

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1115 Teacher Protection

SPONSOR(S): Civil Justice Subcommittee; 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	8 Y, 6 N, As CS	Cary	Bond
2) Justice Appropriations Subcommittee		McAuliffe	Jones Darity
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 unless the teacher has been subjected to disciplinary proceedings for the same act by the employing school district or the Education Practices Commission.

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, commencing in FY 2012-13, payable from the General Revenue Fund, of an indeterminate amount. See Fiscal Comments.

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

Sovereign immunity can act as a complete bar to recovery where the act is a discretionary function of government.⁵ However, teachers are under a common law and statutory duty to supervise the activity of students under their care and control, and such duty is not fully protected by sovereign immunity.⁶ Rather, in such cases, the state waives sovereign immunity, but damages are capped at \$200,000 for any single claim or judgment, or \$300,000 for multiple claims or judgments arising out of the same incidence or occurrence.⁷ Furthermore, if the teacher acts outside of the scope of employment or commits an intentional tort, the government is immune and there is no sovereign immunity protection for the teacher.⁸

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 teacher has not been subjected to disciplinary proceedings for the same act by the employing school district or the Education Practices Commission.

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.

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.⁹ This definition comes from the chapter of the Florida Statutes relating to labor unions.¹⁰ 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 associations¹¹ for unfair labor practices.¹²

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 *Tranion Park Condominium Assoc. v. City of Hialeah*, 468 So.2d 912, 918 (Fla. 1985).

⁶ *Doe v. Escambia County School Bd.*, 599 So.2d 226, 227 (Fla. 1st DCA 1992.)

⁷ Section 768.28, F.S.

⁸ Section 768.28(9)(a).

⁹ Section 447.203(11), F.S.

¹⁰ Chapter 447, F.S.

¹¹ 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

Employee Organizations - Effect of Proposed Changes

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:

Section 2 of the bill appears to require recurring expenditures from the General Revenue Fund by the Office of the Attorney General. The amount is indeterminate. See Fiscal Comments.

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:

As to Section 2 of the bill, there is conflicting information regarding the potential fiscal impact of the bill. The first comments from the affected agency implied a fiscal impact of \$2.1 million annually.¹³ Later

equal access to voluntary teacher meetings, access to teacher mailboxes, and may collect voluntary membership fees through payroll deductions.

¹² 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).

¹³ On January 13, 2012, the Civil Justice Subcommittee received the following comments: "While it is unknown the potential cases that may arise under this proposed legislation, approximately 1,000 cases a year come to Department of Education, Professional Practices Section, 22 of which are in the category of inappropriate discipline. Based on those numbers, there may be dozens of cases per year in Florida alleging excessive use of force by a teacher. According to the OAG, the estimated fiscal impact for defending a teacher in an excessive use of force case, which includes attorneys fees, discovery costs, expert witness fees, court reporter transcription fees, etc., is approximately \$96,000 per case." A previous bill analysis relied on this statement to estimate annual costs at \$2.1 million (22 cases at \$96,000 each).

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comments from the agency indicated that the potential expenditures could be significantly less, but did not provide information sufficient to create an estimate.¹⁴

The state previously purchased an insurance policy to protect teachers from civil suits. In its 5 years of operation ending in FY 2005-06, 39 professional liability policy claims were filed. Of the 30 claims that were closed at the time of a 2006 report, 27 experienced no losses. The remaining 3 claims paid a total of just over \$50,000. The one claim that was settled during litigation cost \$33,375 in attorney fees. None of the 30 closed claims went to trial.¹⁵ Claims handling experience and costs are unknown, so the total cost of the program cannot be used to create an estimate of the cost of the narrower program created by this bill. Nevertheless, the relatively low claims experience of this prior program may lead to doubt about the significantly higher estimates recently provided regarding this bill. Accordingly, the estimated fiscal cost is indeterminate.

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:

As to Section 2 of the bill:

- 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; however the bill requires representation. The two provisions appear inconsistent.
- 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 the OAG currently serves as a legal advisor to the Florida Education Practices Commission (EPC).
- 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 conviction, the OAG may then be limited in acting as appellate counsel for the state in that case.

¹⁴ On January 17, 2012, the Civil Justice Subcommittee received the following comments: "As you can see from the comments below that we sent to the Civil Justice Committee, we did not conclude that every case alleging excessive force by a teacher would go to trial. We did provide the estimate for going to trial at 96k per case. Nor did we purport to estimate how many cases would actually occur in a year; we simply used the data we had from DOE about the pending inappropriate discipline cases (22) as of November 2011. Since some cases may be settled before trial, I asked our attorneys to provide us with the fiscal impact for a typical summary judgement, and that number is 27k per case. Again, to be clear: we do not know how many cases are likely to arise each year, nor can we predict with certainty at which stage in the process most cases are likely to be resolved. We simply have provided cost estimates of two points in litigation: summary judgement and full trial. We have not attempted to quantify appellate costs."

¹⁵ Office of Program Policy Analysis and Government Accountability, Report No. 06-08, January 2006.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 18, 2012, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment provides that the OAG must defend the teacher unless the teacher has not been subjected to disciplinary proceedings by the school district or the Education Practices Commission. The amendment removes the OAG's discretion to decide to take a case if the teacher acted in a good faith belief that the act was within the scope of the teacher's duties in enforcing discipline policies. This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.