

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/CS/HB 1115 Teacher Protection

SPONSOR(S): Education Committee; Justice Appropriations Subcommittee; Civil Justice Subcommittee; Brandes 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	9 Y, 5 N, As CS	McAuliffe	Jones Darity
3) Education Committee	10 Y, 6 N, As CS	Muller	Klebacha
4) Judiciary Committee			

SUMMARY ANALYSIS

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. Employee organizations seeking to become a certified bargaining agent for public employees must register with the Public Employees Relation Commission.

Recent decisions by the Florida Public Employees Relations Commission, however, have expanded the scope of the definition of employee organization to include professional teacher associations that do not perform collective bargaining functions, allowing unions to challenge non-collective bargaining professional teacher associations for unfair labor practices.

The bill excludes a professional teachers association from the definition of employee organization until they apply for registration as a certified bargaining agent.

The bill prohibits postsecondary schools and school districts from requiring a student in a state-approved teacher preparation program to purchase liability insurance as a condition of participation in a clinical field experience. Such students are provided the same legal protection as certified teachers; therefore, requiring the purchase of liability insurance is unnecessary.

This bill does not appear to have a fiscal impact on the state or local governments.

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

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.”¹

Employee organizations seeking to become a certified bargaining agent for public employees must register with the Public Employees Relation Commission (PERC).² If an employee organization is not registered, it may not be certified as an exclusive bargaining agent.³ When an employee organization is certified as the bargaining agent for a unit of employees, the employer is prohibited from deducting dues from unit members for another employee organization.⁴ Public employers are prohibited from interfering with, restraining, or coercing public employees in the exercise of any rights guaranteed to those employees by law.⁵

A professional teacher association is a not-for-profit teacher association that offers membership to all teachers, noninstructional personnel, and administrators, and offers teacher training and staff development at no fee to the district.⁶ The State Board of Education must ensure that these associations are given equal access to voluntary teacher meetings, provided access to teacher mailboxes for distribution of professional literature, and authorized to collect voluntary membership fees through payroll deduction.⁷

Recent decisions by PERC have expanded the definition of employee organization to include professional teacher associations that do not perform collective bargaining functions. This allows unions to challenge non-collective bargaining teacher associations for unfair labor practices, such as providing literature comparing teacher associations with the union or creating a membership form for the transfer of membership from the union to the teacher association.⁸ In *Duval Teachers United*, PERC explained that there was no authority that prohibited PERC from defining a group as both a professional teacher association and an employee organization.⁹

Teachers are immune from personal liability through the doctrine of sovereign immunity.¹⁰ There are also specific statutory protections in place for school district personnel. Each district school board may provide legal services for officers and employees charged with civil or criminal actions arising out of, or in the performance of, their assigned duties and responsibilities. Additionally, district school boards are required to provide reimbursement of reasonable expenses for legal services for officer and employees of school boards who are charged with civil or criminal actions arising out of or in the performance of

¹ Section 447.203(11), F.S.

² Section 447.305(1), F.S.

³ *Id.*

⁴ *Osceola Classroom Teachers Assoc. v. School District of Osceola County*, Case No. CA-2009-068, at 11 (PERC Final Order, Oct. 29, 2010)

⁵ Section 447.501(1), F.S.

⁶ Section 1001.03(4), F.S.

⁷ Section 1001.03(4), F.S.

⁸ *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 (PERC Final Order, May 23, 2011).

⁹ *Duval Teachers United v. School District of Duval County*, Case No. CA-2010-134 (PERC Final Order, May 23, 2011).

¹⁰“ 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.” s. 768.28(9)(a), F.S.

assigned duties and responsibilities upon successful defense by the employee or officer.¹¹ Furthermore, except in the case of excessive force or cruel and unusual punishment, a teacher or other member of the instructional staff, a principal or the principal's designated representative, or a bus driver, shall not be civilly or criminally liable for any action carried out in conformity with State Board of Education and district school board rules regarding the control, discipline, suspension and expulsion of students.¹²

Student participants in a state-approved teacher preparation program are accorded the same legal protection as a certified educator while serving in a supervised clinical field experience.¹³ As such, student participants are shielded from personal liability while serving in their official capacity.

Effect of Proposed Changes

The bill provides professional teacher associations access to "initial orientations".

The bill amends the definition of "professional teacher association" as defined in s. 1001.03(4), F.S., to specifically exclude professional teacher associations from the definition of employee organization, until the association applies for registration as a certified bargaining agent. This language clarifies the definition of professional teacher associations so that there is no allegation of unfair labor practices when a professional teacher association engages in activities for which it is statutorily authorized.

The bill also prohibits postsecondary educational institutions or district school boards from requiring a student in a state-approved teacher program to purchase liability insurance as a condition of participation in any clinical field experience. Teachers are not required to purchase such a policy, given their legal protection under sovereign immunity. Therefore, it is unnecessary for students in a teacher preparation program to purchase a policy, as they are afforded the same legal protections as a certified teacher.

B. SECTION DIRECTORY:

Section 1. Amends s. 1001.03, F.S., relating to definition of professional teacher association, to provide professional teacher association access to initial orientations and to exclude professional teacher associations from the definition of an employee organization.

Section 2. Amends s. 1012.39, F.S., relating to students performing a clinical field experience, to prohibit postsecondary educational institutions or district school boards from requiring a student in a state-approved teacher education program to purchase liability insurance.

Section 3. Provides an effective date of upon becoming law.

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:

The bill does not appear to have any impact on state expenditures.

¹¹ *Id.*

¹² Section 1012.75, F.S.

¹³ Section 1012.39(3), F.S.

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:

None.

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:

None.

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 provided that the Office of the Attorney General (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 removed 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.

On February 14, 2012, the Justice Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment removed sections one and two of the bill that allowed a teacher to request that the OAG represent the teacher in a civil lawsuit arising out of student disciplinary issues.

On February 21, 2012, the Education Committee adopted a strike all amendment and reported the bill favorably as a committee substitute. The amendment, as did the bill, provided that a professional teacher association is not an employee organization until it applies for registration as a collective bargaining agent. In addition, the amendment added two provisions. The first provided professional teacher associations access to initial orientations. The second provision prohibited postsecondary educational institutions or

district school boards from requiring a student to purchase liability insurance as a condition of participation in any clinical field experience.