

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1155 Membership Associations

SPONSOR(S): K-12 Subcommittee, Eisnaugle

TIED BILLS: **IDEN./SIM. BILLS:** SB 1426

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) K-12 Subcommittee	8 Y, 4 N, As CS	Dehmer	Fudge
2) Education Appropriations Subcommittee	10 Y, 2 N	Dobson	Heflin
3) Education Committee	12 Y, 5 N	Dehmer	Mizereck

SUMMARY ANALYSIS

In Florida, not for profit corporations are regulated by the Florida Not For Profit Corporation Act (Act), which outlines the requirements for creating and managing a not for profit corporation as well as the powers and duties of the corporation. The Act authorizes not for profit corporations to be created for any lawful purpose or purposes not for pecuniary profit and not specifically prohibited to corporations by other state laws.

Not for profit corporations are required to submit an annual report to the Department of State that contains basic information about the corporation, including the date of incorporation, the names and addresses of the corporation's directors and principal officers, and the addresses of certain corporate offices.

A not for profit corporation may receive public funds from the state or a local government in certain situations, such as through a grant or through payment of membership dues authorized for governmental employees and entities who are members of certain types of not for profit corporations.

The bill defines the term "membership association" as a corporation not for profit, including a department or division of such corporation, the majority of whose board members are constitutional officers that operate, control, and supervise public entities that receive annual state appropriations through a statutorily defined formulaic allocation that is funded and prescribed annually in the General Appropriations Act or the substantive bill implementing the annual appropriations act. The bill specifies that the term does not include a labor organization or an entity funded through the Justice Administrative Commission.

The bill requires a membership association to file an annual report with the President of the Senate and the Speaker of the House of Representatives by January 1 of each year. The report must include contact information for the membership association, officers and representatives of the membership association, and any affiliates of the membership association. The report must also include information about the membership association's finances, including the amount of the fee required to become a member and the annual membership dues, a copy of the current financial statements, a description of assets and liabilities, a description of salary and allowances paid to each officer and employee who received more than \$10,000 from the membership association during the preceding fiscal year, the amount of the benefit packages paid to each principal officer, and the amount of disbursements for lobbying activity and litigation.

The bill prohibits a membership association from expending moneys received from public funds on litigation against the state. The bill also authorizes the Auditor General to conduct annual financial and operational audits of the accounts and records of each membership association.

The bill may have an indeterminate positive fiscal impact on state government, and may have an indeterminate but likely minimal negative fiscal impact on the private sector. See Fiscal Analysis section.

The bill takes effect July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

In Florida, not for profit corporations are regulated by the Florida Not For Profit Corporation Act (Act), which outlines the requirements for creating and managing a not for profit corporation as well as the powers and duties of the corporation.¹ The Act authorizes not for profit corporations to be created for any lawful purpose or purposes that are not for pecuniary profit and that are not specifically prohibited to corporations by other state laws.² The Act specifies that such purposes include charitable, benevolent, eleemosynary, educational, historical, civic, patriotic, political, religious, social, fraternal, literary, cultural, athletic, scientific, agricultural, horticultural, animal husbandry, and professional, commercial, industrial, or trade association purposes.³

Florida law authorizes not for profit corporations to operate with the same degree of power provided to for profit corporations in the state, including the power to appoint officers, adopt bylaws, enter into contracts, sue and be sued, and own and convey property.⁴ Officers and directors of certain not for profit corporations are also protected by the same immunity from civil liability provided to directors of for profit corporations.⁵ Unlike for profit corporations, certain not for profit corporations may apply for exemptions from federal, state, and local taxes.⁶

Not for profit corporations are required to submit an annual report to the Department of State that contains the following information:

- The name of the corporation and the state or country under the law of which it is incorporated;
- The date of incorporation or, if a foreign corporation, the date on which it was admitted to conduct its affairs in the state;
- The address of the principal office and the mailing address of the corporation;
- The corporation's federal employer identification number, if any, or, if none, whether one has been applied for;
- The names and business street addresses of its directors and principal officers;
- The street address of its registered office in the state and the name of its registered agent at that office; and
- Such additional information as may be necessary or appropriate to enable the Department of State to carry out the provisions of the Act.⁷

A not for profit corporation may receive public funds from the state or a local government in certain situations. Public funds are defined as "moneys under the jurisdiction or control of the state, a county, or a municipality, including any district, authority, commission, board, or agency thereof and the judicial branch, and includes all manner of pension and retirement funds and all other funds held, as trust funds or otherwise, for any public purpose."⁸ The state or a local government may provide public funds to a not for profit corporation through a grant or through payment of membership dues authorized for governmental employees and entities who are members of certain types of not for profit corporations.⁹

¹ Chapter 90-179, L.O.F.

² Section 617.0301, F.S.

³ *Id.*

⁴ *See* ss. 617.0302 and 607.0302, F.S.

⁵ *See* ss. 617.0834 and 607.0831, F.S.

⁶ *See* 26 U.S.C. s. 501; Section 212.08(7)(p), F.S.

⁷ Section 617.1622, F.S.

⁸ Section 215.85(3)(b), F.S.

⁹ *See, e.g.*, Section 2-103(a), Pinellas County Code (authorizing the board of county commissioners to expend monies from the county general fund for membership fees and dues for county employees and officials for professional associations); Section 120-65(a)(2),

Effect of Proposed Changes

The bill defines the term “membership association” as a corporation not for profit, including a department or division of such corporation, the majority of whose board members are constitutional officers¹⁰ who, pursuant to the statutory definition of District School Boards, operate, control, and supervise public entities that receive annual state appropriations through a statutorily defined formulaic allocation that is funded and prescribed annually in the General Appropriations Act or the substantive bill implementing the annual appropriations act. The bill specifies that the term does not include a labor organization or an entity funded through the Justice Administrative Commission.¹¹

The bill requires a membership association to file an annual report with the President of the Senate and the Speaker of the House of Representatives by January 1 of each year. The report must include the following information:

- The name and address of the membership association and any parent membership association or any state, national, or international membership association with which it is affiliated;
- The names, titles, telephone numbers, and addresses of the principal officers and all representatives of the membership association;
- The amount of the fee required to become a member of the membership association, if any, and of the annual dues that each member must pay;
- The current financial statements of the membership association;
- A copy of the current constitution and bylaws of the membership association;
- A description of the assets and liabilities of the membership association at the beginning and end of the preceding fiscal year;
- A description of the salary, allowances, and other direct or indirect disbursements, including reimbursed expenses, to each officer and to each employee who, during the preceding fiscal year, received more than \$10,000 in aggregate funding from the membership association and any other state, national, or international membership association affiliated with it;
- The annual amount of the benefit packages paid to each of the principal officers of the membership association, including health, major medical, vision, dental, and life insurance as well as retirement plans and automobile allowances;
- The per-member amount of annual dues sent from the membership association to each state, national, or international affiliate;
- The total amount of direct or indirect disbursements for lobbying activity at the federal, state, or local level incurred by the membership association, listed by the full name and address of each person who received a disbursement; and
- The total amount of direct or indirect disbursements for litigation expenses incurred by the membership association, listed by case citation.

The bill prohibits a membership association from expending moneys received from public funds, as defined in s. 215.85, F.S., on litigation against the state.

The bill authorizes the Auditor General to conduct annual financial and operational audits of the accounts and records of each membership association.

South Florida Water Management District Administrative Policies (authorizing the district to pay for an employee’s membership in a professional organization not required by his or her job).

¹⁰Section 112.3142(1), F.S. (provides that “constitutional officers” include the Governor, the Lieutenant Governor, the Attorney General, the Chief Financial Officer, the Commissioner of Agriculture, state attorneys, public defenders, sheriffs, tax collectors, property appraisers, supervisors of elections, clerks of the circuit court, county commissioners, district school board members, and superintendents of schools).

¹¹ Current law defines a labor organization as “any organization of employees or local or subdivision thereof, having within its membership residents of the state, whether incorporated or not, organized for the purpose of dealing with employers concerning hours of employment, rate of pay, working conditions, or grievances of any kind relating to employment and recognized as a unit of bargaining by one or more employers doing business in this state.” The definition also includes an “employee organization,” as defined in s. 447.203(11), F.S., at such time as it seeks to register pursuant to s. 447.305, F.S. Section 447.02(1), F.S.

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B. SECTION DIRECTORY:

Section 1. Creates s. 617.221, F.S., relating to membership associations.

Section 2. Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may have an indeterminate positive fiscal impact on state government as a result of reducing litigation against the state by prohibiting membership associations from using monies received from public funds to pay for such litigation.

2. Expenditures:

The bill may have an insignificant but likely minimal negative fiscal impact on the state as a result of the Legislature having to receive and process the required annual reports from membership associations.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate but likely minimal negative fiscal impact on membership associations because they would be required to file an annual report with the Legislature.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 26, 2016, the K-12 Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment removes subsection 1001.32(3), F.S. from the definition of membership association.

This bill analysis is drafted to the committee substitute as passed by the K-12 Subcommittee.