

**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 Education Pre-K - 12

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BILL: CS/SB 1426

INTRODUCER: Community Affairs Committee and Senators Stargel and Gaetz

SUBJECT: Membership Associations

DATE: February 1, 2016

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Present	Yeatman	CA	<b>Fav/CS</b>
2.	Hand		ED	<b>Pre-meeting</b>
3.			AP	

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

**I. Summary:**

CS/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.
- Provides that dues paid to a membership association with public funds must be assessed for each elected or appointed public officer, but dues are prohibited for officers that elect not to join the association.
  - Requires the Auditor General to conduct annual financial and operational audits of each membership association.
  - Provides that all records of membership associations are public records.

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.

The bill takes effect upon becoming law.

## II. Present Situation:

### Not For Profit Corporations

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.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

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.<sup>4</sup> 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.<sup>5</sup> Unlike for profit corporations, certain not for profit corporations may apply for exemptions from federal, state, and local taxes.<sup>6</sup>

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.<sup>7</sup>

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

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<sup>1</sup> Chapter 90-179, L.O.F.

<sup>2</sup> Section 617.0301, F.S.

<sup>3</sup> *Id.*

<sup>4</sup> *See* ss. 617.0302 and 607.0302, F.S.

<sup>5</sup> *See* ss. 617.0834 and 607.0831, F.S.

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

<sup>7</sup> Section 617.1622, F.S.

other funds held, as trust funds or otherwise, for any public purpose.”<sup>8</sup> 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.<sup>9</sup>

### **District School Boards**

Section 4(a) of Article IX of the Florida Constitution provides in part that in each school district there shall be a school board composed of five or more members chosen by vote of the electors in a nonpartisan election for appropriately staggered terms of four years, as provided by law.<sup>10</sup>

Section 1001.32(2), F.S., provides that in accordance with the provisions of s. 4(b) of Art. IX of the State Constitution, district school boards shall operate, control, and supervise all free public schools in their respective districts and may exercise any power except as expressly prohibited by the State Constitution or general law.<sup>11</sup>

School districts in Florida are public entities that receive annual state appropriations through a statutorily defined formulaic allocation (e.g., the FEFP) funded and prescribed annually in the General Appropriations Act or the act’s implementing bill.<sup>12</sup>

### ***Florida School Board Association***

The Florida School Boards Association, Inc. (FSBA) is a not-for-profit corporation representing all school board members in Florida<sup>13</sup>. The FSBA has been the collective voice for Florida school districts since 1930 and is closely allied with other educational and community agencies to work toward improvement of education in Florida.<sup>14</sup>

Duly qualified members of Florida’s county school boards are eligible for membership in the FSBA, upon payment of annual dues by the local county school board.<sup>15</sup> The FSBA Board of Directors is comprised of five executive officers, 27 directors representing geographical districts

<sup>8</sup> Section 215.85(3)(b), F.S.

<sup>9</sup> 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).

<sup>10</sup> Art. IX s. 4(a), Fla. Const.

<sup>11</sup> Section 1001.32(2), F.S.

<sup>12</sup> Sections 1.01(8) and 1011.62, F.S.

<sup>13</sup> Florida School Boards Association, *Mission and Beliefs*, <http://www.fsba.org/beliefs/> (last visited January 29, 2016); Florida Department of State Division of Corporations, *Florida School Boards Association, Inc.*, <http://search.sunbiz.org/Inquiry/CorporationSearch/SearchResultDetail?inquirytype=EntityName&directionType=Initial&searchNameOrder=FLORIDASCHOOLBOARDASSOCIATION%207033620&aggregateId=domnp-703362-624caed9-dafe-4fc1-a205-1afc640b4365&searchTerm=florida%20school%20board%20association&listNameOrder=FLORIDASCHOOLBOARDASSOCIATION%207033620> (last visited January 29, 2016).

<sup>14</sup> *Id.*

<sup>15</sup> Florida School Boards Association, *Bylaws, Article III – Membership*, <http://www.neola.com/fsba/> (last visited January 29, 2016).

in the state, and FSBA members who serve as an officer or member of the Board of Directors of the National School Boards Association or the Southern Regional School Boards Association.<sup>16</sup>

### ***Florida Coalition of School Board Members***

The Florida Coalition of School Board Members (FCSBM) is a not-for-profit corporation formed to create and promote public interest in the cause of public education, and to support similar decision makers and organizations in K-12 education.<sup>17</sup>

The FCSBM is a non-partisan individual membership organization for elected school board members.<sup>18</sup> The FCSBM Board of Directors consists of 5 people who are members of district school boards in Florida.<sup>19</sup>

### **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 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), 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. 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 requires the membership associations to file an annual report with the Legislature by January 1 of each year covering the following topics:

- 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.

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<sup>16</sup> Florida School Boards Association, *Board of Directors*, <http://fsba.org/membership/board-of-directors/> (last visited January 29, 2016).

<sup>17</sup> Florida Department of State Division of Corporations, Florida Coalition of School Board Members, Inc., *Electronic Articles of Incorporation*, <http://search.sunbiz.org/Inquiry/CorporationSearch/ConvertTiffToPDF?storagePath=COR%5C2015%5C0109%5C70176387.tif&documentNumber=N15000000268> (last visited January 29, 2016)

<sup>18</sup> Florida Coalition of School Board members, *About*, <http://www.fcsbm.org/about> (last visited January 29, 2016).

<sup>19</sup> Florida Coalition of School Board Members, *Board of Directors*, [http://www.fcsbm.org/board\\_of\\_directors](http://www.fcsbm.org/board_of_directors) (last visited January 29, 2016)

- 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 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, F.S.

In effect, the requirements for membership associations under this new statute would most likely apply, at a minimum, to the Florida School Boards Association and the Florida Coalition of School Board Members.

**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.<sup>20</sup>

**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.

**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 Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

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<sup>20</sup> Fla. Const., Art. I, s. 2.

**CS by Community Affairs on January 26, 2016:**

Revises the definition of membership associations. The term now includes only a not-for-profit corporation the majority of whose members are constitutional officers who, pursuant to s. 1001.32(2), F.S., operate, control, and supervise public entities that receive annual state appropriations. The reference to s. 1001.32(3), F.S., was removed.

**B. Amendments:**

None.