

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 587 Education Personnel  
**SPONSOR(S):** K-12 Subcommittee, Spano  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 888

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) K-12 Subcommittee	9 Y, 0 N, As CS	Beagle	Fudge
2) Education Appropriations Subcommittee			
3) Education Committee			

### SUMMARY ANALYSIS

The Education Practices Commission (EPC) is a 25 member panel comprised of educators, parents, former school board members, and law enforcement officials that is responsible for adjudicating complaints of misconduct committed by certified educators. The EPC is authorized to suspend or revoke an educator's certificate and may impose other sanctions if the Department of Education (DOE) finds probable cause to prosecute a complaint. Law enforcement members of EPC are not required to be Florida residents. The law does not provide membership for public virtual school administrators, former charter school governing board members, and former district school superintendents.

DOE is required to investigate complaints of misconduct committed by certified educators. DOE employees who are responsible for investigating or prosecuting misconduct by certified educators are not currently authorized to access child abandonment, abuse, or neglect records held by the Department of Children and Families (DCF). Currently, the Commissioner of Education is authorized to enter into a deferred prosecution agreement with a certified educator who is accused of misconduct in lieu of finding probable cause if, in his or her judgment, the agreement is in the best interests of DOE, the educator, and the public, unless there is probable cause to believe that a felony or an act of moral turpitude has occurred. Upon finding no probable cause, the commissioner must dismiss the complaint.

Public school educators are immune from personal liability through the doctrine of sovereign immunity. There are also specific statutory protections in place for such educators. There is currently not a publicly administered statewide liability insurance program for educators.

Among other things, the bill revises the membership of the EPC to include membership opportunities for school administrators employed by virtual schools; former charter school governing board members; and former district school superintendents, assistant superintendents, or deputy superintendents. The bill also requires all EPC members to be Florida residents and authorizes the appointment of emeritus members. Additionally, the bill authorizes the commissioner to issue a letter of guidance to a certified educator upon finding that probable cause to prosecute a complaint does not exist. The bill authorizes DCF to disclose child abandonment, abuse, or neglect records to DOE employees who investigate or prosecute misconduct by certified educators.

Beginning with the 2015-16 school year, the bill requires DOE to administer a statewide educator liability program for public school educators. Coverage must be provided to all full-time instructional personnel free of charge. Part-time instructional personnel, administrative personnel, and student teachers participating in clinical field experience may opt to receive liability coverage, at cost.

The bill has a fiscal impact on state government, as funding for the educator liability insurance program will be subject to appropriation in the General Appropriations Act. The bill does not provide an appropriation for the program. See Fiscal Analysis & Economic Impact Statement.

The bill takes effect upon becoming a law.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### **Education Practices Commission**

The Education Practices Commission (EPC) is a panel that is responsible for adjudicating complaints of misconduct committed by certified educators. The EPC is authorized to suspend or revoke an educator's certificate and may impose other sanctions.<sup>1</sup> The EPC consists of 25 members, including:

- Eight teachers;
- Five administrators, at least one of whom must represent a private school;
- Seven lay citizens, five of whom must be parents of public school students with no family relation to a public school employee and two of whom must be former district school board members; and
- Five sworn law enforcement officials.

EPC members are appointed by the State Board of Education based upon nominations by the Commissioner of Education and subject to Senate confirmation. Teacher, school administrator, and lay members of the EPC must be Florida residents. Residency is not required of law enforcement members.<sup>2</sup>

The Department of Education (DOE) is required to investigate complaints of misconduct committed by certified educators to determine if probable cause exists to refer the matter for prosecution by the EPC.<sup>3</sup> DOE investigative staff must advise the Commissioner for Education regarding the findings of the investigation. DOE's legal department must review the investigation and advise the commissioner as to whether probable cause exists to prosecute the complaint. Unless the complaint involves a felony or crime of moral turpitude, the commissioner may enter into a deferred prosecution agreement with the certified educator in lieu of finding probable cause. The commissioner must dismiss a complaint if probable cause does not exist to commence prosecution.<sup>4</sup>

Florida law provides that records held by the Department of Children and Families (DCF) regarding reports of child abandonment, abuse, or neglect are confidential and exempt from public records disclosure requirements. The law authorizes disclosure of these records to a limited list of individuals, e.g., state or local government, law enforcement, or court officials who investigate or adjudicate alleged child abuse or provide supportive services to child abuse victims.<sup>5</sup> The law does not authorize disclosure of child abuse records to DOE employees who are responsible for investigating or prosecuting misconduct by certified educators.

##### **Educator Liability**

Public school educators are immune from personal liability through the doctrine of sovereign immunity.<sup>6</sup> There are also specific statutory protections in place for such educators. Each district school board may provide legal services for officers and employees charged with civil or criminal actions arising out of, or

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<sup>1</sup> Section 1012.795(1), F.S.

<sup>2</sup> Section 1012.79(1)

<sup>3</sup> Section 1012.796(1), F.S.

<sup>4</sup> Section 1012.796(3), F.S.

<sup>5</sup> Section 39.202(1)-(2), F.S.

<sup>6</sup> "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." Section 768.28(9)(a), F.S.

in the performance of, their assigned duties and responsibilities. Additionally, district school boards must reimburse reasonable legal expenses incurred by officers and employees of school boards who are charged with civil or criminal actions arising out of or in the performance of assigned duties and responsibilities upon successful defense by the employee or officer.<sup>7</sup> 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, may not be held civilly or criminally liable for any action carried out in conformity with state board and district school board rules regarding the control, discipline, suspension, and expulsion of students.<sup>8</sup>

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.<sup>9</sup> As such, student participants are shielded from personal liability while serving in their official capacity.

### **Effect of Proposed Changes**

The bill revises the membership of the EPC as follows:

- The number of teacher members is increased from eight to 10.
- The one school administrator slot currently reserved for a private school administrator may also be filled by a virtual school administrator.
- The number of parent members is reduced from five to four.
- The two membership slots currently reserved for former district school board members remain, but are no longer classified as "lay citizen" slots and may also be filled by a former charter school governing board member or former district school superintendent, assistant superintendent, or deputy superintendent.
- The number of sworn law enforcement officials is reduced from five to four.
- The Commissioner of Education, upon request or recommendation from the EPC, is authorized to appoint up to five emeritus members to serve one-year terms. Emeritus members may serve up to five one-year terms, are voting members for discipline hearings, and are nonvoting members for other matters. Such members are not subject to Senate confirmation.
- All members of the EPC must be Florida residents.

Additionally, the bill authorizes DCF to disclose child abandonment, abuse, or neglect records to DOE employees who investigate or prosecute misconduct by certified educators.

Currently, the commissioner must dismiss a complaint if probable cause does not exist to commence prosecution. The bill also authorizes the commissioner to issue a letter of guidance to a certified educator upon finding that probable cause does not exist, in addition to dismissing the complaint.

Beginning with the 2015-16 school year, the bill requires DOE to administer a liability insurance program to protect public school educators from liability for claims arising from incidents occurring while performing job responsibilities. The program must provide coverage amounting to \$2 million to all full-time instructional personnel.<sup>10</sup> Part-time instructional personnel, administrative personnel, and student teachers participating in clinical field experience through a state-approved teacher preparation program may opt to receive liability coverage, at cost. Each district school board must notify eligible school district personnel and student teachers participating in clinical field experience in the district regarding the coverage. Postsecondary institutions and district school boards are prohibited from requiring student teachers to obtain liability coverage.

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<sup>7</sup> Section 1012.26, F.S.

<sup>8</sup> Section 1012.75, F.S.

<sup>9</sup> Section 1012.39(3), F.S.

<sup>10</sup> Instructional personnel include classroom teachers; staff who provide student personnel services, e.g., guidance counselors, social workers, career specialists, and school psychologists; librarians and media specialists; other instructional staff, e.g., learning resource specialists; and education paraprofessionals under the direct supervision of instructional personnel. Section 1012.01(2), F.S.

DOE must consult with the Department of Financial Services to select the most economically prudent and the cost-effective means of implementing the program through self-insurance, a risk management program, or competitive procurement. Funding for the program is contingent upon appropriation in the General Appropriations Act.

**B. SECTION DIRECTORY:**

**Section 1.** Amends s. 39.202, F.S., relating to Confidentiality of reports and records in cases of child abuse or neglect.

**Section 2.** Amends s. 1012.39, F.S., relating to Students performing clinical field experience.

**Section 3.** Amends s. 1012.75, F.S., relating to Liability of teacher or principal.

**Section 4.** Amends s. 1012.79, F.S., relating to the Education Practices Commission.

**Section 5.** Amends s. 1012.796, F.S., relating to Complaints against teachers and administrators.

**Section 6.** Provides that the bill takes effect upon becoming a law.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

The bill has a fiscal impact on state government, as funding for the educator liability insurance program will be subject to appropriation in the General Appropriations Act. The bill does not provide an appropriation for the program.

**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. 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 March 11, 2015, the K-12 subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment added provisions:

- Requiring DOE to establish an educator liability insurance program.
- Specifying program administration and eligibility requirements.
- Requiring school boards to notify eligible educators and student teachers regarding liability insurance coverage.
- Prohibiting postsecondary institutions and school boards from requiring student teachers to obtain liability insurance.

The amendment also restored the total membership of the EPC to 25 members and reduced the number of parent members from five to four. The bill increased the EPC's total membership from 25 to 27 members and the number of parent slots from five to six. Rather than authorizing the Commissioner of Education to issue of a letter of guidance to a certified educator in lieu of a finding of probable cause, the amendment authorizes issuance of the letter upon dismissal of a complaint.

This bill analysis is drafted to the committee substitute.