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**HOUSE OF REPRESENTATIVES
COMMITTEE ON
EDUCATION INNOVATION
ANALYSIS**

BILL #: HB 1411
RELATING TO: Advertising/School Buses
SPONSOR(S): Representative(s) Haridopolos
TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) EDUCATION INNOVATION
 - (2) EDUCATION APPROPRIATIONS
 - (3) COUNCIL FOR LIFELONG LEARNING
 - (4)
 - (5)
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I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSES OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

This bill authorizes school boards to adopt policies governing school bus advertising, the administration of school bus advertising procedures and the receipt of revenues generated from school bus advertisements, and guidelines for acceptable school bus advertisements.

Current law is silent on the issue of school bus advertisements. School districts must ensure that every school bus meets the specifications established by Federal Motor Vehicle Standards and the regulations set forth by the Commissioner of Education. Some states and individual school districts have authorized the sale of advertising space on school buses, while other states and individual school districts have specifically prohibited the sale of advertising space on school buses.

This bill may raise safety issues. Opponents to school bus advertising may contend that this type of activity poses an inherent safety risk to students. However, there appears to be no consistent data revealing that advertising on school buses poses an inherent safety risk.

This bill does not appear to violate any constitutional provisions. However, constitutional issues may arise by the schools board's administration of the authority it is granted in the bill. For example, a private enterprise that attempts to advertise on a school bus, and is denied access by the school board because the advertisement contains material unacceptable as determined by the school board, may have standing to bring a lawsuit against the school board for a violation of its first amendment rights.

While the revenue potential for school districts cannot be accurately estimated, it does appear that advertising on school buses may generate some additional revenue for school districts.

The effective date of this bill is July 1, 2002.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|-----------------------------------------|----------------------------------------|-----------------------------------------|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

If advertising on school buses imposes a safety risk to students, then this bill may not support the principle of personal responsibility.

B. PRESENT SITUATION:

Supplemental Powers and Duties of School Boards

Provisions in s. 230.23005, F.S., authorize school boards to exercise certain supplemental powers and duties. According to s. 230.23005(2), F.S., a school board may adopt policies providing for the school district's fiscal management of school purchasing practices, facilities, non-state revenue sources, budgeting practices, fundraising activities, and other activities specified in this subsection of statute.

School Buses

Provisions in s. 234.051, F.S., define school buses and establish specifications that each school bus must meet. Pursuant to s. 234.051(1), F.S., a school bus is defined as a motor vehicle regularly used for the transportation of pre-kindergarten through grade 12 students of the public schools to and from school or to and from school activities, and owned, operated, rented, contracted, or leased by any school board, with exceptions for passenger cars, multipurpose passenger vehicles, certain trucks, and certain motor vehicles that are in compliance with requirements of the United States Department of Transportation.

According to s. 234.051(2), F.S., each school bus that is rented, leased, purchased, or contracted for must meet applicable federal motor vehicle safety standards and other specifications as prescribed by regulations of the Commissioner of Education.

National Conference on School Transportation

According to a 1998 Florida House of Representatives Interim Study on School Bus Advertising, the National Conference on School transportation was established in 1939 and is composed of state agency representatives, school district personnel, contract operators, industry advisors, and representatives of other interested professional organizations. The conference meets every five years to develop uniform national school bus guidelines that promote safe, reliable, and efficient transportation of students to and from school and school related activities. The conference adopted a resolution that vigorously urges each state to prohibit advertising on school buses.

National Standards for School Buses

The National Conference on School Transportation adopted the National Standards for School Buses and an excerpt concerning lettering and marking on school buses provides the following:

- The body of the school bus must bear the words "SCHOOL BUS" in black letters at least 8 inches high on both the front and the rear of the body or on signs attached to the body of the school bus. The lettering must be placed as high as possible without impairing its visibility. The "SCHOOL BUS" lettering must have a reflective background, or as an option, may be illuminated by backlighting.
- Included in the lettering and any numbering, the school district or the company name or owner of the school bus must be displayed at the beltline. Additionally, the school bus identification number must be displayed on the sides, on the rear, and on the front of the school bus.
- Other lettering, numbering, or symbols which may be displayed on the exterior of the school bus must be limited to:
 - The school bus identification number placed on the top of the school bus, in addition to the required numbering on the sides, rear, and front of the school bus.
 - The location of the battery or batteries identified by the word "BATTERY" or "BATTERIES" on the battery compartment door in 2" lettering.
 - Symbols or lettering near the service door displaying information for identification by the students of the school bus or route served. Such symbols or lettering, if used, may not exceed 36 square inches in size.
 - The manufacturer, dealer, or school identification or logos.
 - Symbols identifying the school bus as equipped for transporting students with special needs.
 - Lettering on the rear of the school bus relating to school bus flashing signal lamps or railroad stop procedures.

State Rules Governing School Buses

Rule 6-3.017(2)(e)3., F.A.C., require a school bus driver to keep the school bus clean and neat at all times and not affix any stickers or other unauthorized items to the interior or exterior of the school bus. Rule 6-3.029, F.A.C., requires school buses to conform to the National Conference on School Transportation's current National Standards for School Buses, current Federal Motor Vehicle Safety Standards, and to specifications prescribed by the State Board of Education for body, chassis and special equipment. Each school bus must comply with the requirements of the Florida School Bus Specifications (these specifications include detailed requirements for school bus lettering and trim and school bus paint and finish) applicable for the year the school bus was manufactured or the previous year if specifications were not revised and approved for a given year.

School Bus Advertising in other States

According to a 1998 Florida House of Representatives Interim Study on School Bus Advertising, six states permit some form of school bus advertising. When authorized, school bus advertising policies generally provide strict and specific guidelines regarding the content, placement, appearance, and safety features of the advertisements. The study reports that the following states permit school bus advertising:

- **Alabama.** School bus advertising is not specifically authorized in state law but two school districts do permit school bus advertising.
- **Arizona.** The 1997 Arizona Legislature authorized individual school districts to decide whether or not to permit school bus advertising. Arizona law authorizes each school district to sell advertising space on the exterior of school buses, provided that state guidelines are met.
- **Colorado.** The Colorado State Board of Education adopted guidelines for school bus advertising after the Colorado Springs School Board requested permission to advertise on its

school buses. Between 1993 and 1997, the school district earned \$338,680 from advertisers, which calculates to approximately \$2.50 per student per year.

- **Minnesota.** The 1997 Minnesota Legislature authorized the Commissioner of Education, through a competitive process and with the approval of the school bus safety advisory committee, to enter into contracts for the provision of school bus advertisements. Minnesota law prescribes minimum content guidelines for the contract and the advertisements.
- **Tennessee.** Tennessee law authorizes school districts to allot space on the exterior or interior of school buses for the purpose of commercial advertising. The law provides guidelines for advertising on school buses.
- **Texas.** Texas law prohibits the exterior of a school bus from bearing advertisements or other paid announcements directed at the public if the advertising or other paid announcements distract from the effectiveness of required safety warning equipment.

School Bus Advertising Prohibited/Failed Initiatives in other States

According to a 1998 Florida House of Representatives Interim Study on School Bus Advertising, the following seven states explicitly prohibit school bus advertising.

- **California.** Legislation authorizing school bus advertising failed after the California Highway Patrol warned that school buses covered with advertisements would be difficult to identify and the advertisements would distract motorists and increase the risk of accidents.
- **Indiana.** The Indiana Department of Education decided not to permit school bus advertising after its general counsel opined that standardization made school buses readily identifiable to motorists who respond to school buses with caution and that permitting advertisements would interfere with standardization and would be a distraction. The general counsel also opined that permitting school bus advertising might lead to violations of the First Amendment of the United States Constitution.
- **Massachusetts.** Legislation proposing the authorization of school bus advertising was withdrawn from further consideration.
- **Mississippi.** The state rejected a proposal to adopt school bus advertising based on a national position paper opposed to the idea of authorizing school bus advertising.
- **New York.** The 1997 Legislature prohibited the placement or installation of signs, placards, or displays on any motor vehicle used primarily to transport students or students and teachers.
- **North Carolina.** The North Carolina Department of Education prohibits school bus advertising based State Board of Education regulations that prescribe specifications for the appearance of school buses.
- **Washington.** A school district in Washington rescinded a policy that permitted school bus advertising after students, teachers, and parents protested that schools should focus solely on academic learning and that school bus advertisements might cause a distraction to other drivers and threaten student safety.

Potential Safety Concerns

According to a position paper by the National Association of State Directors of Pupil Transportation Services (NASDPTS), there is considerable debate between those who believe advertising on school buses is a legitimate and reasonable means for obtaining additional revenue to maintain

school bus operations and those who believe advertising on school buses presents an inherent safety risk to students.

A significant claim by the advocates for advertising is that there is no data to show that advertising on school buses, or any other type of bus, is or would be distracting to passing motorists. As a result, advocates believe, there are no safety risks associated with advertising on school buses, or the risks are acceptable.

Opponents to school bus advertising do not believe it is legitimate or appropriate to assume there are no safety risks associated with advertising on school buses because of the absence of data. Opponents point out that data have never been collected in sufficient quantity to statistically assess, on a national basis, the effect that advertising on any type of vehicle (transit buses, taxi cabs, etc.) has on driver distraction, safety risks, and resulting accidents.

The position paper cites a 1996 technical paper entitled, *The Role of Driver Inattention in Crashes*, in which the National Highway Traffic Safety Administration (NHTSA) analyzed 1995 national crash data and estimated that 3.2 percent of all tow-away crashes were caused by the driver being distracted by something outside the vehicle, such as another person, object, or activity. A 1994 NHTSA analysis of crashes in North Carolina revealed that approximately 3.7 percent of the 18,000 crashes studied were attributed to driver distractions from a source outside the vehicle.

The NASDPTS position paper reports that the NHTSA analyses focused on driver distraction from all types of sources outside the vehicle, including other persons, activities, and advertising on signs, buildings, and other motor vehicles.

Furthermore, the NASDPTS position paper reports that opponents to advertising on school buses point to the accepted fact that there are definite and identifiable physical features associated with a school bus that make it highly visible and, therefore, predictably safer than other vehicle types. Included among these features is the distinctive school bus yellow color, unique flashing warning lamp systems, and stop signal arms. Opponents to advertising argue that if you put advertising on the exterior of a school bus to catch the attention of passing motorists (since that is precisely what advertising is designed to do), then there is an inherent risk that passing motorists will focus their attention on the advertising and the safety of students boarding or disembarking the school bus will be compromised.

C. EFFECT OF PROPOSED CHANGES:

This bill authorizes school boards to adopt policies governing school bus advertising, the administration of school bus advertising procedures and the receipt of revenues generated from school bus advertisements, and guidelines for acceptable school bus advertisements.

Should school districts adopt policies that permit school bus advertising, school districts may benefit from the receipt of additional revenues. However, based on limited information that exists on current school districts that permit school bus advertising, additional revenues appear to be marginal.

As mentioned in the present situation of this bill analysis, opponents of school bus advertising argue that placing advertisements on the exterior of school buses pose an inherent risk that compromises the safety of student passengers. Should a school bus that possesses advertisements be involved in an accident, the school district may be liable if it is proven that the accident was caused by the advertisements on the school bus. However, it should be noted that there is no data that demonstrates that advertising on school buses poses any risks.

Please see CONSTITUTIONAL ISSUES and OTHER COMMENTS for other pertinent information.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 230.23005(2), F.S., to authorize school boards to adopt policies governing school bus advertising, the administration of school bus advertising procedures and the receipt of revenues generated from school bus advertisements, and guidelines for acceptable school bus advertisements.

Section 2: Establishes an effective date of July 1, 2002.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not appear to have a fiscal impact on state revenues.

2. Expenditures:

This bill does not appear to have a fiscal impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

School bus advertising policies that have been adopted by states and school districts vary in the amount of revenue generated and the use of funds. While some policies restrict the use of the funds to a particular "project," others include no guidelines regarding revenue use. The following revenue information is available regarding existing school bus advertising programs:

- According to a Marketing News report, the Colorado Springs School District received \$338,680 between 1993 and 1997 from advertisers.
- The Fabens School District in El Paso, Texas generates about \$17,000 per year on advertisements placed on 12 of the school district's 17 school buses.
- The Mobile School District in Alabama annually generates about \$46,000 from advertisements on approximately 35-40 school buses.

While the revenue potential for school districts cannot be accurately estimated, it does appear that advertising on school buses may generate some additional revenue for school districts.

2. Expenditures:

This bill does not appear to have a fiscal impact on local expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill may have a positive economic impact on the private sector if private enterprises that advertise on school buses are able to generate a positive return on their investments.

D. FISCAL COMMENTS:

Please see above.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

Advertising Content

The First Amendment to the U.S. Constitution states, "Congress shall make no law ... abridging the freedom of speech of ...". Over the past few decades, there have been many lawsuits and legal decisions concerning freedom of speech. While no lawsuits have been filed on the specific issue of advertising on school buses, there are cases that appear to have applicability to the issue of controlling the content of advertising on school buses.

To determine the ability of a school district to restrict advertising content under the First Amendment, the United States Supreme Court has established three types of fora: 1) traditional public forum; 2) public forum created by government designation (limited public forum); and 3) nonpublic forum. A nonpublic forum allows an organization to control, to an extent, the type and content of advertisements it will accept. An airport has been deemed a nonpublic forum. A limited public forum allows certain speakers access to public property while excluding other speakers. Public forums are traditional public locations, such as streets or parks, which have "immemorially been held in trust for the use of the public . . ." A public forum will give the greatest deference to First Amendment protections.

In 1986, the 9th Circuit District Court of Appeals ruled that a school board violated the First Amendment rights of the plaintiffs when it excluded the plaintiffs' advertisement from the high school's newspaper. The plaintiff was an anti-draft organization involved in promoting alternatives to compulsory military service. The school board had accepted advertisements from a military recruiter, but refused to accept the anti-draft advertisement of the plaintiff. In its decision, the court noted that the school board did not have to accept advertisements from any source, but once it did, it created a "limited public forum." Once this limited public forum was created, the school board could not exclude the plaintiff's advertisement because to do so would violate the plaintiff's First Amendment rights. *San Diego Committee Against Registration and the Draft (Card) v. Governing Bd. of Grossmont Union High School Dist.*, 790 F.2d 1471 (9th Cir. 1986).

However, in 1991, the 9th Circuit in *Planned Parenthood of Southern Nevada, Inc. v. Clark County School Dist.*, 941 F.2d 817, (9th Cir. 1991) distinguished itself from its 1986 opinion. In this case, a

family planning organization brought action challenging rejection of its birth control advertisements for publication in high school newspapers, yearbooks, and athletic programs. The court held that: (1) the publications at issue were not public forum; (2) schools did not create a limited purpose public forum for advertisers of lawful goods and services; and (3) schools' justification for refusing to publish family planning advertisement was reasonable. The court goes on to state, "A school's decision not to promote or sponsor speech that is unsuitable for immature audiences or which might place it on one side of a controversial issue is a judgment call which reposes in the discretion of school officials and which is afforded substantial deference." Under the courts analysis, a school district may regulate advertising content to best serve the interests of the public schools. Although this case does not expressly overturn its 1986 opinion, it refuses to adopt the notion that high school publications are limited public forums in certain situations.

The language of the bill does not appear to cause any constitutional problems. However, a school board could create constitutional issues if it limits free speech in a manner inconsistent with the United States Supreme Court's pubic forum analysis.

It appears that a school district that allows advertisements on school buses creates a limited public forum because the school buses are used for the purpose of expressive activity. However, it is not possible to determine how Florida courts or the United States Supreme Court will address specific instances where a party challenges the constitutionality of limiting certain advertisements.

B. RULE-MAKING AUTHORITY:

While this bill authorizes school boards to adopt policies governing school bus advertising, this bill does not grant additional rule-making authority to any state agency.

C. OTHER COMMENTS:

Political Advertisements

Section 104.31, F.S., prohibits state, county, and municipal employees from using their official authority or influence to interfere with elections. Therefore, it may be appropriate to specifically exclude political advertisements from being displayed on school buses.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON EDUCATION INNOVATION:

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