

**STORAGE NAME:** h0865.ei.doc  
**DATE:** February 17, 2002

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

**BILL #:** HB 865  
**RELATING TO:** Public School Discipline  
**SPONSOR(S):** Representative(s) Joyner  
**TIED BILL(S):** None

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

- (1) EDUCATION INNOVATION
  - (2) COUNCIL FOR LIFELONG LEARNING
  - (3)
  - (4)
  - (5)
- 

I. SUMMARY:

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

Under the current policy of zero tolerance, a student **must** be expelled from school for at least one year **and** be referred for criminal prosecution if he or she (1) brings a firearm or weapon to school, to any school function, or onto any school-sponsored transportation vehicle or (2) threatens to discharge a destructive device or falsely reports the placement of a bomb in a school, on the property of school personnel, on school transportation vehicles, or at a school-sponsored activity. However, current law authorizes a superintendent to consider the one-year expulsion requirement on a case-by-case basis and to request that the school board modify this requirement by assigning the student to a disciplinary program or second chance school if it is in the best interest of the student and school system.

HB 865 permits, rather than requires, a student to be referred for criminal prosecution if he or she (1) brings a firearm or weapon to school, to any school function, or onto any school-sponsored transportation vehicle or (2) threatens to discharge a destructive device or falsely reports the placement of a bomb in a school, on the property of school personnel, on school transportation vehicles, or at a school-sponsored activity.

The bill amends current law in order to include an additional provision in the code of student conduct that school boards must draft for public schools and distribute to all teachers, school personnel, students, and parents or guardians at the beginning of each school year. Specifically, a school board must include a notice on the policy of zero tolerance in the code of student conduct.

Since this bill no longer requires a student to be referred for criminal prosecution if he or she commits one of the aforementioned violations, this bill may jeopardize federal funds received under the *No Child Left Behind Act of 2002* (Please see Fiscal Comments for additional information).

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

SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

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

This bill does not appear to support the principle of Less Government because school boards must include a notice on the policy of zero tolerance in the code of student conduct.

This bill does appear to support the principle of Individual Freedom because superintendents can decide whether to refer the student in violation of the policy of zero tolerance for criminal prosecution.

This bill does not appear to support the principle of personal responsibility because the provision to give the superintendents the right to **NOT** refer a student for criminal prosecution on a case-by-case basis may jeopardize federal funding.

B. PRESENT SITUATION:

**Gun-Free Schools Act of 1994:**

Congress passed the *Gun-Free Schools Act in 1994* (20 U.S.C. 8921) as part of the *Improving America's Schools Act* (Public Law 103-382), to provide federal funding to those states who have a law in effect requiring local educational agencies to expel from school for not less than one year a student who is determined to have brought a weapon to school. The Act provides that the state law may allow the chief administering officer of a local educational agency to modify the expulsion requirement for a student on a case-by-case basis.

**No Child Left Behind Act of 2002:**

Congress passed the *No Child Left Behind Act of 2002* (Public Law 107-110, Title IV). Section 4141 of that Act amends the *Gun-Free Schools Act of 1994*. Like the *Gun-Free Schools Act of 1994*, it provides that any state receiving federal funding under this Act must have a state law in effect that requires local educational agencies to expel from school, for a period of not less than one year, any student who is determined to have brought a firearm to a school. The Act provides that the local school district's chief administering officer may modify the expulsion requirement on a case-by-case basis.

The *No Child Left Behind Act of 2002* also REQUIRES the local educational agency to refer any student who brings a firearm or weapon to a school to the criminal justice or juvenile delinquency system. No funds will be made available under the Act to any local educational agency unless the agency has a policy requiring referral to the criminal justice or juvenile delinquency system for any student who brings a firearm or weapon to a school served by such agency.

### **Policy of Zero Tolerance for Crime and Victimization:**

Section 230.235, F.S., provides that each school district must adopt a policy of zero tolerance for the following:

- Crime and substance abuse: The school district must report delinquent acts and crimes occurring whenever or wherever students are under the jurisdiction of the school district.
- Victimization of students: The school district must adopt a policy to take all necessary steps to protect the victim of any violent crime from any further violation.
- Bringing a firearm<sup>1</sup> or weapon<sup>2</sup>: The school district must expel, with or without continuing educational services, for a period of not less than a year, any student who brings a firearm or weapon to school, to any school function, or onto any school-sponsored transportation vehicle and refer the student for criminal prosecution. The statute allows superintendents to consider the one-year expulsion requirement on a case-by-case basis and request the school board to modify the requirement by assigning the student to a disciplinary program or second chance school if it is determined to be in the best interests of the student and the school system.
- Making a threat<sup>3</sup> or false report<sup>4</sup>: A student making a threat or false report involving school or school personnel's property, school transportation vehicles, or a school-sponsored activity will be expelled for a period of not less than one year and will be referred for criminal prosecution. The statute allows superintendents to consider the one-year expulsion requirement on a case-by-case basis and request the school board to modify the requirement by assigning the student to a disciplinary program or second chance school if it is determined to be in the best interests of the student and the school system.

### **Code of Student Conduct**

Pursuant to s. 230.23(6)(d), F.S., a school board must adopt a code of student conduct for elementary schools and for secondary schools and distribute the appropriate code to all teachers, school personnel, students, and parents or guardians. The code must be organized and written in language that is understandable to students and parents. The code must be discussed at the beginning of every year in student classes, school advisory council meetings, and parent and teacher association meetings. Each code must be based on the rules governing student conduct and discipline adopted by the school board and must be made available in the student handbook or similar publication. Each code must include, but is not limited to:

---

<sup>1</sup>Pursuant to s. 790.001(6), F.S., a firearm is defined as any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. The term "firearm" does not include an antique firearm unless the antique firearm is used in the commission of a crime.

<sup>2</sup> Pursuant to s. 790.001(13), F.S., a weapon is defined as any dirk, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon except a firearm or a common pocketknife.

<sup>3</sup> Pursuant to s. 790.162, F.S., it is unlawful for any person to threaten to throw, project, place or discharge any destructive device with intent to do bodily harm to any person or with intent to do damage to any property of any person, and any person convicted commits a felony of the second degree.

<sup>4</sup> Pursuant to s. 790.163, F.S., it is unlawful for any person to make a false report, with intent to deceive, mislead, or otherwise misinform any person, concerning the placing or planting of any bomb, dynamite, or other deadly explosive. Any person convicted of this is guilty of a felony of the second degree.

- Consistent policies and specific grounds for disciplinary action, including in-school suspension, out-of-school suspension, expulsion, and any disciplinary action that may be imposed for the possession or use of alcohol on school property or while attending a school function or for the illegal use, sale, or possession of controlled substances.
- Procedures to be followed for acts requiring discipline, including corporal punishment.
- An explanation of the responsibilities and rights of students with regard to attendance, respect for persons and property, knowledge and observation of rules of conduct, the right to learn, free speech and student publications, assembly, privacy, and participation in school programs and activities.
- Notice that illegal use, possession, or sale of controlled substances, or possession of electronic telephone pagers, by any student while such student is on school property or in attendance at a school function is grounds for disciplinary action by the school and may also result in criminal penalties.
- Notice that the possession of a firearm, a knife, or a weapon by any student while the student is on school property or in attendance at a school function is grounds for disciplinary action and may also result in criminal prosecution.
- Notice that violence against any school district personnel by a student is grounds for in-school suspension, out-of-school suspension, expulsion, or imposition of other disciplinary action by the school and may also result in criminal penalties being imposed.
- Notice that violation of school board transportation policies, including disruptive behavior on a school bus or at a school bus stop, by a student is grounds for suspension of the student's privilege of riding on a school bus and may be grounds for disciplinary action by the school and may also result in criminal penalties being imposed.
- Notice that violation of the school board's sexual harassment policy by a student is grounds for in-school suspension, out-of-school suspension, expulsion, or imposition of other disciplinary action by the school and may also result in criminal penalties being imposed.
- Policies to be followed for the assignment of violent or disruptive students to an alternative educational program.
- Notice that any student who is determined to have brought a firearm or weapon to school, any school function, or onto any school-sponsored transportation vehicle must be expelled, with or without continuing educational services, from the student's regular school for a period of not less than one full year and referred for criminal prosecution. Superintendents may consider the one-year expulsion requirement on a case-by-case basis and request the school board to modify the requirement by assigning the student to a disciplinary program or second chance school if it is determined to be in the best interest of the student and the school system. School boards may assign the student to a disciplinary program or second chance school for the purpose of continuing educational services during the period of expulsion.
- Notice that any student who is determined to have made a threat or false report (concerning the placing or planting of any bomb, dynamite, or other deadly explosive) involving school or school personnel's property, school transportation vehicles, or a school-sponsored activity must be expelled, with or without continuing educational services, from the student's regular school for a period of not less than one full year and referred for criminal prosecution. Superintendents may consider the one-year expulsion requirement on a case-by-case basis and request the school board to modify the requirement by assigning the student to a disciplinary program or second chance school if it is determined to be in the best interest of the student and the school system. School boards may assign the student to a disciplinary program or second chance school for the purpose of continuing educational services during the period of expulsion.

C. EFFECT OF PROPOSED CHANGES:

HB 865 permits, rather than requires, a student to be referred for criminal prosecution if he or she (1) brings a firearm or weapon to school, to any school function, or onto any school-sponsored transportation vehicle or (2) threatens to discharge a destructive device or falsely reports the placement of a bomb in a school, on the property of school personnel, on school transportation vehicles, or at a school-sponsored activity.

The bill amends current law in order to include an additional provision in the code of student conduct that school boards must draft for public schools and distribute to all teachers, school personnel, students, and parents or guardians at the beginning of each school year. Specifically, a school board must include a notice on the policy of zero tolerance in the code of student conduct.

Since this bill no longer requires a student to be referred for criminal prosecution if he or she commits the aforementioned violations, this bill may jeopardize federal funds received under the *No Child Left Behind Act of 2002* (Please see Fiscal Comments for additional information).

D. SECTION-BY-SECTION ANALYSIS:

**Section 1:** Amends s. 230.23(6)(d), F.S., to include a notice of Florida's policy of zero tolerance for crime and victimization in the code of student conduct.

**Section 2:** Amends s. 230.235(2), F.S., to authorize rather than require, superintendents to refer a student for criminal prosecution if a student brings a firearm or weapon or makes certain threats or false reports on a case-by-case basis.

**Section 3:** Establishes an effective date of July 1, 2002.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a direct economic impact on the private sector.

D. FISCAL COMMENTS:

This bill could possibly jeopardize federal funds received under the *No Child Left Behind Act of 2002*. The Act provides that no funds may be received by a local educational agency from the *No Child Left Behind Act* unless it has a policy requiring referral to the criminal justice or juvenile delinquency system of any student who brings a firearm or weapon to a school served by such agency. HB 865 provides superintendents, in their discretion, the option to NOT refer for criminal prosecution, a student **who brings a firearm or weapon to school** or makes a threat or false report involving school or school personnel's property on a case-by-case basis. The provision in the bill to give superintendents the option to **not** refer for criminal prosecution a student that brings a firearm or weapon to school appears to be inconsistent with the *No Child Left Behind Act* and may jeopardize federal funding.

III. 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 an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

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

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

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

IV. COMMENTS:

A. CONSTITUTIONAL ISSUES:

This bill does not appear to violate any constitutional provisions.

B. RULE-MAKING AUTHORITY:

This bill does not grant additional rule-making authority.

C. OTHER COMMENTS:

None.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

**STORAGE NAME:** h0865.ei.doc

**DATE:** February 17, 2002

**PAGE:** 7

VI. SIGNATURES:

COMMITTEE ON COMMITTEE ON EDUCATION INNOVATION:

Prepared by:

Staff Director:

---

Ryan Visco

---

Daniel Furman