Fiscal Note & Local Impact Statement

127 th General Assembly of Ohio

Ohio Legislative Service Commission
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BILL: **Sub. H.B. 428** DATE: **May 28, 2008**

STATUS: **As Reported by Senate Education** SPONSOR: **Rep. Setzer**

LOCAL IMPACT STATEMENT REQUIRED: **No — Minimal cost**

CONTENTS: **Makes several changes regarding the reporting of and discipline for school employee misconduct**

State Fiscal Highlights

STATE FUND	FY 2008	FY 2009	FUTURE YEARS
General Revenue Fund			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Potential increase in ODE's administrative burden	Potential increase in ODE's administrative burden	Potential increase in ODE's administrative burden
General Reimbursement Fund (Fund 106)			
Revenues	Fee revenue increase of approximately $1.0 million	Fee revenue increase of approximately $1.0 million	Fee revenue increase of approximately $1.0 million
Expenditures	Offsetting increase for notification services	Offsetting increase for notification services	Offsetting increase for notification services

Note: The state fiscal year is July 1 through June 30. For example, FY 2008 is July 1, 2007 – June 30, 2008.

- The bill requires the Department of Education (ODE) to elect to receive notifications from the Bureau of Criminal Identification and Investigation (BCII) for approximately 200,000 individuals licensed by the State Board of Education and entered into the Retained Applicant Fingerprint Database (RAFD). BCII will charge an annual fee of $5 per individual in the Database to cover the costs of providing the service. Therefore, BCII will experience an increase in fee revenue equal to approximately $1.0 million per year. This revenue increase will offset BCII's cost of operating the Database. Generally, the cost of licensure, including the cost of background checks and presumably the additional cost of the RAFD, is borne by the licensee.

- ODE may experience an increase in administrative burden due to the bill's requirements regarding the RAFD.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2008	FY 2009	FUTURE YEARS
School Districts			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Potential minimal increase	Potential minimal increase	Potential minimal increase
Courts			
Revenues	Potential increase	Potential increase	Potential increase
Expenditures	Potential increase	Potential increase	Potential increase

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- Schools may see a minimal increase in expenditure for increased reporting requirements under the bill.
- The criminal and civil penalties created by the bill may increase the caseload for county and municipal courts. This increase in caseload may lead to increased costs for the courts, but also to increased revenues from fines and court costs charged to the parties in the case.

Detailed Fiscal Analysis

The bill establishes new provisions and makes several changes regarding the reporting of and discipline for school employee misconduct. Provisions with potential fiscal effects on state and local governments are discussed below.

Additional reporting requirements

Continuing law requires prosecutors to notify the State Board of Education, for individuals licensed by the Board, and schools, for nonlicensed employees of the school, if one of these individuals pleads guilty to or is convicted of certain offenses.[1] In addition to these cases, the bill mandates reporting when one of these individuals has been determined to be eligible for intervention in lieu of conviction or has agreed to participate in a pre-trial diversion program for these same offenses.

Similarly, continuing law requires that public and chartered nonpublic schools report to the Superintendent of Public Instruction certain information on disciplinary actions against an employee who is licensed by the State Board of Education. One item that must be reported is a known plea of guilty by, a finding of guilt of, or a conviction of a licensee for the same offenses mentioned above. As with prosecutors, the bill also mandates reporting when a licensed employee has been determined to be eligible for intervention in lieu of conviction or has agreed to participate in a pre-trial diversion program for these same offenses.

Any potential costs of this additional reporting are expected to be minimal.

[1] These offenses are listed in the LSC bill analysis.

Penalties for failure to report educator misconduct and for false reports

The bill specifies penalties for school officials who knowingly fail to report educator misconduct to the Superintendent. Under the bill, these officials are guilty of a fourth-degree misdemeanor. The penalty increases to a first-degree misdemeanor if, after the official fails to report the misconduct, the employee whose misconduct should have been reported commits an offense involving abuse or neglect of a child.

The bill grants civil immunity to any individual who reports alleged misconduct in good faith. On the other hand, an individual who knowingly makes false accusations of misconduct that lead to a false report being submitted to the Superintendent is guilty of a first-degree misdemeanor under the bill. In addition, the individual may be subject to civil penalties including the payment of restitution.

The criminal and civil penalties created by the bill may increase the caseload for county and municipal courts. This increase in caseload may lead to increased costs for the courts, but also to increased revenues from fines and court costs charged to the parties in the case.

ODE participation in the Retained Applicant Fingerprint Database

Continuing law requires the Superintendent of the Bureau of Criminal Identification and Investigation (BCII) to establish, by February 15, 2008, a database of fingerprints of individuals on whom BCII has conducted criminal records checks for the purpose of determining eligibility for employment with or licensure from a public office. This database is known as the Retained Applicant Fingerprint Database (RAFD). When someone in the database is arrested or convicted of any offense, the Superintendent must send a notification to the public office that employs or licensed the individual if the public office elects to receive notifications. Under a recently adopted rule, BCII will charge an annual fee of $5 for each individual employee record entered and maintained in the database.

The bill requires that ODE elect to receive BCII notifications. As a result, ODE will be responsible for paying the $5 annual fee for each record submitted to BCII. According to a spokesperson from ODE, the agency will need to submit approximately 200,000 records for an annual cost of approximately $1.0 million. This represents revenue for BCII, which will be offset by the costs of the RAFD service. Generally, the cost of licensure, including the cost of background checks and presumably the additional cost of the RAFD, is borne by the licensee. If a school chooses to reimburse its employees for the costs associated with licensure and, in particular, for being added to the RAFD, the school may experience an increase in expenditures. In addition, ODE may see an increased administrative burden as a result of its work with the RAFD.

Criminal records checks

The bill exempts certain adult education instructors from the requirement that school employee criminal records checks include information from other states that is provided by the FBI. Currently, BCII charges an additional $24 to obtain this information. These fees are generally paid by the employee. The bill also exempts private contractors from providing criminal records checks for certain employees who work in schools if these individuals are monitored by employees of the school when they are in the presence of children. BCII charges

$22 for a state criminal records check and a total of $46 for a state and federal criminal records check.

Employee suspensions

The bill requires that public and chartered nonpublic schools suspend all licensed and nonlicensed employees from duties that require the care, custody, or control of a child upon arrest or indictment for certain specified offenses and continuing through the conclusion of the criminal action against the employee. The school must also report this suspension to ODE. According to a spokesperson from the Buckeye Association of School Administrators, this provision is not expected to increase costs significantly as it generally conforms the law to current practice. A superintendent may reassign an employee to a location that does not involve the employee in direct contact with children and fill the employee's position in the school with a substitute. Presumably, this same practice will be used for the suspensions mandated by the bill.

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