



Educators Professional Liability Insurance Program Abolished by the Legislature

at a glance

Consistent with OPPAGA's recommendations, the 2006 Legislature discontinued the Educators Professional Liability Insurance Program, avoiding the need to appropriate approximately \$1.4 million per year. Florida's public school educators and administrators continue to be protected from professional liability claims by Florida's sovereign immunity law and school district insurance programs.

Scope

In accordance with state law, this progress report describes actions taken by the Legislature to address the findings and recommendations of our 2006 report.^{1,2}

Background

In 2001, the Legislature enacted the Florida Educators Professional Liability Insurance Program. The intent of the program was to provide last resort insurance protection for public school educators and administrators from liability for monetary damages and the cost of defense of actions resulting from claims made against them arising out of occurrences in the course of activities in their professional capacity when no other valid and collectible insurance exists.

¹ Section 11.51(6), *F.S.*

² *Educators Professional Liability Insurance Program Provides Limited Benefits*, OPPAGA [Report No. 06-08](#), January 2006.

The program provided professional liability insurance at no cost to all public school (K-12) teachers and instructional personnel.

In addition to the protection provided by the Florida Educators Professional Liability Program, Florida's sovereign immunity law precludes a school district employee from being held personally liable in most tort situations, and makes the governmental entity exclusively responsible for injury or damage claims.³ As a result, school boards handle most professional liability claims through their own insurance programs.⁴

At the direction of the Legislature, OPPAGA evaluated the program in 2006 and determined that during the program's five-year existence, insurance premiums amounted to \$5.6 million. As shown in Exhibit 1, the program was funded at \$1.2 million until Fiscal Year 2005-06, when its appropriation was increased to \$1.3 million. The program's annual policy premiums were slightly lower than its annual appropriation. In its 2006-07 legislative budget request, the Department of Education requested \$1.4 million for the program.

³ Section 768.28(9)(a), *F.S.*

⁴ Section 1001.42(10)(k), *F.S.*, requires that district school boards provide adequate protection against any loss resulting from liability for which the district school board or its officers, agents, or employees may be responsible under law. School district risk managers said educators and administrators would be protected under the school boards' risk management programs for alleged violations of civil rights under Title 42 *U. S. Code* Section 1983, which provides any individual shall be liable to the party injured for deprivation of any rights, privileges, or immunities secured by the constitution.

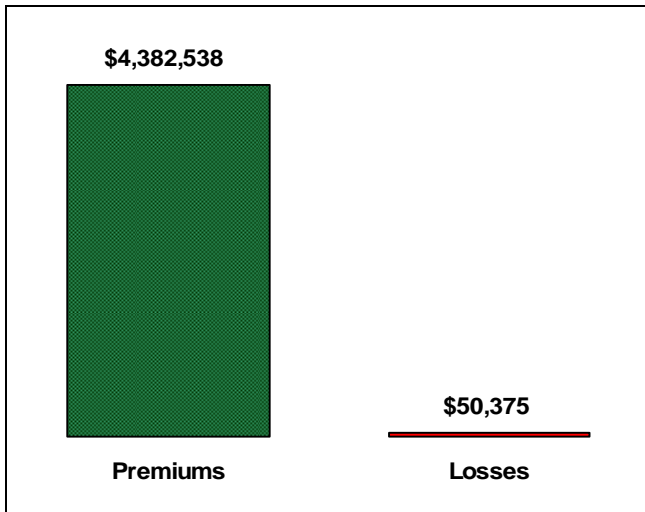
Exhibit 1
Since the Program’s Inception in Fiscal Year 2001-02,
Premiums Amounted to \$5.6 Million

Fiscal Year	State Appropriation	Insurance Premium
2001-02	\$1,200,000	\$1,022,865
2002-03	1,200,000	1,074,827
2003-04	1,200,000	1,137,538
2004-05	1,200,000	1,147,308
2005-06	1,330,000	1,217,964
Total	\$6,130,000	\$5,600,502

Source: GAA, Department of Management Services and Arthur J. Gallagher & Company records.

From the program’s inception through November 30, 2005, the policy paid \$50,375 in claims. During these four fiscal years, the state paid \$4,382,538 in premiums. Total claims paid to or on behalf of those insured thus constituted approximately 1% of the premiums paid, as shown in Exhibit 2.

Exhibit 2
Claims Paid Between 2001-02 and 2004-05
Constitute Only 1% of Premiums Paid



Source: Department of Management Services and Arthur J. Gallagher & Company records.

Our 2006 report identified several factors that limited the number and amount of claims paid by the program, including the state’s sovereign immunity law; the school district insurance programs that pay most of the claims filed; and the restrictive state insurance policy provisions that limit payment of potential claims. Our report assessed four policy options—continuing the program, which would incur relatively high costs considering the premiums and claims paid, directing the Department of Education to purchase broader insurance coverage with fewer exclusions, which would increase the state’s premium costs; establishing a self-insurance program to cover additional circumstances that are currently excluded by the state’s policy at potentially less cost to the state, and discontinuing the Educators Professional Liability Insurance program.

Current Status

Consistent with our recommendations, the 2006 Legislature repealed the Educators Professional Liability Insurance Program. This action avoided the need to appropriate approximately \$1.4 million per year.⁵ Accordingly, the insurance policy was not renewed and it expired June 30, 2006. However, Florida’s educators and administrators continue to be protected from professional liability claims by Florida’s sovereign immunity law and school district insurance programs.

The Legislature decided not to purchase additional insurance or “tail coverage” to cover potential claims that occurred during the policy period but were filed after the policy’s termination. According to state officials, only two claims were filed after the policy expired, and were therefore denied coverage. However, due to policy exclusions, both claims would likely not have been covered even if the policy was maintained.

⁵ Chapter [2006-27](#), *Laws of Florida*.

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