

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Education

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BILL: SB 888

INTRODUCER: Senator Detert

SUBJECT: Educator Professional Practices

DATE: April 7, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Scott</u>	<u>Klebacha</u>	<u>ED</u>	<b>Favorable</b>
2.	<u>Sikes</u>	<u>Elwell</u>	<u>AED</u>	<b>Pre-meeting</b>
3.	_____	_____	<u>FP</u>	_____

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**I. Summary:**

SB 888 modifies the membership of the Education Practices Commission (EPC).

Additionally, the bill:

- Adds Department of Education (DOE) employees and agents, who investigate or prosecute educator misconduct, to the list of individuals authorized to access records relating to child abuse, abandonment, or neglect.
- Authorizes the Commissioner of Education to issue a letter of guidance to an educator in lieu of finding probable cause to prosecute misconduct.

The bill has a minimal fiscal impact associated with the five new emeritus members which may be appointed to the EPC.

The bill provides an effective date of July 1, 2015.

**II. Present Situation:**

Florida law requires that each person<sup>1</sup> in a position who provides direct instruction to students meet the state's educator certification requirements and criteria.

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<sup>1</sup> Such persons include instructional personnel (e.g., classroom teachers, student advisors, or certified school counselors) or administrative personnel (e.g., deputy superintendents, school principals, or assistance principals). Section 1012.01(2)-(3), F.S.

## Education Practices Commission

### *Membership*

The Education Practices Commission (EPC) consists of 25 members including:<sup>2</sup>

- Eight teachers;
- Five administrators, at least one of whom must represent a private school;
- Seven lay citizens, five of whom must be parents of public school students with no family relation to a public school employee and two of whom must be former district school board members; and
- Five sworn law enforcement officials.

The members are appointed by the State Board of Education (state board) based upon nominations made by the Commissioner of Education (commissioner), subject to confirmation by the Florida Senate.<sup>3</sup> Teachers, school administrators, and lay citizens who wish to serve on the EPC must be Florida residents to be appointed; however, law enforcement officials are not required to be Florida residents, but they must have expertise in child safety.<sup>4</sup>

### *Duties and Responsibilities*

The EPC interprets and applies the standards<sup>5</sup> of professional practice established by the state board; revokes or suspends educator certificates, or takes other disciplinary action, for misconduct; reports to and meets with the state board; and adopts rules.<sup>6</sup>

The Department of Education (DOE) is required to investigate legally sufficient<sup>7</sup> complaints of misconduct<sup>8</sup> committed by certified educators and advise the commissioner on whether probable cause exists.<sup>9</sup> Upon a finding of probable cause, the commissioner must file a formal complaint and prosecute the complaint pursuant to chapter 120, F.S.<sup>10</sup> An administrative law judge assigned to hear the complaint makes recommendations to the EPC for review and preparation of final order issued by a panel of five EPC members.<sup>11</sup> Unless the complaint involves a felony or crime of moral turpitude, the commissioner may enter into a deferred prosecution agreement with the

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<sup>2</sup> Section 1012.79(1), F.S.

<sup>3</sup> *Id.* Before making nominations, the Commissioner must consult with teaching associations, parent organizations, law enforcement agencies, and other involved associations in the state. *Id.*

<sup>4</sup> Section 1012.79(1)(a)-(d), F.S.

<sup>5</sup> Code of Ethics of the Education Profession in Florida, Rule 6A-10.080, F.A.C., and Principles of Professional Conduct for the Education Profession in Florida, Rule 6A-10.081, F.A.C. available at <http://www.fldoe.org/teaching/professional-practices/code-of-ethics-principles-of-professio.stml> (last visited March 25, 2015).

<sup>6</sup> Sections 1012.79(7) and 1012.795(1), F.S. A district school board retains its authority to discipline teachers and administrators. Section 1012.79(8)(b), F.S.

<sup>7</sup> Section 1012.796(1)(a), F.S. The complaint is legally sufficient if it contains ultimate facts showing a violation has occurred. *Id.* and s. 1012.795, F.S.

<sup>8</sup> Misconduct may include fraudulently obtaining an educator certificate, knowingly failing to report actual or suspected child abuse, or breach of contract. Section 1012.795(1), F.S.

<sup>9</sup> Section 1012.796(3), F.S.

<sup>10</sup> *Id.* at (6).

<sup>11</sup> Sections 1012.79(8)(a), 1012.795(6), and 1012.796(1), F.S. In 2014, 16 of the 19 hearings involved teacher misconduct. Florida Department of Education, Division of K-12 Educator Quality, *2015 Agency Legislative Bill Analysis* for HB 587 (March 16, 2015) at 2, on file with the Committee on Education Pre-K – 12.

certified educator in lieu of finding probable cause.<sup>12</sup> If the commissioner does not find probable cause, the complaint must be dismissed.<sup>13</sup>

### **Reports of Child Abuse, Abandonment, or Neglect**

Any person who knows, or has reason to suspect, that a child is abused, abandoned, or neglected must report such knowledge or suspicion to the Department of Children and Families (DCF).<sup>14</sup> School teachers and other school officials or personnel are required to make such reports and the failure to do so is a felony of the third degree.<sup>15</sup>

Records held by the DCF regarding such reports, including reports made to the Central Abuse Hotline, are confidential and exempt from public records requirements, unless specifically authorized in law.<sup>16</sup> Access to records, excluding the name of the person reporting abuse, is granted to a limited list of persons, officials, and agencies (*e.g.*, Department of Health employees responsible for child protective investigations, criminal justice agencies, or school district employees designated as a liaison between the school district and DCF).<sup>17</sup>

### **III. Effect of Proposed Changes:**

The bill modifies the membership of the Education Practices Commission (EPC); adds Department of Education (DOE) employees and agents, who investigate or prosecute educator misconduct, to the list of individuals authorized to access records relating to child abuse, abandonment, or neglect; and authorizes the Commissioner of Education (commissioner) to issue a letter of guidance to an educator in lieu of finding probable cause to prosecute misconduct.

#### **EPC Membership**

The bill diversifies the representation on the EPC by including virtual school administrators, former charter school governing board members, and public school officials, while also ensuring that members are citizens of the state. Specifically, the bill makes the following revisions to EPC membership:

- Redistributes the number of teacher, lay citizen, and sworn law enforcement members while retaining the existing number of members (25) as follows:
  - The number of teacher members is increased from 8 to 10.
  - The number of lay citizen members is reduced from 7 to 4, all of whom must be parents of public school students.
  - The number of sworn law enforcement officials is reduced from 5 to 4.
- Revises the membership to include:

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<sup>12</sup> Section 1012.796(3), F.S. An educator may be directed to participate through a deferred prosecution agreement or final order of the EPC in the recovery network program for assistance in obtaining treatment and services for alcohol abuse, drug abuse, or a mental condition. Section 1012.798(1), F.S. Voluntary participation in the program may be considered as a mitigating factor or a condition of disciplinary action. *Id.* at (5).

<sup>13</sup> *Id.*

<sup>14</sup> Section 39.201(1), F.S.

<sup>15</sup> Sections 39.201(1)(d) and 39.205(2), F.S.

<sup>16</sup> Sections 39.202(1) and 39.2021(1), F.S.

<sup>17</sup> Section 39.202(2), F.S.

- Former charter governing board members or former superintendents, assistant superintendents, or deputy superintendents.
- Virtual school administrators.
- Requires all members to be Florida residents.
- Authorizes the commissioner, upon request or recommendation from the EPC, to appoint up to 5 emeritus members from previous membership of the EPC to serve 1-year terms and who:
  - May serve up to five 1-year terms;
  - Are voting members for discipline hearings; and
  - Are consulting, nonvoting members for business meetings.

### **Letter of Guidance**

The bill authorizes the commissioner to issue a letter of guidance to a certified educator who has had a complaint of misconduct filed against him or her, rather than finding probable cause to prosecute. The bill may provide the commissioner with more flexibility in determining the course of action to take regarding complaints of educator misconduct by permitting him or her to issue a letter of guidance if deemed more appropriate under the circumstances.

### **Records of Child Abuse, Abandonment, or Neglect**

In addition to other individuals and agencies authorized by law,<sup>18</sup> the bill authorizes the Department of Children and Families to release records pertaining to child abuse, abandonment, or neglect, which are otherwise confidential and exempt from public records requirements, to DOE employees or agents who investigate or prosecute misconduct by certified educators. The bill may assist the DOE in its investigations of educator misconduct.

The bill provides for an effective date of July 1, 2015.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

### **B. Public Records/Open Meetings Issues:**

None.

### **C. Trust Funds Restrictions:**

None.

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<sup>18</sup> Section 39.202(2), F.S.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

According to the Department of Education, under SB 888, the Education Practices Commission would incur minimal additional operational expenses to cover the estimated costs for travel and training of emeritus members.<sup>19</sup> The additional training and travel costs for adding five emeritus members are estimated at \$3,500 per year. These costs are funded through the Education Certification and Service Trust Fund and can be absorbed within existing resources.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 39.202, 1012.79, and 1012.796.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>19</sup> Florida Department of Education, Division of K-12 Educator Quality, *2015 Agency Legislative Bill Analysis* for HB 587 (March 16, 2015; on file with the Committee on Education Pre-K – 12). As of the date of this committee staff analysis, an agency analysis has not been submitted for SB 888.