



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

#### B. EFFECT OF PROPOSED CHANGES:

Under s. 316.6145, F.S., each school bus that is purchased new after December 31, 2000, and used to transport students in grades pre-K through 12 must be equipped with safety belts or with any other restraint system approved by the Federal Government. The number of safety belts or restraints must be sufficient to allow each student who is being transported to use a separate safety belt or restraint system and must meet the standards required under s. 316.614 F.S. "Florida Safety Belt Law." School buses purchased prior to December 31, 2000, are not required to be equipped with safety belts. In implementing the provisions of this section, each school district must prioritize the allocation of buses equipped with safety belts or restraint system to ensure that elementary schools within the district receive first priority.

Currently under s. 1006.25, F.S., a motor vehicle owned and operated by a county or municipal transit authority that is leased by the district school board for transportation of public school students must meet such standards as the State Board of Education establishes by rule. A school bus authorized by a district school board to carry passengers other than school students must have the words "School Bus" and any other signs and insignia that mark or designate it as a school bus covered, removed, or otherwise concealed while such passengers are being transported.

Also under s. 1006.25, F.S., students may be transported only in designated seating positions, except in case of an emergency as provided in s. 1006.22(12). Students are required to use the occupant crash protection system provided by the manufacturer, which system must comply with the requirements of 49 C.F.R. part 571 or with specifications of the State Board of Education.

Under current law the state, the county, a school district, school bus operator under contract with a school district, or an agent or employee of a school district or operator, including a teacher or volunteer serving as a chaperone, are not liable in an action for personal injury because the injured party was not wearing a safety belt, or for an injury caused solely by another passenger's use or nonuse of a safety belt or restraint system in a dangerous or unsafe manner. Also, each school district must prioritize the allocation of buses equipped with safety belts or restraint systems to ensure that elementary schools receive first priority.

Currently under s. 1006.261, F.S., when buses are used for nonschool purposes such as the Girl Scouts, the Boy Scouts, 4-H Clubs, the Y.M.C.A. and similar groups, the flashing red lights and white strobe lights are not to be used, and the "School Bus" inscriptions on the front and rear of the buses are to be covered or concealed.

Current safety requirements contained within Florida School Bus Specifications and the 2000 National School Transportation Specifications and Procedures provide national uniformity of the familiar exterior yellow and black coloration of school buses to ensure safety. The standard coloration ensures high visibility of school buses and their instant recognition and "identifiability" by motorists. Approved exterior lettering and markings are limited in order to minimize the potential for motorists to become distracted from paying attention to the school bus signals or to students who may be boarding or disembarking.

HB 829 allows district school boards to adopt policies for private sponsorship of seat belt assemblies on school buses. The bill provides that any person or business entity may sponsor the installation of Type 2 seat belts on a school district bus by paying a \$10,000 fee per bus; however, sponsorship is limited to one business entity per bus. Sponsorships or cosponsorships by individuals will be directed by district school board policy. Proceeds from the collection of the fee are to be distributed as follows:

- Up to 5 percent may be used for the cost of an advertising agent involved with the transaction;
- Up to 45 percent may be used for the cost of the seat belt assemblies and installation; and
- The remaining funds are to be remitted to the state for deposit into the General Revenue Fund to be used for transportation services.

Upon request by the sponsor the district school board must place signage on the exterior of the school bus acknowledging the sponsor, which includes the business entity logo, if applicable. If requested, the acknowledgment must bear the wording "Safety belt sponsored by" followed by the name of the sponsor. Sponsorship signage is optional and no sponsor is required to have their name or logo advertised on the bus. In addition, the State Board of Education is authorized to prescribe rules for the design, placement, and size of the signage.

The bill requires that the school bus must be equipped with a seat belt assembly meeting the requirements for Type 2 seat belt assemblies established under Federal Motor Vehicle Safety Standard 209, 49 C.F.R. 571.209, or with any other pelvic and upper torso restraint system approved by the Federal Government in a number sufficient to allow each student who is being transported to use a separate pelvic and upper torso restraint system.

The bill provides that sponsorship of the seat belt assembly installation may be provided for newly purchased school buses or for upgrade to a Type 2 seat belt on existing school buses. Also, under the bill, sponsorship does not impose or imply any duty of responsibility on the sponsor for installation, use, or any action relating to the installation, use, disuse, or misuse of any seat belt assembly on a school bus. No liability may accrue to any person or business entity because that person or entity is a sponsor of seat belt assemblies.

The bill amends s. 1006.25, F.S., to require school buses to cover the sponsor signs when they are transporting passengers who are not school students and revises the requirement that students use occupant protection systems installed in the vehicle.

Also the bill amends s. 1006.261, F.S., to require sponsor signs be covered or concealed when school buses are used for nonschool purposes.

According to the Department of Education, placement of ads could potentially displace current National School Bus Yellow coloration in proportion to their size, and provide a degree of potential distraction by motorists, due to the additional "content" on the exterior of the bus, both of which could compromise student safety. As stated by the Florida Department of Education (DOE), it is recognized that data are unavailable to prove safety would definitely be compromised, but several national and state studies have confirmed driver distraction from sources outside the vehicle were causal factors in an estimated three to four percent of all crashes.

#### C. SECTION DIRECTORY:

Section 1. Gives the act the popular name the "Diana Kautz Student Safety Sponsors Act."

Section 2. Creates s. 1006.273, F.S., to allow a district school board to adopt policies providing for private sponsorship for the installation of crash protection equipment on school buses; providing for a sponsorship fee; providing for the use of moneys collected; providing for signage on the exterior of the school bus acknowledging sponsorship; providing for design, placement, and size of the signage by rule of the State Board of Education.

Section 3. Amends s. 1006.25, F.S., to require sponsor signs be covered when school buses are transporting passengers who are not school students; providing a technical revision relating to the crash protection system installed in the vehicle.

Section 4. Amends s. 1006.261, F.S., to require sponsor signs be covered when school buses are used for nonschool purposes.

Section 5. Provides that the act will take effect July 1, 2005.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

At least \$5,000 additional revenue per bus for each bus equipped with Type 2 belts would accrue to the state under the provisions of the bill.

#### 2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

Limited revenue would accrue to those local district school boards that adopt policies and implement private sponsorship of the specified belt assemblies. These school districts would derive revenue that cannot be estimated at this time from payments by business entity sponsors. Revenue coming into participating districts would be limited to no more than 50% of the \$10,000 sponsorship per bus, with the remainder required to be remitted to the state for deposit into the General Revenue fund for transportation.

#### 2. Expenditures:

Individual school districts in the bill would likely incur expenditures that would exceed the revenue coming in. Under the bill's provisions, the revenue accruing to the districts would not be allowed to exceed \$5,000 per bus, with the remaining \$5,000 per bus going into the state General Revenue fund. Based on recent figures supplied by new bus manufacturers, the upcharge for the Type 2 belts averages \$7,041 per bus. This figure does not include the other capital and operational costs (additional buses, drivers, and infrastructure) associated with the significantly reduced seating capacity of buses equipped with Type 2 belts. Other potential fiscal effects cannot be determined at this time, such as the possibility that this revenue would supplant existing discretionary local sources, or the possible effect on risk management costs, due to the potential safety compromise posed by advertising on the exterior of buses.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Private companies contracting with school districts to place advertisements on the exterior of school buses would presumably derive positive economic benefits from the increased sales of products and services advertised. These benefits cannot be estimated at this time.

### D. FISCAL COMMENTS:

None.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

##### 2. Other:

The First Amendment to the United States Constitution states, Congress shall make no law...abridging the freedom of speech...". Over the past few decades, there have been countless lawsuits and legal decisions concerning freedom of speech, which include cases appearing to have applicability to the issue of controlling the content of advertising on school buses.

While advertising on school buses has been rare on a national basis, at least one public transit authority (the Massachusetts Bay Transportation Authority, 1993) has lost a legal First Amendment challenge to its policy restricting the content of advertising. Specifically, in December 1993, a U.S. District Judge in Boston ruled the Massachusetts Bay Transportation Authority's "G-rated" advertising policy violated the U.S. Constitution. See, *Aids Action Committee of Massachusetts, Inc. , v. Massachusetts Bay Transportation Authority*, 42 F.3d 1(1<sup>st</sup> Cir. 1994). The federal judge stated a transit service "cannot open its transit car doors to public service advertising and hang only its favorite posters." With respect to "protecting" children from inappropriate advertisements, the judge wrote, "that concern evaporates on examination because shielding children from [the] advertisements is insufficiently compelling to justify the resulting limitation of speech."

Based on decisions by the United States Supreme Court, there are three types of fora: (1) traditional public forum; (2) public forum created by government designation; and (3) nonpublic forum. The U.S. Supreme Court has held advertising space on a city transit bus was not considered to be a public forum for purposes of the First Amendment. See, *Lehman v. City of Shaker Heights*, 418 U.S. 298 (1974). This decision allows a transit system to control, to an extent, the type and content of advertisements it will accept because the transit system is considered to be a "nonpublic forum." However, some lawyers and legal experts have expressed concern that a nonpublic forum could become a public forum based on the acceptance of certain types of advertisements. This would eliminate the ability to establish advertising content criteria and make it difficult to establish, and to consistently apply, reasonable advertising content criteria.

#### B. RULE-MAKING AUTHORITY:

The design, placement, and size of the sponsor's signage is to be prescribed by rule of the State Board of Education. A specific grant of rulemaking authority should be included in the text of the newly created s. 1006.273(2)(c), F.S.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

##### Other Department of Education Comments:

Recently 50 state directors of student transportation were surveyed on their state requirements for advertising on school buses. Only 4 of 36 states responding allow advertising on the exterior of school buses. At the May 2000, National Conference on School Transportation in Warrensburg, Missouri, 46 of 48 states and territories represented voted to adopt a resolution urging each state to prohibit advertising on school buses.

National Association of State Directors of Pupil Transportation Services

The National Association of State Directors of Pupil Transportation Services does not endorse advertising on the exterior of school buses. The potential increase to driver distraction, a known cause of motor vehicle accidents, presents a safety problem around school buses that cannot be ignored. Additionally, it may be difficult or impossible, and legally expensive, to control the types of advertising that could appear on school buses. (*United Association of State Directors of Pupil Transportation Services, Advertising on School Buses*, available at <http://www.nasdpts.org/documents/advertise.pdf>)

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**