

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 Committee on Community Affairs

BILL: SB 1426

INTRODUCER: Senators Stargel and Gaetz

SUBJECT: Membership Associations

DATE: January 25, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Present	Yeatman	CA	Pre-meeting
2.			ED	
3.			AP	

I. Summary:

SB 1426 prohibits membership associations from expending any money received from public funds on litigation against the state. A membership association is defined as “a not-for-profit corporation... the majority of whose board members are constitutional officers who... operate, control, and supervise public entities that receive annual state appropriations... prescribed annually in the General Appropriations Act or the substantive bill implementing the annual appropriations act.” The bill also requires such organizations to file an annual report with the Legislature.

The bill may have a positive fiscal impact on the state to the extent that it reduces suits against the state by organizations that receive state funds. However, it appears that any such impact would be minimal.

II. 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

¹ Chapter 90-179, L.O.F.

² Section 617.0301, F.S.

³ *Id.*

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 also are 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

III. Effect of Proposed Changes:

Section 1 creates s. 617.221, F.S., to prohibit certain membership associations from expending any money received from public funds on litigation against the state. The bill also requires the membership associations to file an annual report with the Legislature covering the following topics:

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), 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).

- The name and address of the membership association and any parent membership association, or 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 fee required to become a member of the membership association, if any, and the annual dues that each member must pay.
- The current annual financial statements of the membership association as described in s. 617.1605, F.S.
- A copy of the current constitution and bylaws of the membership association.
- A description of the assets and liabilities of the 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 total from the membership association and any other state, national, or international membership association affiliate.
- The annual amount of the following benefit packages paid to each of the principal officers of the membership association:
 - Health, major medical, vision, dental, and life insurance.
 - Retirement plans.
 - 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 full name and address of each person who received a disbursement.
- The total amount of direct or indirect disbursements for litigation expenses incurred by the membership association, listed by case citation.

The bill defines a membership association for purposes of this section as “a not-for-profit corporation, including a department or division of such corporation, the majority of whose board members are constitutional officers who, pursuant to s. 1001.32(2) and (3), 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. Section 1001.32(2), F.S., provides that district school boards shall operate, control, and supervise all free public schools in their respective districts. Section 1001.32(3), F.S., provides that the district school superintendent is responsible for the administration and management of the schools and for the supervision of instruction in the district. The term does not include a labor organization as defined in s. 447.02 or an entity funded through the Justice Administrative Commission.”

The bill also provides that dues paid to a membership association which are paid with public funds shall be assessed for each elected or appointed public officer. If a public officer elects not to join the membership association, the dues assessed to that public officer may not be paid to the membership association.

The bill requires the Auditor General to conduct an annual financial and operational audit of accounts and records of each membership association. Furthermore, all records of a membership association constitute public records for purposes of ch. 119.

Section 2 provides that the act takes effect upon becoming a law.

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 applies to membership associations organized as a corporation not for profit but does not apply to membership associations organized as a corporation for profit. As such, it may violate the constitutional right of equal protection under the United States Constitution. Unlike the federal Equal Protection Clause, Florida's constitutional right to equal protection only applies to natural persons.¹⁰

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

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

C. Government Sector Impact:

The bill may have a positive fiscal impact on the state to the extent that it reduces suits against the state by organizations that receive state funds. However, it appears that any such impact would be minimal.

¹⁰ Fla. Const., Art. I, s. 2.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 617.221 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.