

STORAGE NAME: h0409a.ge.doc
DATE: February 20, 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 YEAS 12 NAYS 0
 - (2) EDUCATION APPROPRIATIONS
 - (3) COUNCIL ON LIFELONG LEARNING
 - (4)
 - (5)
-

I. SUMMARY:

This bill provides that the state shall, in its annual General Appropriations Act (GAA), 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. With approximately 180,000 persons in Florida currently working in positions fitting under the definition of "instructional personnel," that would mean a maximum cost of \$1.8 million, and a minimum cost of \$900,000.

The Committee on General Education of the House adopted two amendments (one amendment, and one amendment-to-the-amendment) on February 20, 2001. The amended amendment provides that *full-time* instructional personnel shall be given the liability insurance coverage without charge (money shall be appropriated out of the GAA to pay for it), and that *part-time* instructional personnel shall be allowed to purchase the liability coverage at the low-cost group rate (projected to be \$5 to \$10, annually). The amendment-to-the-amendment has been engrossed into the amendment, and the amended amendment is traveling with the bill.

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:

Professional Liability

Professional liability is incurred when certain standards of performance are not lived up to, and the person for whom service is rendered has been damaged in some way. Here's an easily cited education example: A teacher or counselor misinterprets the results of a standardized test. As the result of the misinterpretation, he/she counsels the student to take a course of study not really appropriate to the student's needs. Damages resulting from negligence or improper supervision would be other examples.

A recent survey found that liability protection is among teachers' top three concerns. At the country's third largest insurer of teachers, the number of teachers purchasing professional liability insurance has increased 25% in the last five years.

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 their duties in their official capacity. Hence, the need for professional liability insurance.

Educator Professional 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.

Extent of Coverage in Similar Policies Otherwise Available

Similar insurance policies currently available typically offer \$1,000,000 in liability insurance per person, with a cap of \$3,000,000 per incident. There is often also coverage of up to \$250,000 for civil rights.

Instructional Personnel in Florida

As of October 2000, there were approximately 181,500 full-time instructional personnel in Florida:

Teachers	134,500
Other instructional personnel	16,000
Teacher aides (paraprofessionals)	<u>31,000</u>
TOTAL	181,500

Number of Claims in Other States

In Texas, there are approximately 120,000 teachers covered by a private insurer. Last year there were only between 30-35 claims filed there.

C. EFFECT OF PROPOSED CHANGES:

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

The Fred T. Jones Company of Reston, Virginia (the 3rd largest insurer of teachers, nationwide) estimates an annual cost of \$10 per insured, based on a pool of 100,000 insured. Since Florida's pool will consist of at least 180,000 (and since the larger the pool, the smaller the premium), an annual cost range of \$5 to \$10 is projected.

Based on the number of claims elsewhere (Texas had 30-35 claims last year, from among a pool of 100,000 teachers), Florida might expect around 50 claims per year.

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 180,000 instructional personnel (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 \$1.8 million, and a minimum cost of \$900,000. If the pool of insured is expanded, the cost per person could drop even lower.

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.

IV. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

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PAGE: 5

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

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VI. SIGNATURES:

COMMITTEE ON GENERAL EDUCATION:

Prepared by:

Staff Director:

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