensing background screening unless state law provides the local governments with explicit statutory authority to conduct such screenings. (Section 50.12, 28 CFR Ch. 1.)

Select Committee On Public Security and Crisis Management

After the terrorist attacks of 9-11-01, the Senate created the Select Committee On Public Security and Crisis Management to make recommendations on steps Florida might take to improve the security of its citizens, infrastructure, and economy. The committee solicited input from public and private interests across the state, to include state agencies and local governments.

On September 14th, Governor Bush directed FDLE and the Division of Emergency Management (DEM) in the Department of Community Affairs (DCA) to complete a comprehensive assessment of Florida's capability to prevent, mitigate, and respond to a terrorist attack. Their primary recommendations are outlined in the report titled *Assessing Florida's Anti-Terrorism Capabilities*. The report outlined a number of long-term measures to enhance and expand prevention/regulation/statutory remedies to combat terrorism, including requiring background checks and employment standards for individuals working or having regular access to ports of transportation.

Currently, state law does not provide explicit authority for local government, including port and airport authorities, to access the FBI databases (Level 2 screenings) for employment or licensing background screening.

III. Effect of Proposed Changes:

Section 1 authorizes a county to require, by ordinance, screening of:

- employee applicants or appointments if the position is found to be critical to security or public safety, or
- any private contractor, employee of a private contractor, vendor, repair person, or delivery person who has access to any public facility or publicly operated facility if the facility is found to be critical to security or public safety.

The ordinance must require each person applying for, or continuing employment in, any such position or having access to any such facility to be fingerprinted. The fingerprints must then be submitted to the Department of Law Enforcement (FDLE) for a state criminal history record check and to the Federal Bureau of Investigation (FBI) for a national criminal history record check. The information obtained from the criminal history record checks may be used by the county to determine an applicant's eligibility for employment or appointment and to determine an employee's eligibility for continued employment.

Section 2 authorizes a municipality to require, by ordinance, screening of:

- employee applicants or appointments if the position is found to be critical to security or public safety, or
- any private contractor, employee of a private contractor, vendor, repair person, or delivery person who has access to any public facility or publicly operated facility if the facility is found to be critical to security or public safety.

The ordinance must require each person applying for, or continuing employment in, any such position or having access to any such facility to be fingerprinted. The fingerprints must then be submitted to FDLE for a state criminal history record check and to the FBI for a national criminal history record check. The information obtained from the criminal history record checks may be used by the municipality to determine an applicant's eligibility for employment or appointment and to determine an employee's eligibility for continued employment.

Section 3 provides that the act will take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Employee or appointment applicants, private contractors, employees of a private contractor, vendors, repair persons, or delivery persons who want access to select public facilities or publicly operated facilities may incur background screening costs if local governments require background screening and require that such persons pay the cost of such screening.

C. Government Sector Impact:

Counties and municipalities may incur screening costs if they elect to require such screening.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Criminal Justice:

Clarifies that the new section is not intended to limit or prevent background screenings and criminal history record checks that counties may already be doing in areas that have not been defined as critical to security or public safety.

#2 by Criminal Justice:

Clarifies that the new section is not intended to limit or prevent background screenings and criminal history record checks that cities may already be doing in areas that have not been defined as critical to security or public safety.

Amends s. 112.011, F.S. (providing that a person shall not be disqualified from employment with the state, a political subdivision, or a city because of a prior conviction for a crime unless the crime was a felony or first degree misdemeanor and directly relates to the position) to provide that that section does not apply to positions that a county or city deem to be critical to security or public safety. (WITH TITLE AMENDMENT)

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
