

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

Prepared By: The Professional Staff of the Committee on Higher Education

**BILL:** CS/SB 574

**INTRODUCER:** Committee on Military Affairs and Domestic Security and Senators Baker and Gaetz

**SUBJECT:** Schools/ROTC/Military Recruiters

**DATE:** March 10, 2008      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Mayer	Matthews	ED	<b>Favorable</b>
2.	Pardue	McElroy	MS	<b>Fav/CS</b>
3.	Mayer	Matthews	HE	<b>Fav/CS</b>
4.			EA	
5.				
6.				

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

This committee substitute prohibits a school district from banning the establishment, maintenance, or operation of a Junior Reserve Officers' Training Corps (JROTC) program at a public high school within the district. Additionally, it allows a student to enroll in a JROTC unit at another public high school if one is not available at the student's school.

The bill affords military recruiters the same access to secondary education students as that provided to recruiters from postsecondary educational institutions and prospective employers.

The bill requires enforcement of this section by the State Board of Education and authorizes the adoption of rules to administer it.

The bill also prohibits community colleges and state universities from banning the establishment, maintenance, or operation of Senior Reserve Officers' Training Corps (ROTC) programs. Furthermore, community colleges and state universities are prohibited from restricting military recruiters' access to students, facilities, and student directory information.

This bill creates the following sections of the Florida Statutes: 1003.451 and 1004.09.

## II. Present Situation:

As established under federal law, the Reserve Officers' Training Corps consists of two separate programs. The ROTC program prepares selected students for commissioned service in the Army, Navy, Air Force, or Marine Corps. ROTC units are generally established at selected educational institutions that are authorized to grant baccalaureate degrees.<sup>1</sup>

The JROTC program is established at public and private secondary educational institutions for the purpose of instilling in students the values of citizenship, service to the United States, personal responsibility, and a sense of accomplishment. Participation in JROTC is limited to students who are in the 9<sup>th</sup> grade or above.<sup>2</sup> Participation incurs no military service obligation and instructors may not apply any pressure toward military service.<sup>3</sup> However, successful completion of a JROTC program may qualify the participant for advanced placement in the ROTC program or in the Active or Reserve Components of the Armed Forces with advanced enlistment grade.<sup>4</sup>

Section 1002.22(3)(d)(1), F.S., allows officials of schools, school systems, technical centers, or public postsecondary education institutions in which a student seeks or intends to enroll, to access personally identifiable records or reports of such student without the consent of the student or the student's parent. The 2004 Legislature extended this right of access to the same information to career and technical centers.<sup>5</sup>

Federal law provides for directory information, such as a secondary education student's name, address, and telephone listing, to be available to military recruiters in the same way that information is provided to postsecondary education institutions and prospective employers of students.<sup>6</sup> Federal law has an opt-out provision whereby students and/or parents can submit a request to a local educational agency that the student's information not be released.<sup>7</sup> In addition, federal law requires that military recruiters be given the same access to secondary school students as that given to post secondary educational institutions or prospective employers.<sup>8</sup> Furthermore, federal law conditions receipt of grants and contracts from the U.S. Department of Defense, U.S. Department of Education, and certain other federal departments and agencies if an institution of higher education prevents ROTC access or military recruiting on campus through the Solomon Amendment.<sup>9</sup>

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<sup>1</sup> 10 U.S.C. s. 2102

<sup>2</sup> 10 U.S.C. s. 2031

<sup>3</sup> <http://www.lee.k12.fl.us/orgs/jrotc/application.htm>

<sup>4</sup> Cadet Command Regulation 145-2, Junior Reserve Officers' Training Corps Program, Organization, Administration, Operation, Training and Support, Headquarters U.S. Army Cadet Command, Fort Monroe, VA, 1 July, 2007, p. 1.

<sup>5</sup> s. 78, ch. 2004-357, L.O.F., as codified in s. 1002.22, F.S.

<sup>6</sup> 10 U.S.C. s. 503(c) and 20 U.S.C. 7908 (a).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> 10 U.S.C. s. 983, the "Solomon Amendment".

### III. Effect of Proposed Changes:

This committee substitute creates s. 1003.451, F.S., which prohibits a school district from banning the establishment, maintenance, or operation of a JROTC unit at a public high school in the district.

The bill further requires that a school district allow a student to enroll in a unit at another school in the event the high school that the student attends does not have a JROTC unit so long as the student:

- Meets minimum JROTC enrollment qualifications, and
- JROTC enrollment at another school does not interfere with the student's course scheduling.

If a student enrolls in a JROTC program at another school, the school district is not required to provide transportation.

The bill follows federal law by requiring a school district to afford military recruiters the same access to secondary school students and facilities as that afforded to postsecondary educational institutions and prospective employers. Military recruiters must also be given access to student directory information such as names, addresses, and telephone numbers unless a student or parent has requested such information not be released.

The bill directs the State Board of Education to enforce this section of statute and authorizes the Board to adopt rules to administer it.

The bill also creates s.1004.09, F.S., which prohibits a community college or state university from banning the establishment, maintenance, or operation of a ROTC program at its institution. This provision would grant military recruiters the same access to the community college's or university's students as that afforded other employers. Further, military recruiters are also granted access to community college or university student directory information to the extent required in federal law.

Section 1004.09, F.S., is merely a restatement of federal requirements for postsecondary institutions.<sup>10</sup> Federal funds are denied to any institution of higher education that declines to follow the requirements of the Solomon Amendment.<sup>11</sup> Because the bill language is mandatory only to the extent required by federal law, failure by a community college or state university to afford the military access to its students or denial of the right to operate a ROTC unit would only jeopardize the institution's federal funds.<sup>12</sup>

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<sup>10</sup> 10 U.S.C. s. 983, the "Solomon Amendment".

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

**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:**

The Solomon Amendment<sup>13</sup> denies federal funds to institutions of higher education that prevent ROTC access to campus or prevent military recruiting on campus. When the amendment<sup>14</sup> was passed, members of an association of law schools and faculties, who opposed the federal government's position on homosexuals in the military, filed a lawsuit challenging the constitutionality of the law with respect to the First Amendment.

First, an argument was made regarding the equal access provision of the amendment. The plaintiffs contended that so long as the anti-discrimination policies of law schools—which often banned discrimination based on sexual orientation—were applied in the same way to the military as they were to other recruiters on campus, excluding military recruiters would still comply with the Solomon Amendment because the schools would not be treating military recruiters differently.<sup>15</sup> The Court rejected this argument by reasoning that the Solomon Amendment only looks to the result achieved by adopting this policy, instead of focusing on the content of a school's recruiting policy, and held that military recruiters must be given the same access as recruiters who comply with a law school's policy.<sup>16</sup>

Second, Congress was found to have properly exercised its authority to “raise and support armies, and to provide and maintain a Navy,” without exceeding the constraints of the First Amendment, because the Solomon Amendment's access requirement does not place an unconstitutional condition on the receipt of federal funds.<sup>17</sup>

Finally, the Court held that the Solomon Amendment neither dictates or compels the content of speech, does not impede the freedom of law schools to comment on and speak about the military's policies, nor does it regulate an expressive conduct or infringe on the expressive association of the schools.<sup>18</sup>

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<sup>13</sup> 10 U.S.C. s. 983.

<sup>14</sup> *Id.*

<sup>15</sup> *Rumsfeld v. Forum for Academic & Institutional Rights, Inc.*, 547 U.S. 47 (U.S. 2006).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

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

Other states such as Alabama,<sup>19</sup> Connecticut,<sup>20</sup> Michigan,<sup>21</sup> and Ohio<sup>22</sup> have successfully enacted laws similar to this bill. Although First Amendment issues may be raised with respect to this bill, this bill does not appear to unconstitutionally infringe on any First Amendment rights of students, schools, or parents.<sup>23</sup>

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

Statutory cross-references to 20 U.S.C. s. 7908 in subsection (3) of 1003.451, F.S., may not have the desired effect. Federal law requires that local educational agencies receiving federal assistance under the Elementary and Secondary Education Act of 1965 and Title 20 of the United States Code give military recruiters access to the names, addresses, and telephone listings of secondary school students.<sup>24</sup> Local educational agencies must also ensure that military recruiters have the same access to students that is provided to postsecondary institutions or prospective employers of those students, in order to receive federal funding.<sup>25</sup> Currently, the import of the bill in subsection (3) of 1003.451, F.S., is simply to follow federal law, which schools and school districts must already do. The statutory cross-references to 20 U.S.C. s. 7908 may therefore be deleted in order to give more effect to the subsection, and prevent the unlikely situation that a school could refuse to comply with the law by declining the acceptance of federal funds. Removing the statutory cross-references would also help alleviate potential future disputes over the meaning of the bill if the federal law were amended.

**VII. Related Issues:**

None.

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<sup>19</sup> Code of Ala. § 16-1-25.

<sup>20</sup> Conn. Gen. Stat. § 10a-149c.

<sup>21</sup> MCLS § 380.1139.

<sup>22</sup> ORC Ann. 3345.33.

<sup>23</sup> *Rumsfeld v. Forum for Academic & Institutional Rights, Inc.*, 547 U.S. 47 (U.S. 2006).

<sup>24</sup> 20 U.S.C. s. 7908; 10 U.S.C. s. 503.

<sup>25</sup> *Id.*

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

This committee substitute:

- Clarifies that the bill applies at the secondary educational institution level to the program known as the Junior Reserve Officers' Training Corps (JROTC);
- Provides guidance for enrollment in a JROTC unit at another school in the event no unit is available at a student's school;
- Exempts a school district from the responsibility to provide for transportation if a student enrolls in a JROTC unit at another school;
- Prohibits community colleges and state universities from banning the establishment, maintenance, or operation of a Senior Reserve Officers' Training Corps at the college or university; and
- Requires that military recruiters be given access to community college and state university students, facilities, and students' directory information to the same extent as other employers.

**B. Amendments:**

None.