



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Safeguard Individual Liberty: The bill prohibits school districts and public secondary schools from preventing the operation of ROTC units or from preventing students from enrolling in a ROTC unit at another educational institution.

Empower Families: The bill prohibits school districts and public secondary schools from preventing students from enrolling in a ROTC unit at another educational institution.

#### B. EFFECT OF PROPOSED CHANGES:

##### Present Situation:

##### ***Junior Reserve Officers' Training Corps***

The U.S. Congress authorizes each military department to establish Junior Reserve Officers' Training Corps (JROTC) units at public and private secondary educational institutions that apply to the respective military department and meet federal standards and criteria.<sup>1</sup> The purpose of JROTC is "to instill in students ... the values of citizenship, service to the United States, and personal responsibility and a sense of accomplishment."<sup>2</sup> The U.S. Army, Navy, Marine Corps, and Air Force have each established JROTC programs. In addition, the first U.S. Coast Guard JROTC was established in 1991 at the Maritime and Science Technology Academy (MAST Academy) in Miami, Florida.



The U.S. Department of Defense has issued instructions for JROTC units.<sup>3</sup> The instructions specify that, to enroll in a JROTC unit, students shall:

- Be selected by the JROTC instructor with the approval of the school principal or his or her representative;
- Maintain acceptable standards of academic achievement and an academic standing that warrants at least normal progression leading to graduation;
- Maintain acceptable standards of conduct as defined by the military department;
- Be in grade 8 or above, with certain exceptions; and

<sup>1</sup> 10 U.S.C. § 2031(a)(1).

<sup>2</sup> 10 U.S.C. § 2031(a)(2).

<sup>3</sup> U.S. Department of Defense, *Junior Reserve Officers' Training Corps (JROTC) Program, Enclosure E2 (Procedures for the Establishment of JROTC at Schools), section E2.3 (Eligibility of Students), Instruction No. 1205.13, 9* (Feb. 6, 2006), available at <http://www.dtic.mil/whs/directives/corres/pdf/120513p.pdf> (last visited Mar. 5, 2008) [hereinafter *JROTC Instruction*].

- Meet other qualifying participation criteria prescribed by the military department (for example, the U.S. Army JROTC requires participating students to be physically able to participate in the JROTC's physical education program.<sup>4</sup>)

The JROTC instructions also specify that students with disabilities who have an Individualized Education Plan (IEP) or Section 504 Accommodation Plan may enroll in a JROTC unit, even if the students are otherwise ineligible under these enrollment requirements.<sup>5</sup>

According to the Florida Department of Education (DOE), there are currently six ROTC Major Areas of Interest and 28 ROTC courses in the state's *Course Code Directory* for high schools to offer (9 for Air Force, 4 for Army, 4 for Navy, 4 for Marine Corps, and 7 for Coast Guard). Based on attendance data from the 2006-2007 school year, DOE reports that there were 31,590 students enrolled in ROTC classes in 286 schools in almost all districts throughout the state. The school districts not offering ROTC courses included Calhoun, Franklin, Glades, Hendry, Jackson, Lafayette, and Madison counties. In the 2006-2007 school year, there were no high school students who were dual enrolled in a community college ROTC course.<sup>6</sup>

Florida law allows students who complete 2 years in a ROTC class to simultaneously satisfy the one-credit graduation requirement in physical education and the one-credit graduation requirement in performing arts (total of two credits).<sup>7</sup>

In addition to JROTC programs, the military departments have also established ROTC units on college and university campuses. These programs are known as Senior ROTC.<sup>8</sup>

### ***Military Recruitment on School Campuses***

On January 8, 2002, President George W. Bush signed into law the federal *No Child Left Behind (NCLB) Act of 2001*.<sup>9</sup> Among its provisions, the NCLB act established several provisions regarding the access of military recruiters to students and student recruiting information:

- ***Access to student recruiting information.***—Each school district receiving certain federal funds under the NCLB act must provide, on a request made by military recruiters, access to secondary school students' names, addresses, and telephone listings.
- ***Consent.***—A secondary school student, or the parent of the student, may request that the student's name, address, and telephone listing not be released without prior written parental consent, and the school district shall notify parents of the option to make a request and shall comply with any request.
- ***Same access to students.***—The school district must provide military recruiters with the same access to secondary school students as is provided generally to postsecondary educational institutions or to prospective employers of the students.<sup>10</sup>

<sup>4</sup> U.S. Army Cadet Command, *Junior Reserve Officers' Training Corps Program: Organization, Administration, Operation, Training, and Support, Cadet Command Regulation 145-2, section 3-11 (Enrollment Requirements)* 17-18 (July 1, 2007), available at <https://www.usarmyjrotc.com/jrotcRes/downloads/CCR145-2.pdf> (last visited Mar. 5, 2008).

<sup>5</sup> *JROTC Instruction*, *supra* note 3, at 9 (paragraph E2.3.3).

<sup>6</sup> Florida Department of Education, *2008 Agency Bill Analysis of HB 251*, 2 (Dec. 14, 2007).

<sup>7</sup> Section 1003.428(2)(a)6., F.S.,

<sup>8</sup> *See, e.g.*, 10 U.S.C. §§ 2101-2111b.

<sup>9</sup> Public Law 107-110 (2002).

<sup>10</sup> *Id.* at § 9528 (codified at 20 U.S.C. § 7908).

Implementing provisions of the federal *Family Educational and Privacy Rights Act (FERPA)*,<sup>11</sup> Florida law allows a public school to publicly release “directory information”<sup>12</sup> about its students, but requires the school to give public notice of the categories of information it designates as directory information and allow a reasonable period of time for a parent or student to inform the school in writing that the information should not be released.<sup>13</sup>

According to DOE, the level of access to public schools for military recruiters is determined at the local level.<sup>14</sup> Some public schools restrict recruiters on campus to certain events, while other schools do not allow recruiters of any kind on campus. Many high schools require recruiters to have pre-scheduled appointments.<sup>15</sup>

### Proposed Changes:

The bill prohibits a school district or public secondary (grades 6-12)<sup>16</sup> school from preventing an ROTC unit from operating at the school, preventing students from enrolling in an ROTC unit at another educational institution, or denying military recruiters the same access to students which is given to postsecondary educational institutions and prospective employers.

The bill includes several drafting issues (**see III. COMMENTS**).

The bill directs the State Board of Education to enforce the bill’s provisions under section 1008.32, F.S., which allows the state board to take the following actions if the state board determines that a district school board is unwilling or unable to comply with law or state board rule:

- Report to the Legislature that the school district is unwilling or unable to comply with law or state board rule and recommend action to be taken by the Legislature;
- Reduce the discretionary lottery appropriation until the school district complies with the law or state board rule;
- Withhold the transfer of state funds, discretionary grant funds, or any other funds specified as eligible for this purpose by the Legislature until the school district complies with the law or state board rule;
- Declare the school district ineligible for competitive grants; or
- Require monthly or periodic reporting on the situation related to noncompliance until it is remedied.

The bill requires the State Board of Education to adopt rules to administer the bill’s provisions.

The bill provides an effective date of July 1, 2008.

### C. SECTION DIRECTORY:

Section 1. Creates section 1003.451, F.S., which prohibits school districts and schools from preventing an ROTC unit from operating at the school, preventing students from enrolling in an ROTC unit at

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<sup>11</sup> 20 U.S.C. § 1232g(a)(5).

<sup>12</sup> Section 1002.22(2)(d), F.S., defines “directory information” as a student’s “name, address, telephone number if it is a listed number, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student.”

<sup>13</sup> Section 1002.22(3), F.S. (flush-left provisions following § 1002.22(3)(d)14., F.S.).

<sup>14</sup> Florida Department of Education, *supra* note 6, at 2.

<sup>15</sup> *Id.*

<sup>16</sup> The Florida Secondary School Redesign Act (s. 1003.413(1), F.S.) specifies that “[s]econdary schools are schools that primarily serve students in grades 6 through 12.”

another educational institution, or denying military recruiters the same access to students which is given to postsecondary educational institutions and prospective employers.

Section 2. Provides an effective date of July 1, 2008.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

The Florida Department of Education (DOE) estimates that the bill would require "increased workload expenses [for DOE] by an unknown amount to survey and identify districts that were in compliance and to enforce compliance for others."<sup>17</sup> Accordingly, the fiscal impact is indeterminate but appears to be insignificant.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

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

None.

### D. FISCAL COMMENTS:

According to DOE, the bill could create a negative fiscal impact on school districts if the bill requires the districts to incur the expense of transportation and additional planning to assure that students could complete required coursework by their scheduled graduation.<sup>18</sup> If the bill is amended to clarify that school districts are not required to provide transportation for students enrolling in JROTC units at other schools (**see III. COMMENTS**), the bill's fiscal impact appears to be insignificant.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

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

Not applicable. The bill does not appear to require a county or municipality to spend funds or take an action requiring expenditures; reduce the authority that counties and municipalities had as of February 1, 1989, to raise revenues in the aggregate; or reduce the percentage of a state tax shared in the aggregate with counties and municipalities as of February 1, 1989.

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<sup>17</sup> Florida Department of Education, *supra* note 6, at 3.

<sup>18</sup> *Id.*

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill directs the State Board of Education to adopt rules to administer the bill's provisions. The state board's general grant of rulemaking authority is found in section 1001.02(1), F.S.:

The State Board of Education is the chief implementing and coordinating body of public education in Florida except for the State University System, and it shall focus on high-level policy decisions. It has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of law conferring duties upon it for the improvement of the state system of K-20 public education except for the State University System.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill prohibits a school district or public secondary school from preventing an ROTC unit from operating at the school. The bill does not distinguish whether it applies to Junior ROTC (secondary schools), Senior ROTC (postsecondary educational institutions), or both programs.

The bill also prohibits a school district or public secondary school from preventing students from enrolling in a ROTC unit at "another educational institution." This provision is unclear as to whether a school district or public secondary school would be required to:

- Permit a student to enroll in a Junior ROTC unit at a private school;
- Permit a student to enroll in a Senior ROTC unit at a community college or state university (through, for example, a dual-enrollment program);
- Permit a student to enroll in another school's Junior ROTC unit, even though the student's assigned school operates a Junior ROTC unit;
- Admit a student in a public school's Junior ROTC unit, even though the student does not otherwise meet the JROTC unit's enrollment criteria;
- Permit a student to transfer enrollment to another public school that operates a Junior ROTC; and
- Provide transportation between schools for students enrolling in a Junior ROTC unit in another school.

These drafting issues are addressed by an amendment adopted by the Committee on K-12 (**see IV. AMENDMENTS**).

D. STATEMENT OF THE SPONSOR

Waived by sponsor due to time constraints.

#### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 4, 2008, the Committee on K-12 adopted an amendment offered by Representative Jordan (remove everything after the enacting clause). The amendment clarifies use of the terms "Junior ROTC" (secondary education level) and "Senior ROTC" (postsecondary education level) and revises provisions throughout the bill, which are described as follows:

## Junior ROTC:

The amendment prohibits a school district from banning any branch of the U.S. Armed Forces or the U.S. Department of Homeland Security<sup>19</sup> from establishing, maintaining, or operating a Junior ROTC unit at a public high school. The bill prohibits policies or practices preventing the establishment, maintenance, or operations of Junior ROTC units at public secondary schools (middle and high schools). Thus, the amendment removes provisions from the bill which prohibited the ban of Junior ROTC at middle schools.

The bill prohibits a school district from preventing a student from enrolling in a Junior ROTC unit at another educational institution. The amendment clarifies that a school district must allow a student to enroll in Junior ROTC at another public high school but denies authority for a student to enroll in Junior ROTC at another school, if:

- The student's school offers Junior ROTC for any service branch;
- The student does not meet the Junior ROTC unit's minimum enrollment requirements; or
- The student's class schedule does not allow the student to enroll in Junior ROTC at another school.

The amendment also specifies that a school district is not required to provide transportation for a student attending Junior ROTC at another public high school.

The bill requires a school district to grant military recruiters with the same access to secondary school students which the district grants to postsecondary educational institutions or prospective employers of students. The amendment, through cross-reference to federal law, clarifies that these provisions are required by the federal NCLB act.<sup>20</sup> The amendment specifies that military recruiters must be provided the same access to school facilities and grounds as provided to postsecondary educational institutions or prospective employers of students. The amendment also clarifies that the military recruiters who must be given access to secondary schools are the recruiters of the U.S. Armed Forces (i.e., U.S. Army, Navy, Marine Corps, and Air Force) and the Department of Homeland Security (e.g., U.S. Coast Guard).

As previously discussed, the federal NCLB act requires a school district receiving certain federal funds to provide military recruiters with access to the names, addresses, and telephone listings of secondary school (middle and high school) students.<sup>21</sup> The NCLB act also requires the school district to give parents the option of—and notify parents about the option of—allowing a student or parent to request that the student's name, address, and telephone listing not be released without prior written parental consent.<sup>22</sup> State law establishes a similar process for the release of "directory information,"<sup>23</sup> which requires a school to give public notice of the categories of information it designates as directory information and allow a reasonable period of time for a parent or student to inform the school in writing that the information should not be released.<sup>24</sup>

The amendment requires a school district to grant military recruiters with access to the names, addresses, and telephone listings of secondary school students as required by the federal NCLB act. The amendment also specifies that a school district, as required by the NCLB act and current state law, must give a parent the opportunity to request that the student's name, address, and telephone listing not be released without prior written parental consent as required under the NCLB act and current state law.

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<sup>19</sup> U.S. Coast Guard Junior ROTC units are coordinated under authority of the U.S. Department of Homeland Security, while other Junior ROTC units (U.S. Army, Navy, Marine Corps, and Air Force) are coordinated by the U.S. Armed Forces.

<sup>20</sup> See *supra* note 10 and accompanying text.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> See *supra* note 12.

<sup>24</sup> See *supra* note 13 and accompanying text.

The amendment also includes provisions from the bill which allow the State Board of Education to adopt rules and take enforcement action against school districts that do not comply with the bill's requirements.

Senior ROTC:

Under a federal law commonly referred to as the "Solomon Amendment,"<sup>25</sup> an institution of higher education is prohibited from receiving certain federal contract and grant funding if the Secretary of Defense determines that the institution, among other things, prevented:

- A military department from maintaining, establishing, or operating a Senior ROTC unit at the institution;
- A military department or the U.S. Department of Homeland Security from gaining access to campus—and students (17 years of age or older) on campus—for purposes of military recruitment, which access is "at least equal in quality and scope to the access to campuses and to students that is provided to any other employer";<sup>26</sup> and
- Military recruiters from having access to the names, addresses, telephone listings, dates and places of birth, levels of education, academic majors, degrees received, and the most recent educational institutions enrolled in by students (17 years of age or older).<sup>27</sup>

The amendment prohibits a Florida community college or state university, to the extent required by the federal Solomon Amendment, from:

- Banning any branch of the U.S. Armed Forces from establishing, maintaining, or operating a Senior ROTC unit at the college or university;
- Denying military recruiters of the U.S. Armed Forces and U.S. Department of Homeland Security the same access to the college's or university's students, and to campus facilities and grounds, which the college or university grants to other employers; and
- Denying military recruiters access to the names, addresses, telephone listings, dates and places of birth, levels of education, academic majors, degrees received, and most recent educational institutions enrolled in by the college's or university's students.

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<sup>25</sup> See, e.g., *Rumsfeld v. Forum for Academic and Institutional Rights*, 547 U.S. 47, 51, 126 S. Ct. 1297, 1302 (2006) (U.S. Supreme Court referred to 10 U.S.C. § 983 as the "Solomon Amendment").

<sup>26</sup> 10 U.S.C. § 983(b)(1).

<sup>27</sup> 10 U.S.C. § 983.