

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 422

SPONSOR: Governmental Oversight and Productivity Committee and Senator Mitchell

SUBJECT: Barry Grunow Act

DATE: January 29, 2002 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matthews	O'Farrell	ED	Fav/ 2 amendments
2.	Wilson	Wilson	GO	Favorable/CS
3.	_____	_____	AED	_____
4.	_____	_____	AP	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill amends the Barry Grunow Act to provide certain designated benefits to the survivors of an employee of a district school board, killed while performing his or her job related duties, or if the act causing the death was motivated by the fact that a victim was an employee of a district school board. The bill provides coverage exclusion for persons employed by contracted entities to the school district.

This bill amends section 112.1915, Florida Statutes.

II. Present Situation:

Barry Grunow was a Lake Worth Middle School teacher who was killed while performing his teaching duties on May 26, 2000, by a 13-year old student of the school. The incident occurred just outside the door of Mr. Grunow's classroom, on the last day of classes for the school year. In response, the Legislature created the Barry Grunow Act, a new section of law providing certain benefits to the survivors of public school teachers and school administrators intentionally killed by a violent act while in the line of duty, or killed simply because they were teachers or school administrators.

Teachers are defined as any instructional staff provided in s. 228.041(9), F.S., and includes classroom teachers, pupil personnel services staff, librarians and media specialists, other instructional staff, and instructional paraprofessionals. School administrators are defined in s. 228.041(10)(c), F.S., to include principals or school directors, vocational center directors, and assistant principals. Beneficiary is defined in the Act as the person designated by the teacher or administrator in a written and signed document that was delivered to the employing school board

while the teacher was alive. In the absence of designation, the beneficiary is the teacher's or school administrator's estate.

The benefits provided are as follows:

- The sum of \$75,000 to the beneficiary. This money is in addition to any insurance, workers' compensation, or pension benefits or any other benefits the beneficiary of the teacher or school administrator may be entitled to under state or federal law. These funds are to be exempt from the claims and demands of the slain employee's creditors, pursuant to s. 732.402(2)(d), F.S.
- The payment of \$1,000 to the beneficiary toward the teacher or administrator's funeral and burial expenses. This money also is in addition to workers' compensation, pension benefits or any other benefits the beneficiary may be entitled to under state and federal law. These funds are exempt from the claims and demands of the slain employee's creditors, pursuant to s. 732.402(2)(d), F.S.
- Payment of the entire health insurance premium for the surviving spouse and dependent children of the teacher or administrator. The health insurance coverage is to continue until the spouse remarries, and for each dependent child as long as the child remains dependent or reaches the age of 25. The school board that employed the deceased teacher or school administrator must pay the health insurance premium and report the annual amount paid to the Department of Education. The department must reimburse the local board for the premium costs.
- Waiver of any state tuition and matriculation fees for dependent children, up until the age of 25, at any public vocational-technical school, community college, or university. The child must remain a student in good standing at the institution being attended to retain the benefit. The total amount of this benefit per surviving child is up to the cost of tuition and matriculation fees at a state university for 120 credit hours.

Section 732.402, F.S., was amended to exempt the benefits provided under this Act from claims against the decedent's estate.

The State Board of Education is authorized to adopt the administrative rules and procedures necessary to implement the benefit provisions.

If the Florida Education Foundation has paid benefits to the beneficiary and survivors of a slain teacher or administrator, the organization is to be reimbursed for such expenses and no additional payments shall be made to the beneficiary or survivors. The Florida Education Foundation is the non-profit direct support group for the Department of Education.

The Act became effective on June 7, 2001; however, the benefits and provisions of the act applied to incidents occurring on or after May 26, 2000.

The Act specifies that state funding shall be provided annually in the General Appropriations Act.

As of November 30, 2001, and according to the Department of Education, there are no known beneficiaries other than the family of Barry Grunow. According to the Risk Management

Department of the School District of Palm Beach County, health insurance premiums of \$9,208 were paid by the district and reimbursed by the Department of Education. It is anticipated that the premium costs will increase for the current fiscal year.

III. Effect of Proposed Changes:

The bill amends s. 112.1915, F.S., to define an a employee covered by the on-the-job-incident benefits of the Barry Grunow Act an educational support employee as defined in s. 228.041(38), F.S. It specifically disclaims coverage of the act for any worker employed under contract with an entity that provides services to the school district.

The bill requires the State Board of Education to abide by s. 120.541, F.S., when adopting rules and procedures necessary to implement the provisions of the bill. Section 120.541, F.S., provides a mechanism for a substantially affected person (would include corporations) to submit a proposal for a lower cost regulatory alternative to a proposed rule. The State Board of Education would then be required to prepare a statement of estimated regulatory costs and advise whether it would accept the alternative or reject the alternative and provide rationale thereof.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill specifies that funding shall be provided annually in the General Appropriations Act. The Legislature cannot bind future Legislatures. The Florida Senate, *Manual for Drafting General Bills*, 5th Ed. 1999, citing *Neu v. Miami Herald Pub. Co.*, 462 So.2d 821 (Fla. 1985). By requiring that funding shall be provided annually in the General Appropriations Act, the bill may be construed as binding future Legislatures to fund the bill. It may be advisable to amend the bill to provide that funding for the bill shall be “as provided in the General Appropriations Act.”

It is unknown whether the exclusion of non-certified non-instructional personnel has an impact on collective bargaining in derogation of the Contracts Clause of the State Constitution. As non-certified non-instructional personnel may be subject to the same collective bargaining agreement as secretaries, cafeteria workers, janitors and school bus drivers, an argument could be made that the benefit was not collectively bargained.

It is unclear from the bill whether the offered benefit can be extended to casual labor or part-time, seasonal, and temporary employees. They may or may not be certified personnel but, in their capacity as casual labor, they are customarily excluded from the bargaining unit and from other employee benefit coverage. This issue could become more important if the employees argue that the distinction between unit and non-unit employees is blurred by an expansion in the scope of the benefit coverage. In *Vizcaino v. Microsoft Corporation*, 97 F.3d 1187 (9th Cir. 1996); 120 F. 3d 1006 (9th Cir. 1997) a large computer software manufacturer was found by a federal appellate court and, in a separate action, by the Internal Revenue Service, to have treated its nominally excluded workers as employees when it provided them with many of the attributes of employment (i.e., parking, attendance, office space, supplies, equipment, structured schedule, meeting participation) but denied them compensation-based benefits. The court ordered retroactive relief. It is instructive that an unsuccessful defense offered by Microsoft was that it had entered into agreements with each of the affected employees acknowledging that independent and temporary status and exclusion from company benefit programs.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Surviving family members of a slain teacher or administrator are eligible to receive a one-time payment of \$75,000, burial expenses of \$1,000, continued health insurance coverage for the spouse until remarried and the children up to the age of 25, and a waiver of postsecondary education tuition for any dependent children up to age 25, up to the value of 120 credit hours at a public university. Private health insurance companies or self-insurance trusts would receive premiums in exchange for providing coverage.

C. Government Sector Impact:

The bill directs that state funding for the act shall be provided annually in the General Appropriations Act. The amount per slain teacher would be a \$75,000 payment, \$1,000 for funeral and burial expenses, the tuition and matriculation fees waived for surviving dependent children, plus the costs of the health insurance premium for the survivors.

The Legislature appropriated \$165,000 in FY 2001-2002 to cover the cost of the benefits provided under the Barry Grunow Act. The school district paid \$9,208 in health insurance premiums for FY 2000-2001. It is anticipated that the premium costs will increase for the current fiscal year.

Data are not available to estimate the continuing costs to the state would be in terms of adding additional employees for coverage.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
