

III. Effect of Proposed Changes:

SB 894 modifies and expands several statutory provisions relating to education personnel.

Educator Misconduct

Present Situation

Florida law requires that each person¹ in a position who provides direct instruction to students meet the state's educator certification requirements and criteria. The Office of Professional Practices Services² (PPS) within the Department of Education (DOE) investigates misconduct by educators who hold a Florida Educator Certificate or a valid application for a Florida Educator Certificate.³

The DOE is required to investigate legally sufficient⁴ complaints of misconduct⁵ committed by certified educators and advise the Commissioner of Education (Commissioner) on whether probable cause exists.⁶ Upon a finding of probable cause, the Commissioner must file a formal complaint and prosecute the complaint pursuant to chapter 120, F.S.⁷ If the Commissioner does not find probable cause, the complaint must be dismissed.⁸

Currently, the PPS is not legally authorized to access records relating to cases of child abuse, abandonment, or neglect involving a certified educator.⁹ Records held by the Department of

¹ 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). Section 1012.01(2)-(3), F.S.

² Florida Department of Education, Professional Practices, <http://www.fldoe.org/teaching/professional-practices> (last visited January 14, 2016).

³ Florida Department of Education, Role of Professional Practices Services, <http://www.fldoe.org/teaching/professional-practices/role-of-professional-practices-service.stml> (last visited January 13, 2016).

⁴ Section 1012.796(1)(a), F.S. The complaint is legally sufficient if it contains ultimate facts showing a violation has occurred. *Id.* and s. 1012.795, F.S.

⁵ 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.

⁶ Section 1012.796(3), F.S.

⁷ *Id.* at (6). An administrative law judge assigned to hear the complaint makes recommendations to the EPC for review and preparation of final order issued by a panel of five EPC members. Sections 1012.79(8)(a), 1012.795(6), and 1012.796(1), F.S. In 2014, 16 of the 19 hearings involved teacher misconduct. 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. 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. 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. Section 1012.798(1), F.S. Voluntary participation in the program may be considered as a mitigating factor or a condition of disciplinary action. *Id.* at (5).

⁸ *Id.* For the period starting January 1, 2015, and ending November 24, 2015, the Commissioner issued findings of probable cause to 565 educators and no probable cause to 356 educators. *See* Florida Department of Education, *2016 Agency Legislative Bill Analysis* (SB 894), at 5, *r'cvd* December 23, 2015 (on file with the staff of the Committee on Education Pre-K – 12).

⁹ 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). Section 39.201(1), F.S. 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. Sections 39.201(1)(d) and 39.205(2), F.S.

Children and Families (DCF) regarding reports of child abuse, abandonment, or neglect, including reports made to the Central Abuse Hotline, are confidential and exempt from public records requirements, unless specifically authorized in law.¹⁰

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 DCF).¹¹ Employees of the PPS, who are responsible for investigating educator misconduct, are not included on the list of persons or entities granted access to records relating to child abuse, abandonment, or neglect.

The Education Practices Commission (EPC), as a quasi-judicial body, issues penalties against an educator's certificate.¹² The EPC interprets and applies the standards¹³ of professional practice established by the State Board of Education (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.¹⁴

The EPC consists of 25 members including:¹⁵

- 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.

The members are appointed by the State Board based upon nominations made by the Commissioner, subject to confirmation by the Florida Senate.¹⁶

Effect of Proposed Changes

The bill authorizes, in addition to other individuals and agencies authorized by law,¹⁷ the DCF to release records pertaining to child abuse, abandonment, or neglect cases, which are otherwise confidential and exempt from public records requirements, to DOE employees or agents who

¹⁰ Sections 39.202(1) and 39.2021(1), F.S.

¹¹ Section 39.202(2), F.S.

¹² *Id.*

¹³ Code of Ethics of the Education Profession in Florida, Rule 6A-10.080, F.A.C., and Principles of Professional Conduct for the Education Profession in Florida, Rule 6A-10.081, F.A.C., <http://www.fldoe.org/teaching/professional-practices/code-of-ethics-principles-of-professio.stml> (last visited January 13, 2016).

¹⁴ Sections 1012.79(7) and 1012.795(1), F.S. A district school board retains its authority to discipline teachers and administrators. Section 1012.79(8)(b), F.S.

¹⁵ Section 1012.79(1), F.S. The eight teacher members comprise 32 percent of the total EPC membership. *See* Florida Department of Education, *2016 Agency Legislative Bill Analysis* (SB 894), at 4, *r'cvd* December 23, 2015 (on file with the staff of the Committee on Education Pre-K – 12).

¹⁶ Section 1012.79(1), F.S. Before making nominations, the Commissioner must consult with teaching associations, parent organizations, law enforcement agencies, and other involved associations in the state. *Id.* Teachers, school administrators, and lay citizens who wish to serve on the EPC must be Florida residents to be appointed; however, law enforcement officials are not required to be Florida residents, but they must have expertise in child safety. *Id.*

¹⁷ Section 39.202(2), F.S.

investigate or prosecute misconduct by certified educators. Allowing access to such records may assist the DOE in conducting more thorough and informed investigations of educator misconduct.

Also, 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 in determining the course of action to take regarding complaints of educator misconduct by permitting him or her to issue a letter of guidance if deemed more appropriate under the circumstances.

Furthermore, the bill increases the number of teacher members and diversifies the representation on the EPC by including virtual school administrators, former charter school governing board members, and public school officials, while also ensuring that members are citizens of the state.

Specifically, the bill makes the following revisions to EPC membership:

- Redistributes the number of teacher, lay citizen, 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.
 - 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.
 - Virtual school administrators.
- Requires all members to be Florida residents.
- Authorizes the Commissioner, upon request or recommendation from the EPC, to appoint up to 5 emeritus members from previous membership of the EPC to serve 1-year terms and who:
 - May serve up to five 1-year terms;
 - Are voting members for discipline hearings; and
 - Are consulting, nonvoting members for business meetings.

Educational Certification and Service Trust Fund

Present Situation

The State Board establishes fees for applications, examinations, certification, certification renewal, late renewal, recordmaking, and recordkeeping based on estimates of the revenue required to implement the laws regarding certification of school personnel.¹⁸ The DOE must remit all proceeds from the collection of certification fees, fines, penalties, and costs levied pursuant to chapter 1012, F.S., relating to education personnel, for deposit into the Educational Certification and Service Trust Fund.¹⁹ The monies from the fund are disbursed for the purpose of paying the expenses incurred by the EPC, as well as for printing forms and bulletins and issuing certificates.²⁰

¹⁸ Section 1012.59(1), F.S.

¹⁹ *Id.* at (2).

²⁰ *Id.*

The earnings received or credited by trust funds, including interest, are subject to an 8 percent service charge that is appropriated to the General Revenue Fund.²¹ Generally, any trust fund administered by the DOE is exempt from the service charge; however, the Educational Certification and Service Trust Fund is the only trust fund administered by the DOE that is subject to the service charge.²²

Effect of Proposed Changes

The bill expressly exempts the Educational Certification and Service Trust Fund from the 8 percent service charge consistent with all other trust funds administered by the DOE. In effect, the funds that would have been deposited into the General Revenue Fund may be used for activities related to educator certification, as well as activities related to education practices and professional practices.²³

Educator Liability Insurance

Present Situation

Public school educators are immune from personal liability through the doctrine of sovereign immunity.²⁴ 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.²⁵ 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.²⁶

Furthermore, 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.²⁷

During the 2015 Legislative Special Session "A," the Legislature passed SB 2502-A implementing specific appropriations made in the 2015-2016 General Appropriations Act,

²¹ Section 215.20(1), F.S.

²² Section 215.22(1)(j), F.S. Since the Educational Certification and Service Trust Fund was subject to the service charge on January 1, 1990, it is not exempt. *Id.* at (4). See also Florida Department of Education, *2016 Agency Legislative Bill Analysis* (SB 894), at 4, *r'cvd* December 23, 2015 (on file with the staff of the Committee on Education Pre-K – 12).

²³ Florida Department of Education, *2016 Agency Legislative Bill Analysis* (SB 894), at 5, *r'cvd* December 23, 2015 (on file with the staff of the Committee on Education Pre-K – 12).

²⁴ 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.

²⁵ Section 1012.26, F.S. 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. *Id.*

²⁶ Section 1012.75, F.S.

²⁷ Section 1012.39(3), F.S.

including Specific Appropriation 99B, which appropriated funds in the amount of \$1.2 million for the educator liability insurance program (program) to be administered by the DOE.²⁸ The purpose of the program is to protect full-time instructional personnel from liability for monetary damages and the costs of defending actions as a result of claims arising from incidents that occur during the course of performing professional responsibilities.²⁹

Under the program, a minimum of \$2 million in liability coverage must be provided to full-time instructional personnel, while other individuals may choose to participate at their own cost: part-time instructional personnel, administrative personnel, and students enrolled in a state-approved teacher preparation program.³⁰ The DOE and each district school board is required to notify personnel of the availability of liability coverage.³¹ The program is scheduled to expire July 1, 2016.³²

Effect of Proposed Changes

The bill makes permanent the educator liability insurance program by removing the expiration date from current law. Also, the bill removes the minimum \$2 million of required liability coverage. By removing the minimum amount of required coverage, the DOE or each district school board may determine the appropriate amount of coverage.

Moreover, the bill requires a district school board to provide electronic or written notification to a student participating in a clinical field experience of the availability of educator liability insurance for purchase at his or her own cost. Also, each district school board or postsecondary education institution is prohibited from requiring a student enrolled in a state-approved teacher preparation program to purchase liability insurance as a condition of participation.

Educator Recruitment and Retention

Present Situation

The DOE is responsible for cooperating with teacher organizations, district personnel offices, schools, colleges, and departments of all public and nonpublic postsecondary educational institutions to focus on the recruitment and retention of qualified teachers in the state.³³ In order to fulfill this responsibility, the DOE is required to perform the following duties, including, but not limited to:³⁴

- Developing and implementing a system for posting teaching vacancies and establishing a database of applicants accessible within and outside the state.
- Developing and distributing promotional materials relating to a career in teaching.
- Identifying best practices for retaining high-quality teachers.

²⁸ Section 10, ch. 2015-222, L.O.F., *implementing* Specific Appropriation 99B, s. 2, ch. 2015-232, L.O.F.

²⁹ Section 1012.75(3), F.S., *as amended by* s. 10, ch. 2015-222, L.O.F.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ Section 1012.05(1), F.S.

³⁴ *Id.* at (2).

Current law requires the DOE, in cooperation with district personnel offices, to sponsor a job fair in the central part of the state to match in-state and out-of-state educators and potential educators with teaching opportunities in the state.³⁵ The DOE may collect a registration fee not to exceed \$20 per person and a booth fee not to exceed \$250 per school district or other interested participant.³⁶ The fees are used to promote and operate the job fair and may be used to purchase promotional items such as mementos, awards, and plaques.³⁷

Effect of Proposed Changes

The bill grants DOE the discretion to sponsor a centrally located job fair for educators and potential educators. In effect, DOE may decide to reallocate resources, which would otherwise be used to sponsor the job fair, in support of other recruitment and retention efforts as it deems necessary.

Also, the bill requires the DOE to coordinate and establish a best practices community to assist school district personnel responsible for recruiting educators and performing other human resource-related functions.

School Leader Preparation Programs

Present Situation

School leaders include school administrators, school principals, school directors, career center directors, and assistant principals.³⁸ School principals or school directors serve as the administrative head of a school and are responsible for coordinating and administering the instructional and noninstructional activities of the school.³⁹ Assistant principals are staff members who assist the administrative head of the school regarding curricular and administrative matters.⁴⁰

The Florida Principal Leadership Standards (FPLS) are Florida's core expectations for effective school administrators.⁴¹ The FPLS are research-based; represent necessary knowledge, skills, and abilities for effective school leadership; and are the basis for school administrator preparation programs, certification competencies, certification examinations, performance evaluations, and professional development systems.⁴² The FPLS emphasize the ability to improve student learning results; develop and retain quality classroom teachers; and manage the

³⁵ *Id.* at (4).

³⁶ *Id.*

³⁷ *Id.*

³⁸ Section 1012.01(3), F.S. Administrative personnel are K-12 personnel who perform management activities such as developing and executing broad policies for the school district. Administrative personnel include district-based instructional and noninstructional administrators, as well as school administrators who perform administrative duties at the school-level.

Id.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Rule 6A-5.080, F.A.C.

⁴² *Id.*

organization, operations, and facilities of a school.⁴³ The job performance of school administrators must be evaluated annually.⁴⁴

The law requires school leaders to be certified and directs the State Board to classify school services, designate certification subject areas, establish competencies for certification, and certification requirements for all school-based personnel.⁴⁵ The State Board has established in rule two classes of certification for school administrators – educational leadership and school principal. Certification in educational leadership qualifies one for any position falling under the classification “school administrator.”⁴⁶ In order to advance to certification as a school principal, one must first be certified in educational leadership.⁴⁷

In Florida, aspiring school administrators must complete a school leader preparation program approved by DOE.⁴⁸ State Board rule authorizes DOE to approve two types of school leader preparation programs.⁴⁹ Level I programs may be offered by school districts and postsecondary institutions and lead to initial certification in educational leadership for the purpose of preparing individuals to serve as school administrators.⁵⁰ Level II programs may be offered by school districts, build upon Level I training, and lead to certification as a school principal.⁵¹ State Board rule specifies criteria for initial and continued approval of Level I and Level II school leader preparation programs.⁵²

Effect of Proposed Changes

The bill establishes in law a system of accountability and state approval for school leader preparation programs offered by Florida postsecondary institutions and public school districts. Currently, the criteria for approval of school leader programs, including a bi-level certification and preparation process, exists in State Board rule.⁵³ In effect, the bill codifies the existing approval process and criteria that exists in State Board rule with slight modifications.

The bill provides an effective date of July 1, 2016.

⁴³ *Id.*

⁴⁴ Section 1012.34(3)(a), F.S. The criteria used to measure school administrator performance are student performance, instructional leadership, and professional and job responsibilities. *Id.* At least one-third of a school administrator’s evaluation must be based upon student performance. *Id.* Based upon these criteria, an administrator is assigned a performance rating of highly effective, effective, needs improvement, or unsatisfactory. *Id.* at (2)(e).

⁴⁵ Section 1012.55(1)(a)-(b), F.S.

⁴⁶ Rule 6A-5.081, F.A.C.

⁴⁷ Rule 6A-4.0083, F.A.C.

⁴⁸ Rule 6A-5.081, F.A.C. The William Cecil Golden Professional Development Program for School Leaders is a professional development program for school principals. The program was established in collaboration with state and national professional leadership organizations. It is designed to respond to Florida’s needs for quality school leadership and support the efforts of school leaders in improving instruction and student achievement and developing and retaining quality teachers. Professional development provided through the program must be based upon the FPLS and other school leadership standards. Section 1012.986, F.S.

⁴⁹ Rule 6A-5.081, F.A.C.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

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:

SB 894 eliminates the General Revenue service charge on fees that support the Educational Certification and Service Trust Fund, which, according to the Department of Education (DOE), will increase revenues by approximately \$600,000.⁵⁴

Furthermore, the bill provides that funding for the educator liability insurance program is subject to appropriation in the General Appropriations Act (GAA). For the 2015-2016 fiscal year, \$1.2 million was appropriated in the 2015 GAA to fund the program.⁵⁵

The DOE estimates that \$3,500 in annual travel expenses would be incurred for all five emeritus members appointed to the Education Practices Commission (EPC), plus an additional \$1,250 per year for substitute teacher reimbursements to account for emeritus members who are teachers and for increasing teacher members on the EPC.⁵⁶

VI. Technical Deficiencies:

None.

⁵⁴ Florida Department of Education, *2016 Agency Legislative Bill Analysis* (SB 894), at 8, *r'cvd* December 23, 2015 (on file with the staff of the Committee on Education Pre-K – 12).

⁵⁵ Specific Appropriation 99B, s. 2, ch. 2015-232, L.O.F.

⁵⁶ Florida Department of Education, *2016 Agency Legislative Bill Analysis* (SB 894), at 8, *r'cvd* December 23, 2015 (on file with the staff of the Committee on Education Pre-K – 12).

VII. Related Issues:

None.

VIII. Statutes Affected:

SB 894 substantially amends the following sections of the Florida Statutes: 39.202, 215.22, 1012.05, 1012.39, 1012.75, 1012.79, and 1012.796.

Also, the bill creates the following section of the Florida Statutes: 1012.562.

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.