

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.)

Prepared By: The Professional Staff of the Education Pre-K - 12 Committee

BILL: SB 1698

INTRODUCER: Senator Wise

SUBJECT: Teacher Protection

DATE: February 18, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Abrams	deMarsh-Mathues	ED	Pre-meeting
2.	_____	_____	JU	_____
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill allows a classroom teacher to request that the Office of the Attorney General (OAG) represent the teacher in a civil lawsuit arising from the enforcement of disciplinary policies. Upon request, the OAG must represent the teacher if the OAG finds that the suit has arisen out of an act that the teacher in good faith believed was within the scope of his or her disciplinary duties.

The bill also modifies the definition of the term "employee organization" in s. 447.203, F.S., relating to labor organizations, to exclude professional teacher associations that do not register as collective bargaining organizations.

The bill creates section 16.0152 of the Florida Statutes and substantially amends section 447.203 of the Florida Statutes.

II. Present Situation

Civil Suits Against Teachers

Public school classroom teachers¹ are granted the authority to control and discipline students, subject to state law, school district policy, and the direction of the school principal.² A classroom teacher, in some circumstances, may be sued for in-class discipline by or on behalf of an

¹ s. 1012.01(2)(a), F.S., defines classroom teachers as staff members assigned the professional activity of instructing students in courses in classroom situations, including basic instruction, exceptional student education, career education, and adult education, including substitute teachers.

² s. 1003.32, F.S.

aggrieved student.³ A teacher is not civilly or criminally liable for any action carried out in conformity with the State Board of Education and district school board rules regarding the control or discipline of students, except in the case of excessive force or cruel and unusual punishment.⁴

Sovereign immunity can act as a complete bar to recovery where the act is a discretionary function of government.⁵ However, teachers are under a common law and statutory duty to supervise the activity of students under their care and control, and such duty is not fully protected by sovereign immunity.⁶ Rather, in such cases, the state waives sovereign immunity, but damages are capped at \$200,000 for any single claim or judgment, or \$300,000 for multiple claims or judgments arising out of the same incidence or occurrence.⁷ Further, if the teacher acts outside of the scope of employment or commits an intentional tort, the government is immune and there is no sovereign immunity protection for the teacher.⁸

Employee Organizations

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.⁹ Recent decisions by the Florida Public Employees Relations Commission, however, have expanded the scope of that definition to include professional teacher associations that do not perform collective bargaining functions, allowing unions to challenge non-collective bargaining teacher associations¹⁰ for unfair labor practices.¹¹

III. Effect of Proposed Changes:

Civil Suits Against Teachers

This bill creates s. 16.0152, F.S. allowing a public school teacher, other than a substitute teacher, to request that the Office of the Attorney General (OAG) represent the teacher in a suit involving the teacher's enforcement of disciplinary issues. Such a request must be made in writing with 14 days of receipt of the complaint. If requested, the bill requires the OAG to defend the teacher if the OAG finds that the suit has arisen out of an act that the teacher in good faith believed was

³ See, e.g., *Williams v. Cotton*, 346 So.2d 1039 (Fla. 1st DCA 1977).

⁴ s. 1006.11(2), F.S.

⁵ *Trianon Park Condominium Assoc. v. City of Hialeah*, 468 So.2d 912, 918 (Fla. 1985).

⁶ *Doe v. Escambia County School Bd.*, 599 So.2d 226, 227 (Fla. 1st DCA 1992). The scope of the teacher's duty depends upon the circumstances involved, and the applicable statutes, rules, and regulations adopted by the school board. *Id.*

⁷ s. 768.28(5), F.S.

⁸ s. 768.28(9)(a), F.S.

⁹ s. 447.203(11), F.S.

¹⁰ Professional teacher associations are defined in s. 1001.03(4), F.S., as not-for-profit, professional teacher associations that offer membership to all teachers and offer teacher training and staff development at no fee to the district. Such organizations are allowed equal access to voluntary teacher meetings, access to teacher mailboxes, and may collect voluntary membership fees through payroll deductions.

¹¹ 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 (Hearing Officer's Recommended Order).

within the scope of his or her disciplinary duties as pursuant to law.¹² If the OAG decides not to represent a teacher, the use of the decision as evidence is inadmissible in court.

The OAG is required to draft a notice of teachers' options under this bill for dissemination by the Commissioner of Education to each K-12 classroom teacher by August 15th of each year.

Employee Organizations

Current law establishes the registration requirements for employee organizations that seek to become a certified bargaining agent for public employees.¹³ An organization must register with the Public Employees Relations Commission prior to requesting recognition by a public employer to collectively bargain and prior to requesting certification as an exclusive bargaining agent.¹⁴ An employee organization that is not registered may not participate in a representation hearing, participate in a representation election, or be certified as an exclusive bargaining agent.¹⁵

IV. This bill amends the definition of an employee organization in s. 447.203, F.S., to specifically exclude any professional teacher association, as defined in s. 1001.03(4), F.S., until the organization applies for registration pursuant to chapter 447, F.S. . Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

¹² Section 1003.32, F.S., authorizes teachers to control and discipline the students assigned to them by the principal or his or her designee. The law requires the teacher to maintain order in the classroom and in other places in which he or she is assigned to be in charge of students. Teachers may take specific actions in managing student behavior and ensuring the safety of all students in their classes, including establishing classroom rules of conduct, implementing consequences, and having disobedient, disrespectful, violent, abusive, uncontrollable, or disruptive students removed from the classroom for behavior management intervention.

¹³ s. 447.305(1), F.S.

¹⁴ *Id.*

¹⁵ *Id.*

B. Private Sector Impact:

A teacher who is subject to a civil lawsuit due to a disciplinary action that the OAG determines has arisen while the teacher believed he or she was acting in good faith and within the scope of his or her disciplinary powers will have the option of the OAG's representation instead of needing to obtain legal assistance.

C. Government Sector Impact:

The OAG cannot predict how many cases alleging excessive force by a teacher will arise each year.¹⁶ Additionally, the OAG cannot predict with certainty how many of these cases will end up in trial. However, the OAG estimates that the cases that go to trial will cost approximately \$96,000 per case.¹⁷ The cases that are resolved in summary judgment (before trial) will cost roughly \$27,000 per case.¹⁸ These estimates do not include potential appellate costs.¹⁹

VI. Technical Deficiencies:

Requiring the OAG to defend a teacher in a civil lawsuit could create a potential conflict of interest for the OAG, because the OAG currently serves as a legal advisor to the Florida Education Practices Commission.²⁰

Additionally, the bill could create another potential conflict of interest. The OAG prepares criminal appeals on behalf of the state. It is possible that the OAG could obtain information from a teacher seeking representation in a civil case that implicates the teacher in a criminal case. If that teacher is convicted and appeals the conviction, the OAG may then be limited in acting as appellate counsel for the state in that case.²¹

VII. Related Issues:

None.

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

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

None.

B. Amendments:

None.

¹⁶ Office of the Attorney General, Comments on HB 1115 (February 17, 2012). On file with the Senate Committee on Education Pre-K – 12.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *See generally*, Florida State BAR Rule 4-1.7.

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