

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1115 Teacher Protection

SPONSOR(S): Brandes; Grant and others

TIED BILLS: None **IDEN./SIM. BILLS:** SB 1698

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Cary	Bond
2) Justice Appropriations Subcommittee			
3) Education Committee			
4) Judiciary Committee			

SUMMARY ANALYSIS

Public school classroom teachers are occasionally named as defendants in civil lawsuits as a result of in-school disciplinary issues. This bill allows a teacher to request that the Office of the Attorney General (OAG) represent the teacher in a civil lawsuit arising out of disciplinary issues. The OAG must represent the teacher if it finds that the suit arose out of an act that the teacher had a good faith belief was within the scope of the teacher's duties.

The bill also modifies the definition of "employee organization" within the labor organizations statute to exclude professional teacher associations that do not register as collective bargaining organizations.

This bill does not appear to have a fiscal impact on local governments. This bill appears to require recurring expenditures in the Department of Legal Affairs of \$2.1 million annually, commencing in FY 2012-13, payable from the General Revenue Fund.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Civil Suits Against Teachers - Present Situation

Public school teachers¹ are granted the authority to control and discipline students, subject to state law, school district policy, and the direction of the school principal.² A classroom teacher, in some circumstances, may be sued for in-class discipline by or on behalf of an aggrieved student.³ A teacher is not civilly or criminally liable for any action carried out in conformity with the State Board of Education and district school board rules regarding the control or discipline of students, except in the case of excessive force or cruel and unusual punishment.⁴ When a teacher is named in a civil suit for enforcing discipline policies, if the teacher is not defended by the school board, the teacher is typically represented a private attorney hired by the teacher, a teacher's union, or another professional teacher's organization.

Civil Suits Against Teachers - Effect of Proposed Changes

This bill creates s. 16.0152, F.S. to allow a public school teacher, other than a substitute teacher, to request that the Office of the Attorney General (OAG) represent the teacher in the suit. Such a request must be made in writing with 14 days of receipt of the complaint. The bill requires the OAG to defend the teacher throughout the civil action if the OAG determines that the teacher acted with a good faith belief that the act was within the scope of the teacher's duties in enforcing discipline policies developed under s. 1003.32, F.S.

The OAG is required to draft a notice of the teacher's options under this bill for dissemination by the Commissioner of Education to each K-12 classroom teacher by August 15th of each year. The bill provides that a decision by the OAG to not represent a teacher is not admissible as evidence in the trial of any civil action that commences.

Employee Organizations - Present Situation

An employee organization is any labor organization, union, association, fraternal order, occupational or professional society, or group, however organized or constituted, that represents, or seeks to represent, any public employee or group of public employees concerning any matters relating to their employment relationship with a public employer.⁵ This definition comes from the chapter of the Florida Statutes relating to labor unions.⁶ Recent decisions by the Florida Public Employees Relations Commission, however, have expanded the scope of that definition to include professional teacher associations that do not perform collective bargaining functions, allowing unions to challenge non-collective bargaining teacher associations⁷ for unfair labor practices.⁸

¹ Section 1012.01(2)(a), F.S.

² Section 1003.32, F.S.

³ See, e.g., *Williams v. Cotton*, 346 So.2d 1039 (Fla. 1st DCA 1977).

⁴ Section 1006.11(2), F.S.

⁵ Section 447.203(11), F.S.

⁶ Chapter 447, F.S.

⁷ Professional teacher associations are defined by s. 1001.03, F.S., as not-for-profit, professional teacher associations that offer membership to all teachers and offer teacher training and staff development at no fee to the district. Such organizations are allowed equal access to voluntary teacher meetings, access to teacher mailboxes, and may collect voluntary membership fees through payroll deductions.

⁸ See, e.g., *Osceola Classroom Teachers Assoc. v. School District of Osceola County*, Case No. CA-2009-068 (PERC Final Order, Oct. 29, 2010) and *Duval Teachers United v. School District of Duval County*, Case No. CA-2010-134 (Hearing Officer's Recommended Order).

This bill amends the definition for "employee organization" in s. 447.203, F.S., to specifically exclude any "professional teacher association" as defined in s. 1001.03(4), F.S., until such organization applies for registration pursuant to the labor union statute.

B. SECTION DIRECTORY:

Section 1 provides a name for the act.

Section 2 creates s. 16.0152, F.S., relating to suits against K-12 classroom teachers.

Section 3 amends s. 447.203, F.S., relating to definition of employee organization.

Section 4 provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The Office of the Attorney General estimates that there would be 22 lawsuits annually alleging improper discipline. The OAG also determined that defense costs would be approximately \$96,000 per case. Assuming 22 cases is a representative year, the result is an approximate fiscal cost of approximately \$2.1 million dollars annually. The bill does not specify the source of funding, and accordingly appears to be funded from the General Revenue Fund.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to have any impact on local government revenues.

2. Expenditures:

This bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

According to the Office of the Attorney General, requiring the OAG to defend a teacher in a civil lawsuit could create a potential conflict of interest for the OAG, since it currently serves as a legal advisor to the Florida Education Practices Commission.

The bill may also create another potential conflict of interest. The OAG prepares criminal appeals on behalf of the state. It is possible that the OAG could obtain information from a teacher seeking representation in a civil case that implicates the teacher in a criminal case. If that teacher is convicted and appeals, the OAG may then be unable to act as appellate counsel for the state.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a