

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Education Committee

BILL: CS/SB 622

INTRODUCER: Education Committee and Senator Wise

SUBJECT: School Bus Safety

DATE: March 6, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Eichin</u>	<u>Meyer</u>	<u>TR</u>	Favorable
2.	<u>Brown</u>	<u>Matthews</u>	<u>ED</u>	Fav/CS
3.	_____	_____	<u>EA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill creates the Diana Kautz Safety Sponsors Act, which authorizes district school boards to provide private sponsorships for installation of crash-protection equipment on existing school buses. Regarding new school bus purchases, the district school board is required to provide for sponsorship of seat belt installations.

Any person or business entity is authorized to sponsor the seat belt installation by paying a sponsorship fee that is set by the local school board, the funds of which are required to be distributed based on the following:

- Up to five percent for the cost of the advertising agent;
- Up to 45 percent for the cost of the seat belt assemblies and installation; and
- Remaining funds remitted for deposit to the General Revenue Fund and earmarked for transportation.

Up to four business entity sponsors are authorized per bus, and the number of individual sponsorships is to be set by district school board policy. This bill provides for placement of signage, and wording of the advertisement, with design and size of signage to be at the discretion of the district school board.

This bill grants sponsor immunity from liability for actions based on installation, use, disuse, or misuse of seat belt assemblies, provides that a sponsor is not responsible for installation or use of any seat belt assembly, and precludes a sponsor name from being placed on a jury verdict form.

All seat belt assemblies must comply with federal requirements, and sponsorship signs must be covered when passengers other than students are being transported.

This bill substantially amends ss. 1006.25 and 1006.261, and creates s. 1006.273 of the Florida Statutes.

II. Present Situation:

School Buses, Safety Belts or Other Restraint Systems, Liability, and Agreements

In 1999, HB 1837 (Ch. 99-316, L.O.F.) was enacted, which created a new section of law related to school buses equipped with seat belts. Section 316.6145, F.S., defines a school bus as one owned, leased, operated, or contracted by a school district. All school buses purchased new after December 31, 2000, and used to transport students in grades pre-K through 12 are subject to the requirements for safety belts or any other restraint system approved by the federal government sufficient to provide each student a separate belt or restraint system. There is an exception for a school bus purchased prior to December 31, 2000. Also, passengers on school buses equipped with safety belts or federally approved restraint systems must wear properly adjusted and fastened belts at all times the bus is in operation.

Specific parties are exempt from liability:

- In an action for personal injury by a school bus passenger solely because the injured party was not wearing a safety belt, the following are not liable: 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.
- In an action for personal injury by a school bus passenger 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, the following are not liable: 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.

Each school district must prioritize to ensure elementary schools within the school district are given first priority in the allocation of buses equipped with safety belts or federally approved restraint systems and specified types of seats. Districts may enter into agreements to provide transportation only if the point of origin or termination of the trip is within the district's boundaries.

School Buses and Liability

Section 316.615, F.S., provides requirements for school buses and school bus drivers. The definition of a school includes all public and private nursery, pre-elementary, elementary, and secondary level schools. The section further requires that all motor vehicles with a seating capacity of 24 or more pupils, regularly used to transport pupils to and from school or school activities, comply with the requirements of Chapter 1006, F.S. Also, the law specifies the requirements for motor vehicles (other than privately owned passenger motor vehicles and those owned or operated by governmental entities) with a seating capacity of less than 24 pupils used for transportation of pupils to and from the school or school activities.

Chapter 1006, F.S., addresses the transportation of public school children. Section 1006.25, F.S., defines a school bus as a motor vehicle regularly used for the transportation of pre-K disability program through grade 12 public school students to and from school or school activities. The definition applies to motor vehicles owned, operated, rented, contracted, or leased by the school board. Exceptions to the definition are: passenger cars, multipurpose passenger vehicles, and trucks as defined in federal regulations (49 CFR 571); and motor vehicles subject to and meeting specific federal regulations (the Federal Motor Carrier Safety Regulations in 49 CFR), but not used exclusively for the transportation of public school students.

School buses which are rented, leased, purchased, or contracted for must meet applicable federal motor carrier vehicle safety standards and other specifications as may be required by the rules of the State Board of Education. Students may be transported only in designated seating positions, except as otherwise provided, and must use the occupant crash protection system provided by the manufacturer. This system must meet federal requirements (49 CFR 571) or comply with the State Board of Education's specifications.

Section 1006.25(3), F.S., provides that 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 marking or designating it as a school bus covered, removed, or otherwise concealed while such passengers are being transported.

Section 1006.261(3), F.S., prohibits flashing red and white strobe lights from being used, and requires "School Bus" inscriptions to be covered or concealed when buses are used for nonschool purposes, other than the transportation of the transportation disadvantaged.

The Debate Surrounding Seat Belts on School Buses

National statistics have consistently demonstrated school buses constitute one of the safest forms of transportation. Nationwide each school year, approximately 450,000 public school buses travel more than 4.3 billion miles to transport 23.3 million children to and from school and school related activities. The National Highway Traffic Safety Administration (NHTSA) has determined students are approximately eight times safer riding in a school bus than in private automobiles.¹ A number of factors, including the size, design, operation, and existing safety features account for the safety of school buses. Central to current school bus safety features is the concept of "compartmentalization" which relies on high-backed padded seats, spaced close together, to confine and cushion passengers in the event of a crash. Belt-type restraints, requiring active intervention by the passenger, are not federally required on large school buses (over 10,000 pounds gross vehicle weight rating). Compartmentalization, which has been required on all school buses built since April 1977, has generally been through to be proven effective in reducing injuries and fatalities, especially in instances of front or rear impact crashes. However, after several studies, the National Traffic Safety Board (NTSB) found compartmentalization does not provide adequate protection for passengers in side impact collisions or roll-over crashes.²

¹John Hinch et al., U.S. Congressional Report, "School Bus Safety: Crashworthiness Research", April 2002, National Highway Traffic Safety Administration. Available at <http://www-nrd.nhtsa.dot.gov/departments/nrd-11/SchoolBus.html>

²*School Bus Safety Report*, Florida Department of Highway Safety and Motor Vehicles, 20-22 (August 2004).

Presently, only two-point lap belts (Type 1) are installed on certain school buses. The lap belt (two-point belt) fastens across the child's lower abdomen for pelvic restraint. Currently, there are 2,699 school buses in Florida with lap belts which constitute approximately 14 percent of the total school buses in the state.³

A three-point lap/shoulder belt (Type 2) is a combination of pelvic and upper torso restraints. According to NHTSA's 2002 report, when used correctly, the lap/shoulder belts would provide some benefit in both large and small school buses. However, NHTSA's testing showed serious neck injury, and perhaps abdominal injury could result if lap/shoulder belts are misused. Although the number of on-board fatalities and serious injuries in school bus crashes is very small (an average of five school bus passenger fatalities per year), the bulk of those occurring are in side, rollover, angular and multiple impacts, usually involving significant intrusion into the bus in crashes with other large vehicles or trains. The same report stated three-point lap/shoulder belts would likely provide benefits in those crash modes, but provided no estimates of benefits.

The report also addressed other considerations regarding three-point lap/shoulder belts. Buses equipped with three-point lap/shoulder belts would cost more per bus, and more buses would be required due to the inherent reduction in maximum rated student seating capacity of buses with Type 2 belts. The report found installing the lap/shoulder belts would reduce school bus capacity by up to 17 percent because of necessary seat redesign.⁴ This reduction in seating capacity would force some children to find other means of transportation, increasing their chance of being involved in a fatal crash in other types of motor vehicles. Also, according to the NHTSA report, this seat redesign would add approximately \$40 to \$50 per seating position to the cost of a new school bus.⁵ Finally, NHTSA concluded in its report, any passenger crash protection system significantly increasing the cost of school bus transportation will reduce the safety of children if commensurate additional funds are not provided, because children would be displaced into other less expensive, but far less safe modes of transportation. If states did adopt seat belt requirements in school buses, the states should determine methods to ensure proper use of the seat belts and should determine no passengers are forced to find alternate means of transportation to and from school.

Advertising on School Buses

Current safety requirements contained within the 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.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

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.

According to the DOE, 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 Missouri, 46 of 48 states and territories represented voted to adopt a resolution urging each state to prohibit advertising on school buses.

III. Effect of Proposed Changes:

Section 1 provides a name for the act, which shall be known as the “Diana Kautz Student Safety Sponsors Act.” Ms. Kautz, a 15-year old student at Royal Palm Beach High School, was killed on November 11, 2004, when she was ejected from a school bus following an accident in which the school bus driver ran a stop sign.⁶ The school bus was equipped with seat belts but Ms. Kautz was not wearing her seat belt at the time of the accident.⁷

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. Specifically, the policies are subject to the following provisions:

- Any person or business entity may sponsor the installation of Type 2 seat belts by paying a fee prescribed by local school board policy; however, sponsorship is limited to up to four business entities 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.
- The district school board must place signage, upon request by the sponsor, on the exterior rear, lower panels of the school bus acknowledging the sponsor, which includes the business entity logo, if applicable. Although, no sponsor is required to have his or her name or the name of the business entity placed on the school bus. If requested, the acknowledgment must bear the wording “Safety belt sponsored by” followed by the name of the sponsor. In addition, the district school board is authorized to prescribe rules for the design, placement, and size of the signage.

⁶ Boca Raton News, *School Board refuses to put Slosberg on the agenda*, November 30, 2004.

⁷ *Id.*

- For sponsorship 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.
- Sponsorship of the seat belt assembly installation is required to be provided for newly purchased school buses.
- 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. No sponsor may be named on a jury verdict form and may not be deemed, or found to be in any way at fault for the injury, death, or damage that gave rise to the action.

Section 3 amends s. 1006.25, F.S., to require sponsor signs be covered, removed, or concealed when school buses are transporting passengers who are not school students. Also, the bill makes a technical revision relating to the requirement that students use the occupant crash protection system installed in the vehicle.

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

Section 5 provides this act shall take effect July 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

In general, that a property is government-owned does not automatically open the property up to the public.⁸ Rather, the nature of the forum dictates the level of government control over that property.⁹ Courts distinguish among traditional public forums; designated or

⁸ *Uptown Pawn & Jewelry, Inc.*, 337 F.3d 1275, 1277 (11th Cir. 2003).

⁹ *Id.*

limited forums; and nonpublic forums.¹⁰ A traditional public forum is a physical space such as a public street or park that has traditionally been held in trust for public use, and is a place of open discourse and assembly.¹¹ A designated public forum refers to public property that the government has provided specifically for the purpose of expressive activity, such as university meeting facilities, school board meetings, and municipal theaters.¹² Courts have consistently applied strict scrutiny, or the highest level of review, to content-based government restrictions on speech that takes place in a traditional public forum.¹³ To survive strict scrutiny, the state is required to show that a governmental regulation is narrowly drawn to accomplish a compelling governmental interest, the regulation is reasonable, and the viewpoint neutral.¹⁴ If the regulation is content-neutral, and the government imposes restrictions in a time, place, and manner approach, mid-level scrutiny applies.¹⁵ If so, the state is required to demonstrate a significant, rather than compelling state interest.¹⁶ These same levels of scrutiny apply to a designated public forum, provided that the character of the forum is maintained.¹⁷ Public property that is neither a traditional public forum, nor a limited purpose forum, is designated as a nonpublic forum, and subject to low-level scrutiny.¹⁸ Here, the state only needs to show the restrictions are reasonable and not viewpoint discriminatory.¹⁹ Public buses, subways, and streetcars have been classified as nonpublic fora.²⁰ Courts have been mixed, however, regarding whether the advertising space on buses constitutes public fora.²¹

For example, in 1974, the U.S. Supreme Court held that interior advertising space on a city transit system does not constitute a public forum.²² Here, the city refused to allow advertising that was political in nature, basing its decision on the appearance of support of one political candidate over another. In upholding the city's action, the court distinguished between speech conveyed in a traditional public forum, where passersby are free to come and go, and speech that is forced upon a captive audience.²³ In a concurring opinion, Justice Douglas stated more specifically, "...if we are to turn a bus or streetcar into either a newspaper or a park, we take great liberties with people who because of necessity become commuters and at the same time captive viewers or

¹⁰ Michael A. Scherago, *Closing the Door on the Public Forum*, 26 LYLALR 241, 244 (Nov. 1992).

¹¹ *Id.*

¹² *Id.* at 245.

¹³ See *Ledford v. State*, 642 So.2d 1254 (2nd DCA 1995).

¹⁴ *Id.* at 1256.

¹⁵ Scherago, *supra* note 6, at 245.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* at 246.

¹⁹ *Id.*

²⁰ Cynthia R. Mabry, *Brother Can You Spare Some Change?—And Your Privacy Too?: Avoiding a Fatal Collision Between Public Interests and Beggars' First Amendment Rights*, 28 USFLR 309, 329 (Winter, 1994).

²¹ See, i.e., *New York Magazine v. Metropolitan Transportation Authority*, 136 F.3d 123 (2d Cir. 1998) in which the court held that advertising space on buses were designated public forum; *Ridley v. Massachusetts Bay Transportation Authority*, 390 F.3d 65 (1st Cir. 2004) in which the court finds the opposite.

²² *Lehman v. City of Shaker Heights*, 94 S.Ct. 2714 (S.Ct. 1974).

²³ *Id.* at 2715.

listeners.”²⁴ The decision to designate a public bus as a nonpublic forum has subsequently been questioned.²⁵

In refusing to rule on whether the interiors of subways and trolley cars constitute a public forum, a 1994 court cited inconsistency and lack of clarity in its application to those places. Instead, the court proceeded directly to the issue of whether the Massachusetts Bay Transportation Authority’s restriction was content neutral.²⁶ The First Circuit U.S. Court of Appeals affirmed the District Court’s opinion, which struck down the Massachusetts Bay Transportation Authority’s (“Authority”) policy on restricting advertising in subways and trolley cars.²⁷ Here, where the Authority prohibited ads, which used sexual innuendo to educate about Acquired Immuno Deficiency Syndrome (AIDS) and condom use but permitted movie ads with similar levels of sexual content, the court held that the Authority committed viewpoint discrimination.²⁸

While the court has recognized that it is possible for a transit authority to define as a legitimate policy the rejection of ads that are harmful to children, the inquiry does not end upon a mere assertion of child protection.²⁹ Where a transit authority prohibited marijuana decriminalization ads but had previously accepted ads promoting the use of alcohol, the court held that the authority had not adequately refuted viewpoint discrimination. Further, the court held that the authority failed to show a sufficient link between the drug ads and a negative impact on juveniles.³⁰

The bill, as written, does not provide guidelines on sponsor language, and therefore, is not likely itself to be the subject to a court challenge. A greater potential for challenge exists when a school board adopts policies for acceptance/rejection of sponsors. It is unclear whether a court would interpret the listing of a sponsor’s name and logo on the outside of school buses as forcing ideas on a captive audience, in this case the students riding on the bus, in the same vein as the impact of political advertising inside the bus or subway on passengers, as was the case in *Lehman*. Provided that a court would likely designate a school bus as a nonpublic forum, it appears that lower level scrutiny would apply to a review of restrictions on speech, such that the state would only be required to show a reasonable relationship between the restriction and the state’s purpose. In this case, the state would probably assert the protection of children as the state interest. Case law, however, still requires restrictions on speech to be viewpoint neutral. This is particularly notable if a district school board rejects certain sponsors and permits others who are similarly situated.

²⁴ *Id.* at 2719.

²⁵ Scherago, *supra* note 6, at 261.

²⁶ *Aids Action Committee of Massachusetts, Inc., v. Massachusetts Bay Transportation Authority*, 42 F.3d 1, 9 (1st Cir. 1994)

²⁷ *Id.* at 3.

²⁸ *Id.* at 12.

²⁹ *Ridley v. Massachusetts Bay Transportation Authority*, 390 F.3d 65, 85-86 (1st Cir. 2004).

³⁰ *Id.* at 88-89.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

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.

C. Government Sector Impact:**Local Government Revenue Impact-**

According to the Florida Department of Education, limited revenue would accrue to those local district school boards adopting policies for and implementing 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 percent of the sponsorship fee, with the remainder required to be remitted to the state for deposit into the General Revenue Fund for transportation purposes.

Local Government Expenditure Impact-

According to the Florida Department of Education, individual school districts using the authority in the bill would likely incur expenditures exceeding incoming revenue. Under the bill's provisions, the revenue accruing to the districts would not be allowed to exceed 50 percent of the fee, with the remaining funds going into state general revenue. Based on recent figures supplied by new bus manufacturers, the additional cost for the Type 2 belts averages \$8,256 per bus. This figure does not include other capital and operational costs (additional buses, drivers, and infrastructure) associated with the significantly reduced seating capacity of buses equipped with Type 2 belts.

Additionally, bus manufacturers estimate that the seating capacity will be decreased by an average of 26 percent on buses equipped with three-point belts. This reduced capacity would require a participating district to purchase 35 percent more buses equipped with three-point belts to transport the same number of students, which will result in an additional cost of \$23,200 a bus. An increase in labor costs, consisting of paying additional drivers, is expected in the amount of \$4,662 a bus.

Other potential fiscal effects cannot be determined at this time, such as the possibility 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.

State Revenue Impact-

An indeterminate amount of additional revenue per bus for each bus equipped with Type 2 belts would be remitted to the state for deposit into the General Revenue Fund to be used for transportation purposes.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

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