

STORAGE NAME: h0409.ge.doc
DATE: February 12, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMITTEE ON GENERAL EDUCATION
ANALYSIS**

BILL #: HB 409
RELATING TO: Educator Professional Liability Insurance
SPONSOR(S): Representative Farkas
TIED BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) COMMITTEE ON GENERAL EDUCATION
 - (2) EDUCATION APPROPRIATIONS
 - (3) COUNCIL ON LIFELONG LEARNING
 - (4)
 - (5)
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I. SUMMARY:

This bill provides that the state shall, in its annual General Appropriations Act, provide educator professional liability coverage for all instruction personnel, as defined in s. 228.041(9), F.S.

Instructional personnel, as defined in that section, includes classroom teachers, guidance counselors, social workers, school psychologists, librarians, learning resource specialists, educational paraprofessionals, and other personnel whose function includes the provision of direct instructional services to students.

Professional liability coverage, as used in this bill, means protection from having to pay monetary damages or the cost of attorney's fees resulting from defending claims made against them, arising out of actions in the course of their professional capacity.

Indications are that such annual coverage can be obtained for no more than \$10 per teacher, and for perhaps as low as \$5 per teacher. That would mean a maximum cost of \$1.5 million, and a minimum cost of \$750,000.

SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Educator Liability Insurance

Presently, there is no state program providing professional liability insurance for Florida's teachers. Therefore, if a teacher currently wishes such coverage, he or she has three choices:

- (1) Obtain such coverage themselves, directly;
- (2) Obtain coverage through their district, in a group plan; or
- (3) Obtain coverage through a union or professional association, in a group plan.

Sovereign Immunity

There is, in present law, a provision providing "sovereign immunity" from civil suits (torts) against teachers acting in their professional capacity. That law (s. 768.28[9][a], F.S.) provides, in part:

(9)(a) No officer, employee, or agent of the state or of any of its subdivisions shall be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment or function, unless such officer, employee, or agent acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property...

That protection, in essence, says that if you are a government employee (such as a teacher), you cannot even be named in a suit (much less successfully sued and made to pay damages) if the suit arises from actions in your professional capacity, *unless you acted in either bad faith, malicious purpose, or in wanton and willful disregard.*

Even though s. 768.28(9)(a), F.S., is intended to protect state employees such as teachers from civil suits arising from their official capacity, the reality is that the plaintiff (i.e., the accusing party) can draw the teacher into the suit by simply alleging that the teacher acted in bad faith, malicious purpose, or in wanton and willful disregard while discharging your duties in their official capacity. Hence, the need for professional liability insurance.

C. EFFECT OF PROPOSED CHANGES:

This bill provides professional liability insurance for Florida's teachers, at no cost to the teacher.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

This bill will require the expenditure of funds necessary to purchase group liability insurance for Florida's approximately 150,000 teachers. Indications are that such coverage can be obtained for no more than \$10 per teacher, and for perhaps as low as \$5 per teacher. That would mean a maximum cost of \$1.5 million, and a minimum cost of \$750,000.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend or take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that counties or municipalities have to raise revenue in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the percentage of a state tax shared with counties or municipalities.

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IV. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VI. SIGNATURES:

COMMITTEE ON GENERAL EDUCATION:

Prepared by:

Staff Director:

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