

**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.)

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Prepared By: The Professional Staff of the Committee on Fiscal Policy

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BILL: CS/SB 888

INTRODUCER: Fiscal Policy Committee and Senator Detert

SUBJECT: Educator Professional Practices

DATE: April 22, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Scott</u>	<u>Klebacha</u>	<u>ED</u>	<b>Favorable</b>
2.	<u>Sikes</u>	<u>Elwell</u>	<u>AED</u>	<b>Recommend: Favorable</b>
3.	<u>Pace</u>	<u>Hrdlicka</u>	<u>FP</u>	<b>Fav/CS</b>

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**I. Summary:**

CS/SB 888 revises provisions related to education. Specifically, the bill:

- Adds Department of Education (DOE) employees and agents who investigate or prosecute educator misconduct to the list of individuals authorized to access confidential records relating to child abuse or neglect;
- Requires a school district to add additional points to the calculation of a matrix of services for a student who is deaf and enrolled in an auditory-oral education program beginning with the 2016-2017 school year;
- Requires a district school board to notify students regarding the availability of liability insurance for students participating in clinical field experience;
- Requires the DOE to establish an educator liability insurance program;
- Modifies the membership of the Education Practices Commission; and
- Authorizes the Commissioner of Education to issue a letter of guidance to an educator in lieu of a finding probable cause to prosecute misconduct.

The bill has a minimal fiscal impact associated with the five new emeritus members that may be appointed to the Education Practices Commission.

The bill revises the matrix of services calculation for students who are deaf and enrolled in an eligible auditory-oral education program beginning in the 2016 -2017 fiscal year. The revised matrix calculation will generate additional FEPF funds for students in these programs to receive services that will enable them to be mainstreamed in regular classrooms once they exit the auditory-oral program, no later than age 7.

## II. Present Situation:

### Reports of Child Abuse, Abandonment, or Neglect

Any person who knows, or has reason to suspect, that a child is abused, abandoned, or neglected must report such knowledge or suspicion to the Department of Children and Families (DCF).<sup>1</sup> School teachers and other school officials or personnel are required to make such reports and the failure to do so is a felony of the third degree.<sup>2</sup>

Records held by the DCF regarding such reports, including reports made to the Central Abuse Hotline, are confidential and exempt from public records requirements, unless specifically authorized in law.<sup>3</sup> Access to records, excluding the name of the person reporting abuse, is granted to a limited list of persons, officials, and agencies (*e.g.*, Department of Health employees responsible for child protective investigations, criminal justice agencies, or school district employees designated as a liaison between the school district and the DCF).<sup>4</sup>

Currently, employees or agents of the DOE who are responsible for the investigation or prosecution of misconduct by a certified educator are not included on the list of persons with access to confidential records in cases of child abuse or neglect.

Florida law requires that each person<sup>5</sup> in a position who provides direct instruction to students meet the state's educator certification requirements and criteria.

### School Funding

The procedure for determining annual school funding allocation for exceptional student education programs to each school district is determined by using a matrix of services to document the services that each exceptional student will receive. The nature and intensity of the services indicated on the matrix is consistent with the services described in each exceptional student's individual educational plan.<sup>6</sup>

An auditory-oral education program is a program that develops and relies solely on listening skills and uses an implant or assistive hearing device for the purpose of relying on speech and spoken language skills as the method of communication.<sup>7</sup> Parents of a child who is deaf or hard of hearing can enroll the child in an auditory-oral education program as a school of choice. The level of services is determined by the individual educational plan team or individualized family support plan team, which includes the child's parent. A child is eligible for services until the end of the school year in which he or she reaches the age of 7 years or after grade 2, whichever comes first.<sup>8</sup>

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<sup>1</sup> Section 39.201(1), F.S.

<sup>2</sup> Section 39.205(1), F.S.

<sup>3</sup> Sections 39.202(1) and 39.2021(1), F.S.

<sup>4</sup> Section 39.202(2), F.S.

<sup>5</sup> Such persons include instructional personnel (*e.g.*, classroom teachers, student advisors, or certified school counselors) or administrative personnel (*e.g.*, deputy superintendents, school principals, or assistance principals). *See* s. 1012.01(2)-(3), F.S.

<sup>6</sup> Section 1011.62(1)(e), F.S.

<sup>7</sup> Section 1002.391(1)(a), F.S.

<sup>8</sup> Section 1002.391(2) and (3), F.S.

Currently, no special consideration points are added to the calculation of a matrix of services for students enrolled in an auditory-oral education program.

## **Liability**

### ***Educator Liability***

Public school educators are immune from personal liability through the doctrine of sovereign immunity.<sup>9</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 in the performance of, their assigned duties and responsibilities. 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>10</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 of Education and district school board rules regarding the control, discipline, suspension, and expulsion of students.<sup>11</sup>

### ***Student Liability***

Currently, a student who is enrolled in a state-approved teacher preparation program and who is jointly assigned a clinical field experience under the direction of a regularly employed and certified educator is given the same protection of law as that of the certified educator except for the right to bargain collectively as an employee of the district school board.<sup>12</sup> Thus, student participants are shielded from personal liability while serving in their official capacity.

## **Education Practices Commission**

### ***Membership***

The Education Practices Commission (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

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<sup>9</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. *See* s. 68.28(9)(a), F.S.

<sup>10</sup> Section 1012.26, F.S.

<sup>11</sup> Section 1012.75, F.S.

<sup>12</sup> Section 1012.39(3), F.S.

- Five sworn law enforcement officials.<sup>13</sup>

The members are appointed by the State Board of Education (state board) based upon nominations made by the Commissioner of Education (commissioner), subject to confirmation by the Senate.<sup>14</sup> Teachers, school administrators, and lay citizens who wish to serve on the EPC must be Florida residents; however, law enforcement officials are not required to be Florida residents, but they must have expertise in child safety.<sup>15</sup>

### ***Duties and Responsibilities***

The EPC interprets and applies the standards<sup>16</sup> of professional practice established by the state board; revokes or suspends educator certificates, or takes other disciplinary action, for misconduct; reports to and meets with the state board; and adopts rules.<sup>17</sup>

The Department of Education (DOE) is required to investigate legally sufficient<sup>18</sup> complaints of misconduct<sup>19</sup> committed by certified educators and advise the commissioner on whether probable cause exists.<sup>20</sup> Upon a finding of probable cause, the commissioner must file a formal complaint and prosecute the complaint pursuant to ch. 120, F.S.<sup>21</sup> An administrative law judge assigned to hear the complaint makes recommendations to the EPC for review and preparation of a final order issued by a panel of five EPC members.<sup>22</sup> 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.<sup>23</sup> If the commissioner does not find probable cause, the complaint must be dismissed.<sup>24</sup>

## **III. Effect of Proposed Changes:**

### **Records of Child Abuse, Abandonment, or Neglect (Section 1)**

The bill authorizes the DCF to release records pertaining to child abuse, abandonment, or neglect, which are otherwise confidential and exempt from public records requirements, to DOE

<sup>13</sup> Section 1012.79(1), F.S.

<sup>14</sup> Before making nominations, the commissioner must consult with teaching associations, parent organizations, law enforcement agencies, and other involved associations in the state. *Id.*

<sup>15</sup> Section 1012.79(1)(a)-(d), F.S.

<sup>16</sup> Rule 6A-10.080, F.A.C. and 6A-10.081, F.A.C.

<sup>17</sup> Section 1012.79(7), F.S.

<sup>18</sup> Section 1012.796(1)(a), F.S. The complaint is legally sufficient if it contains ultimate facts showing a violation has occurred.

<sup>19</sup> Misconduct may include fraudulently obtaining an educator certificate, knowingly failing to report actual or suspected child abuse, or breach of contract. Section 1012.795(1), F.S.

<sup>20</sup> Section 1012.796(3), F.S.

<sup>21</sup> Section 1012.796(6), F.S.

<sup>22</sup> Sections 1012.79(8)(a), and 1012.795(6), F.S. In 2014, 16 of the 19 hearings involved teacher misconduct. *See Florida Department of Education, Division of K-12 Educator Quality, 2015 Agency Legislative Bill Analysis for HB 587* (March 16, 2015) at 2, (on file with the Committee on Education Pre-K – 12).

<sup>23</sup> Section 1012.796(3), F.S. An educator may be directed to participate through a deferred prosecution agreement or final order of the EPC in the recovery network program for assistance in obtaining treatment and services for alcohol abuse, drug abuse, or a mental condition. *See s. 1012.798(1), F.S.*

<sup>24</sup> Section 1012.796(3), F.S.

employees or agents who investigate or prosecute misconduct by certified educators. The bill may assist the DOE in its investigations of educator misconduct.

### **School Funding (Section 2)**

The bill requires a district school board, beginning with the 2016-2017 school year, to add three special consideration points to the calculation of a matrix of services for a student who is deaf and enrolled in an auditory-oral education program.

### **Liability**

#### ***Educator Liability Insurance Program (Section 4)***

The bill requires the DOE to establish an educator liability insurance program to protect full-time instructional personnel from liability for monetary damages and the cost of defense of action resulting from claims made against them during the course of their professional activities. Liability coverage in the amount of \$2 million must be provided to all full-time instructional personnel. Liability coverage may be provided at cost to part-time instructional personnel; administrative personnel; and students enrolled in a state-approved teach preparation program. The DOE must consult with the Department of Financial Services to select the most cost-effective means of implementing the program through self-insurance, a risk management program, or competitive procurement.

The bill requires each school district to annually notify personnel regarding liability coverage by August 1 and to certify to the DOE that notification has been provided. The DOE must develop the notice to be used by each school district and the notice must:

- Include the amount of coverage;
- Describe the nature of the coverage;
- Contain the contact information for coverage and claims questions;
- Be on an 8 ½ by 5 ½ inch postcard; and
- Be provided separately from any other correspondence.

#### ***Clinical Field Experience (Section 3)***

The bill requires a district school board that provides clinical field experience to notify students regarding the availability of educator liability insurance. The bill prohibits a district school board or a postsecondary educational institution from requiring students who are enrolled in a state-approved teacher preparation program to purchase liability insurance as a condition of participation in a clinical field experience or related activity on the premises of an elementary or secondary school.

#### **The EPC Membership (Section 5)**

The bill revises the membership of the EPC. Specifically, the bill makes the following revisions to the EPC membership:

- Redistributes the number of teachers, lay citizens, and sworn law enforcement members while retaining the existing number of members (25) as follows:
  - The number of teacher members is increased from 8 to 10;

- The number of lay citizen members is reduced from 7 to 4, all of whom must be parents of public school students; and
- The number of sworn law enforcement officials is reduced from 5 to 4.
- Revises the membership to include:
  - Former charter governing board members or former superintendents, assistant superintendents, or deputy superintendents; and
  - Virtual school administrators.
- Requires all members to be Florida residents.

The bill also authorizes the commissioner, upon request or recommendation from the EPC, to appoint up to five emeritus members from previous membership of the EPC to serve 1-year terms. An emeritus member may serve up to five 1-year terms as a voting members for discipline hearings and as consulting, nonvoting members for business meetings.

#### **Letter of Guidance (Section 6)**

The bill authorizes the commissioner to issue a letter of guidance to a certified educator who has had a complaint of misconduct filed against him or her, rather than finding probable cause to prosecute. The bill may provide the commissioner with more flexibility by permitting the issuance of a letter of guidance in determining the course of action to take regarding educator misconduct complaints, if deemed more appropriate under the circumstances.

The bill provides for an effective date of July 1, 2015.

#### **IV. 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.

##### **B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

According to the Department of Education, under SB 888, the Education Practices Commission would incur minimal additional operational expenses to cover the estimated costs for travel and training of emeritus members.<sup>25</sup> The additional training and travel costs for adding five emeritus members are estimated at \$3,500 per year. These costs are funded through the Education Certification and Service Trust Fund and can be absorbed within existing resources.

The bill revises the matrix of services calculation for students who are deaf and enrolled in an eligible auditory-oral education program beginning in the 2016-2017 school year. The revised matrix calculation will generate additional FEFP funds for students in these programs to receive services that will enable them to be mainstreamed in regular classrooms once they exit the auditory-oral program, no later than age 7.

The educator liability insurance program has an estimated cost of \$1.2 million for FY 2015-2016.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 39.202, 1011.62, 1012.39, 1012.75, 1012.79, and 1012.796.

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

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

**CS by Fiscal Policy on April 20, 2015:**

The committee substitute requires a school district to add additional points to the calculation of a matrix of services for a student who is deaf and enrolled in an auditory-oral education program and any school district that offers education liability insurance to notify students regarding the availability of liability insurance for students participating in clinical field experience. The CS also requires the DOE to establish an educator liability insurance program.

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<sup>25</sup> Florida Department of Education, Division of K-12 Educator Quality, *2015 Agency Legislative Bill Analysis for HB 587* (March 16, 2015), (on file with the Committee on Education Pre-K – 12).

B. Amendments:

None.

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

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