

STORAGE NAME: h0409s1z.ge.doc
DATE: May 31, 2001

****AS PASSED BY THE LEGISLATURE****
CHAPTER #: 2001- 46, Laws of Florida

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE
GENERAL EDUCATION
FINAL ANALYSIS**

BILL #: CS/HB 409, 1st ENG
RELATING TO: Educator Professional Liability Insurance
SPONSOR(S): Council for Lifelong Learning and Representative Farkas
TIED BILL(S):

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

- (1) COMMITTEE ON GENERAL EDUCATION YEAS 12 NAYS 0
- (2) EDUCATION APPROPRIATIONS YEAS 15 NAYS 0
- (3) COUNCIL ON LIFELONG LEARNING YEAS 13 NAYS 0
- (4)
- (5)

I. SUMMARY:

This bill provides that the state shall, in its annual General Appropriations Act (GAA), provide funding for educator professional liability coverage for all full-time instructional personnel (as defined in s. 228.041[9], F.S.). This insurance will be provided at no cost to the full-time instructional personnel. The bill also offers the same liability insurance, at cost, to all part-time instructional personnel, and to administrative personnel (as defined in s. 228.041[10], 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 and support to students. Administrative personnel, as defined in the same section, includes principals, assistant principals, superintendents, assistant superintendents, deputy superintendents, and vocational center directors.

The bill provides that the Department of Education shall administer the educator liability program. It further provides that the insurance carrier providing any portion of educator professional liability coverage under the program must be selected by a competitive process. The amount of the appropriation for purchase of liability insurance remaining after liability insurance is provided shall revert to General Revenue (Line Item 138A of the General Appropriations Act for FY 2001-02 provides \$1,200,000 to implement the provisions of this bill).

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. Liability insurance is inherently defensive in nature, and cannot be used to finance litigation against other parties.

The Fred T. Jones Company of Reston, Virginia (the 3rd largest insurer of teachers, nationwide) has estimated an annual cost of \$10 per insured for educator professional liability insurance, based on a pool of 100,000 insured. Since Florida's pool will consist of at least 180,000 persons (and since the larger the pool, the smaller the premium), *indications are that such annual coverage can be obtained for Florida's teachers for around \$5 per teacher.* Therefore, with approximately 180,000 persons in Florida currently working in positions fitting under the definition of "instructional personnel," the cost of coverage is estimated to be around \$900,000.

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:

Professional Liability

Professional liability is incurred when certain standards of performance are met, and the person for whom service is rendered has been harmed in some way. An easily cited education example is: A teacher or counselor misinterprets the results of a standardized test. As the result of the misinterpretation, he or she counsels the student to take a course of study not really appropriate to the student's needs. Harm 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, provides that government employee (such as a teacher), cannot be named in a suit (much less successfully sued and made to pay damages) if the suit arises from actions in the employee's professional capacity, *unless the employee acted in bad faith, with 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 duties in his or her official capacity. Hence, professional liability insurance is needed.

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. Such policies often also offer coverage of up to \$250,000 for civil rights.

Instructional Personnel in Florida

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

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

Administrative Personnel in Florida

The term "administrative personnel" is defined in s. 228.041(10), F.S. It includes personnel who perform management activities for the school or school district. Specifically listed are:

- Superintendents,
- Assistant superintendents,
- Deputy superintendents.
- Principals,
- Assistant principals.
- Vocational center directors.

There are 9,251 administrative personnel throughout Florida's K-12 schools. More than two-thirds of that number are school based administrative personnel, slightly less than one third of that number (2,533) are district-based administrative personnel

Number of Claims in Other States

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

C. EFFECT OF PROPOSED CHANGES:

This bill provides professional liability insurance for Florida's full-time teachers, at no cost to the teacher. It also offers the same insurance, at cost, to part-time teachers and to administrative personnel.

The bill provides that the Department of Education shall administer the educator liability program. It further provides that the insurance carrier providing any portion of educator professional liability coverage under the program must be selected by a competitive process. The amount of the appropriation for purchase of liability insurance remaining after liability insurance is provided shall revert to General Revenue.

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 around \$5 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:

See "EFFECT OF PROPOSED CHANGES"

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

This bill will require the appropriation of funds necessary to purchase group liability insurance for Florida's approximately 180,000 instructional personnel (teachers and aides). Indications are that such coverage can be purchased for \$5 to \$10 per teacher depending on the size of the insured pool. Estimated aggregate cost of the insurance ranges from \$900,000 to \$1,800,000. The most likely estimate is \$5 per teacher, for an aggregate cost of \$900,000.

SPECIFIC APPROPRIATION 138A of the General Appropriations Act for FY 2001-02 provides \$1,200,000 to implement the provisions of this bill.

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.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on General Education of the House adopted two amendments (one amendment, and one amendment-to-the-amendment) on February 20, 2001. The amendment, as amended, provides that *full-time* instructional personnel will be given the liability insurance coverage without charge (funds will be appropriated in the GAA), 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 Committee on Education Appropriations heard the bill on March 8, 2001, and adopted a substitute amendment for the General Education Committee amendment that was traveling with the bill. The substitute retained the provisions of the amendment and added liability coverage at cost for all administrative personnel (as defined by section 228.041 [10], F.S.) who choose to participate in the state provided program.

On March 12, 2001, the Council for Lifelong Learning adopted the amendment traveling from the Committee on Education Appropriations, and made the bill a Council Substitute.

The Senate adopted one amendment on the Senate Floor. That amendment provided that the Department of Education shall administer the educator liability program. It further provided that the insurance carrier providing any portion of educator professional liability coverage under the program must be selected by a competitive process. The amount of the appropriation for purchase of liability insurance remaining after liability insurance is provided shall revert to General Revenue.

STORAGE NAME: h0409s1z.ge.doc

DATE: May 31, 2001

PAGE: 6

VI. SIGNATURES:

COMMITTEE ON GENERAL EDUCATION:

Prepared by:

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Staff Director:

Ouida Ashworth

AS REVISED BY THE COMMITTEE ON EDUCATION APPROPRIATIONS:

Prepared by:

William Cecil Golden

Staff Director:

John Newman

AS FURTHER REVISED BY THE COUNCIL ON LIFELONG LEARNING:

Prepared by:

Gip Arthur

Staff Director:

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FINAL ANALYSIS PREPARED BY THE COMMITTEE ON GENERAL EDUCATION:

Prepared by:

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