



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Safeguard Individual Liberty: The bill prohibits bullying and harassment of public K-12 students and employees and establishes measures to prevent the substantial interference with a student's educational performance.

Empower Families: The bill requires a school district to regularly report to a victim's parents on the actions taken to protect the victim and notify a victim's parents of the local agencies where criminal charges may be filed against the perpetrator.

Maintain Public Security: The bill prohibits bullying and harassment of public K-12 students and employees.

#### B. EFFECT OF PROPOSED CHANGES:

##### Present Situation:

Current research presents various definitions of the term "bullying." For example:

- "Bullying can take many forms. It can be direct, indirect, physical, verbal, or psychological. The most commonly discussed forms are direct and indirect bullying.

##### *Direct Bullying* (face-to-face bullying)

- Verbal (name calling, put-downs, insults, harassment)
- Deliberately excluding certain people from groups and activities, or giving them the 'silent treatment'
- Physical (shoves, pushes, hitting, kicking, assault)
- Psychological ('dirty looks,' threats, coercion, extortion)

##### *Indirect Bullying* (bullying done behind someone's back)

- Gossip (lowering people's opinions of the victim)
- Excluding certain people from groups and activities
- Social aggression (includes things that damage a person's relationships with others, things like spreading untrue rumors about a person or telling others not be friends with someone)"<sup>1</sup>

- Bullying is a "specific type of aggression in which:
  - 1) The behavior is intended to harm or disturb,
  - 2) There is an imbalance of power, with a more powerful person or group attacking a less powerful one, and
  - 3) The behavior occurs repeatedly over time."<sup>2</sup>

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<sup>1</sup> National Youth Violence Prevention Resource Center, *Facts for Teens: Bullying 1* (2002), available at <http://hamfish.org/newsroom/bullying411.pdf>.

<sup>2</sup> Hamilton Fish Institute, George Washington University, *The 4-1-1 on Bullying 6* (September 2004) (citing the Mayo Clinic and the Journal of the American Medical Association), available at <http://hamfish.org/newsroom/bullying411.pdf>.

The United States Department of Education reports that, in 2005, 28 percent of students ages 12 to 18 reported having been bullied at school during the previous 6 months.<sup>3</sup> Of these students, 58 percent said that the bullying had happened once or twice during the period, 25 percent had experienced bullying once or twice a month, 11 percent reported having been bullied once or twice a week, and 8 percent said they had been bullied almost daily.<sup>4</sup>

Following a series of school shootings in the late 1990s, in which the shooters were reported to be victims of bullying at school, at least 29 states have enacted anti-bullying legislation: Alaska, Arkansas, California, Colorado, Connecticut, Georgia, Idaho, Illinois, Indiana, Louisiana, Maine, Minnesota, Missouri, Nevada, New Hampshire, New Jersey, New York, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, and West Virginia.<sup>5</sup>

The Florida Department of Education (DOE) reports that it conducted a poll of school districts to determine which districts have an anti-bullying policy. Sixty-three districts (approximately 87.5 percent) responded that they have an anti-bullying policy.<sup>6</sup> DOE reports that the general trend among the districts is not to adopt a separate anti-bullying policy but to include bullying as a violation of the code of student conduct and provide for disciplinary action.<sup>7</sup> DOE also reports that 31 school districts provide some definition of bullying.<sup>8</sup> In addition, 35 school districts are implementing various bullying prevention programs.<sup>9</sup>

#### Current Law:

Under current law, a district school board must adopt rules for the control and discipline of students.<sup>10</sup> A district school board must also adopt two codes of student conduct, one for elementary schools and another for middle and high schools.<sup>11</sup> A code of student conduct must be based on the school district's

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<sup>3</sup> U.S. Department of Education, National Center for Education Statistics, *Indicators of School Crime and Safety: 2007*, NCES 2007\_003, vi-vii (Dec. 2006), available at <http://nces.edu.gov/pubs2007/2007003.pdf>.

<sup>4</sup> *Id.* More current data are not yet available.

<sup>5</sup> Jennifer Dounay, Education Commission of the State, *State Anti-Bullying Statutes* (Apr. 2005), available at <http://www.ecs.org/clearinghouse/60/41/6041.htm>; *Recent State Policies and Activities: Safety/Student Discipline-Bullying/Conflict Resolution*, available at <http://www.ecs.org.ecs/ecscat.nsf/webtopicview?openview&restricttocategory=safety/student+discipline--bullying/conflict+resolution> (last visited Mar. 3, 2008).

<sup>6</sup> DOE, *2008 Bill Analysis for HB 669* (Jan. 29, 2008).

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

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

<sup>9</sup> DOE reports in *Bullying Programs in Florida Districts* (available at [http://www.fldoe.org/safeschools/bull\\_fl.asp](http://www.fldoe.org/safeschools/bull_fl.asp), last visited Mar. 3, 2008) the following implemented bullying prevention programs:

- Aggression Replacement Training (ART): Hernando and Indian River;
- Aggressors, Victims, Bystanders: Brevard, Collier, Columbia, DeSoto, Dixie, Escambia, Flagler, Glades, Lafayette, Levy, Manatee, Okaloosa, Palm Beach, Pinellas, Santa Rosa, Sarasota, St. Lucie, Union, and Volusia;
- Bullying Prevention (Olweus): Marion, Orange, Pasco, Pinellas, Sarasota, Seminole, and Sumter;
- Bullying Safe: Lee;
- Bully-Proofing Your School: Brevard and Volusia;
- Foundations: Creating Safe and Civil Schools: Clay and Duval;
- PATHS: Madison and Okaloosa;
- PeaceBuilders: Franklin and Gulf;
- Positive Action: Charlotte and Leon;
- Project ACHIEVE: Charlotte;
- Safe Schools Ambassadors: Seminole;
- Success in Stages: Build Respect, Stop Bullying: Union; and
- TRUST: Miami-Dade.

<sup>10</sup> Fla. Stat. § 1006.07(1)(a).

<sup>11</sup> Fla. Stat. § 1006.07(2).

rules governing student conduct and discipline; must be organized and written in language understandable to students and parents; and, among other things, must contain:<sup>12</sup>

- Consistent policies, specific grounds for disciplinary action, and disciplinary procedures;
- Explanation of a student's rights and responsibilities;
- Notice that violence against district school board personnel, disruptive behavior on a school bus or at a bus stop, or sexual harassment are grounds for disciplinary action;
- Notice that a student possessing a firearm or weapon at school, at a school function, or on school-sponsored transportation will be expelled; and
- Notice that a student making a threat or false report involving school or school personnel's property, school transportation, or a school-sponsored activity will be expelled.

In addition, current law and rules adopted by the State Board of Education require a district school board to adopt a zero-tolerance policy on school violence, crime, the use of weapons, substance abuse, and the victimization of students.<sup>13</sup>

A school district's code of student conduct may assign more severe disciplinary actions when the offender appears motivated by hostility toward the victim's real or perceived gender, race, religion, color, sexual orientation, ethnicity, ancestry, national origin, political beliefs, marital status, age, social and family background, linguistic preference, or disability.<sup>14</sup>

Further, current law prohibits discrimination on the basis of race, ethnicity, national origin, gender, disability, or marital status against a student or an employee in the state system of public K-20 education.<sup>15</sup> DOE requires educational institutions to create an educational and work environment free of harassment on the basis of race, sex, national origin or handicap.<sup>16</sup> The department specifies that an institution is responsible for all acts of harassment between fellow employees, fellow students, or by nonemployees, if the institution knew or should have known of the harassment and failed to take corrective action.<sup>17</sup>

A district school board is required to protect a student victimized by a violent crime from further victimization.<sup>18</sup> Except under certain circumstances, a student committing specified violent offenses is prohibited from attending the school attended by, or riding the school bus ridden by, the victim or the victim's sibling.<sup>19</sup> In addition, if a violent offense involves a victim, school officials are required to notify the victim, and the victim's parents or legal guardian if the victim is a minor, of the offense and of the victim's right to press charges against the offender.<sup>20</sup>

Current law assigns specific duties for student discipline and school safety to certain school district personnel. The duties include:

- A district school superintendent recommends student discipline and school safety plans to the district school board.<sup>21</sup>

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

<sup>13</sup> Fla. Stat. § 1006.13(1); Fla. Admin. Code Ann. r. 6A-1.0404(1).

<sup>14</sup> Fla. Admin. Code Ann. r. 6A-1.0404(5).

<sup>15</sup> Fla. Stat. § 1000.05(2)(a).

<sup>16</sup> Fla. Admin. Code Ann. r. 6A-19.008.

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

<sup>18</sup> Fla. Stat. § 1006.13(1)(b).

<sup>19</sup> Fla. Stat. § 1006.13(5)(b) & (c).

<sup>20</sup> Fla. Admin. Code Ann. r. 6A-1.0404(6).

<sup>21</sup> Fla. Stat. § 1006.08(1).

- A school principal or designee develops policies for delegating to teachers, instructional staff, and school bus drivers the school's responsibility for control of students.<sup>22</sup> A school principal is directed to fully support the authority of a teacher or school bus driver to remove disobedient, disrespectful, violent, abusive, uncontrollable, or disruptive students from the classroom or school bus.<sup>23</sup>
- A school principal must also submit reports to DOE on student discipline and school safety.<sup>24</sup> DOE compiles the reports and publicly reports the data through the School Environmental Safety Incident Reporting (SESIR) system.<sup>25</sup> The SESIR system collects data on 22 incidents of crime, violence, and disruptive behaviors that occur on school grounds, on school transportation, and at off-campus, school-sponsored events.
- A school bus driver is responsible for keeping order on the school bus and requiring good behavior from, and protecting, the students on the bus.<sup>26</sup>

### Safe Schools Funding:

Funding for Safe Schools is included in the Florida Education Finance Program (FEFP) as a categorical fund<sup>27</sup> and is appropriated by the Legislature through proviso language in the General Appropriations Act.<sup>28</sup> The Legislature allocated, as adjusted, \$76,617,665<sup>29</sup> for Safe Schools activities for the 2007-2008 school year.<sup>30</sup> The Safe Schools funds are allocated as follows:

- Each school district receives a \$74,483 base allocation for Safe Schools;<sup>31</sup>
- Two-thirds of the remaining balance is allocated based on the latest official Florida Crime Index provided by the Florida Department of Law Enforcement; and
- One-third is allocated based on each district's share of the state's total unweighted student enrollment.<sup>32</sup>

School districts may use Safe Schools funds for various activities, including:

- After-school programs for middle school students;
- Other improvements to enhance the learning environment, including implementation of conflict-resolution strategies;
- Alternative school programs for adjudicated youth;
- Suicide prevention programs; and
- Other improvements to make the school a safe place to learn.<sup>33</sup>

<sup>22</sup> Fla. Stat. § 1006.09(1)(a).

<sup>23</sup> *Id.*

<sup>24</sup> Fla. Stat. §§ 1001.54(3) & 1006.09(6).

<sup>25</sup> Florida Department of Education, *Statewide Report on School Safety and Discipline Data*, at <http://www.firn.edu/doe/besss/sesir.htm> (last visited Mar. 3, 2008).

<sup>26</sup> Fla. Stat. § 1006.10(1) & (4).

<sup>27</sup> Fla. Stat. § 1001.62(6)(b)3.

<sup>28</sup> Specific Appropriation 86, *General Appropriations Act for Fiscal Year 2007-2008*, Chapter 2007-72, Laws of Florida.

<sup>29</sup> Upon completion of the 2007 Florida Legislative Session the allocation was \$77,150,000, with each school district receiving at least \$75,000. However, those figures were adjusted upon completion of the 2007 Florida Legislative Special Session C.; *Id.*

<sup>30</sup> Committee Substitute for Sen. Bill No. 6-C (F.E.F.P. is incorporated by reference), Chapter 2007-328, Law of Florida.

<sup>31</sup> *Id.*

<sup>32</sup> See *supra* note 28.

<sup>33</sup> *Id.*

### Proposed Changes:

The bill creates the “Jeffrey Johnston Stand Up for All Students Act.”<sup>34</sup> The bill prohibits the bullying or harassment of any public K-12 student or employee during a public K-12 education program or activity; during a school-related or school-sponsored program or activity; on a public K-12 school bus; or through a public K-12 computer, computer system, or computer network.

### Definitions:

The bill provides definitions of the terms “bullying” and “harassment”:

- **Bullying:** Systematically and chronically inflicting physical hurt or psychological distress on one or more students, which may involve teasing; social exclusion; threat; intimidation; stalking; physical violence; theft; sexual, religious, or racial harassment; public humiliation; or destruction of property.
- **Harassment:** Threatening insulting, or dehumanizing gesture, use of computers, or written, verbal, or physical conduct directed against a student or school employee that causes reasonable fear of harm to person or property; substantially interferes with a student’s educational performance, opportunities, or benefits; or substantially disrupts the orderly operation of a school.

The bill further specifies that bullying and harassment include:

- Retaliating against a student or school employee for reporting bullying or harassment;
- Reporting bullying or harassment, which reporting is not made in good faith;
- Perpetuating bullying or harassment with the intent to demean, dehumanize, embarrass, or cause physical harm to a student or school employee by incitement or coercion; use of (or providing access to) a school district’s computer, computer system, or computer network; or conduct substantially similar to bullying or harassment.

The bill also specifies that current statutory definitions for computer crimes<sup>35</sup> and stalking<sup>36</sup> apply to the provisions created by the bill.

### Model Policy:

The bill requires DOE to develop and provide to the school districts by October 1, 2008, a model policy prohibiting bullying and harassment.

### School District Policies:

The bill requires a school district, by December 1, 2008, to adopt a policy prohibiting bullying and harassment against a public K-12 student or employee. A school district’s policy must be in substantial conformity to DOE’s model policy and must:

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<sup>34</sup> In 2005, Jeffrey Johnson of Cape Coral, a victim of bullying and harassment from his classmates at Ida S. Baker High School in Lee County, committed suicide at the age of 15 years. See <http://jeffreyjohnston.org> (last visited Mar. 3, 2008).

<sup>35</sup> Fla. Stat. § 815.03, defines terms used to proscribe computer-related crimes throughout the chapter. The defined terms, “access,” “computer,” “computer network,” “computer software,” “computer system,” and “data” are among the terms used in the bill.

<sup>36</sup> The bill cross-references the definition of “cyberstalk” in Fla. Stat. § 784.048(1)(d). “‘Cyberstalk’ means to engage in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person, causing substantial emotional distress to that person and serving no legitimate purpose.”

### *Enforcement:*

- Include definitions of “bullying” and “harassment,” which must include the definitions included in the bill;
- Establish procedures for reporting and investigating a report of bullying or harassment, including anonymous reporting (the bill prohibits disciplinary action based solely on anonymous reports);
- Prescribe standards of conduct for public K-12 students and employees, disciplinary actions for a student or employee who engages in bullying or harassment or who wrongfully and intentionally accuses another of bullying or harassment; and
- Establish procedures for referring bullying and harassment reports outside of the school district’s authority to the appropriate officials (the bill specifies that a reported act of bullying or harassment is deemed to be a school-related activity).

### *Victim Services and Prevention:*

- Establish procedures for:
  - Referring victims and offenders of bullying or harassment to counseling;
  - Regular reporting to a victim’s parents on the actions taken to protect the victim;
  - Immediately notifying the parents of both the victim and offender of bullying or harassment, as well as all local agencies where criminal charges may be filed against the offender; and
  - Training students, parents, teachers, school administrators, counseling staff, and volunteers to identify, prevent, and respond to bullying and harassment.

### *Statewide Reporting:*

- Establish procedures for including bullying and harassment in the school district’s student discipline and school safety reports submitted to DOE (currently through the School Environmental Safety Incident Reporting (SESIR) system).

The bill allows a school district to adopt separate discrimination policies for different categories of students but requires that all students have the same protection from bullying and harassment. The bill requires a school district to include students, parents, teachers, administrators, school staff, volunteers, community representatives, and local law enforcement agencies in the development of the bullying and harassment policy.

The bill requires the policy to be included in the district’s codes of student conduct and employee handbooks and requires ongoing implementation throughout the school year, integrated with a school’s curriculum, discipline policies, and violence prevention efforts.

### Immunity for Reporting:

The bill provides:

A school employee, school volunteer, student, or parent who promptly reports in good faith an act of bullying or harassment to the appropriate school official designated in the school district’s policy and who makes this report in compliance with the procedures set forth in the policy is immune from a cause of action for damages arising out of the reporting itself or any failure to remedy the reported incident.

### Computer Issues:

The bill prohibits a person charged with a disciplinary action under a school district's policy or other prosecution from raising the "physical location" or "time of access" of a computer-related incident as a defense to the charges. The bill also exempts a person who uses a computer, computer system, or computer network from violations of the bullying and harassment policies, when the person acts within the scope of lawful employment or investigates a bullying or harassment violation under the school district's policy.

### Contingency of Safe Schools Funds:

The bill provides that, for the 2009-2010 school year, a school district's Safe Schools funding "is contingent upon and payable to the school district upon [DOE's] approval of the school district's bullying and harassment policy." The bill specifies that DOE must approve a district's policy if it is in substantial conformity with the department's model policy.

The bill also requires that, each year beginning with the 2010-2011 school year, a school district's Safe Schools funding "shall be contingent upon and payable to the school district upon" the district's compliance with "all reporting procedures" in the bill, that is, submitting reports of bullying and harassment to DOE as part of the district's reports of safety and discipline data.<sup>37</sup>

### Annual Report to Governor and Legislature:

The bill requires the Commissioner of Education to report to the Governor and presiding officers of the Legislature by January 1 of each year on the implementation of policies prohibiting bullying and harassment, including reports of bullying and harassment submitted to DOE as part of the school districts' student discipline and school safety data.

### First Amendment:

The bill requires construction of its provisions consistent with the First Amendment to the United States Constitution.

### Severability Provision:

The bill provides that its provisions are severable. If any provision or the application thereof is held invalid, then the invalidity of the provision does not affect other provisions or applications of the bill which can be given effect without the invalid provision or application.

### Effective Date:

The bill provides that it takes effect upon becoming a law.

## C. SECTION DIRECTORY:

Section 1. Creates section 1006.147, Florida Statutes, which prohibits bullying and harassment of public K-12 students and employees.

Section 2. Provides a severability provision.

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<sup>37</sup> In paragraph (4)(k), a school district is required to submit student discipline and school safety reports to DOE (currently through the School Environmental Safety Incident Reporting (SESIR) system). The bill appears to make Safe Schools funding contingent upon the submission of these reports.



Section 3. Provides an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

According to DOE, the department "will be required to compile and aggregate the reported incidents of bullying and harassment, including those that do not meet the criteria of the prohibited act."<sup>38</sup>

DOE further reports,

the department will also be required to oversee the withholding of funds from any school district that did not comply with the act. Historically, safe schools funding has been provided through the FEFP with the following components:

- A lump sum distributed to each district, with the remainder distributed as follows:
- Two-thirds based on the latest official Florida Crime Index provided by the Department of Law Enforcement
- One-third based on each district's share of the state's total unweighted student enrollment.<sup>39</sup>

DOE indicates that the above-described workload increase can be absorbed by existing staff.<sup>40</sup>

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill does not appear to impact the revenues of counties or municipalities.

#### 2. Expenditures:

DOE notes in its analysis that,

An estimated 87.5 percent of school districts have adopted an anti-bullying policy similar to the requirements of the bill. [DOE] staff time would be required to evaluate whether a school district's adopted policy complies with the requirements of the bill. At a minimum, resources would have to be assigned to the training of staff about the anti-bullying policy adopted by the district pursuant to the requirements. The exact fiscal impact cannot be determined.<sup>41</sup>

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<sup>38</sup> DOE, *2008 Bill Analysis for HB 669* (Jan. 29, 2008).

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Legislature allocated, as adjusted, \$76,617,665<sup>42</sup> for Safe Schools for fiscal year 2007-2008, including an allocation formula guaranteeing a school district at least \$74,483.<sup>43</sup> The bill requires the withholding of Safe Schools funds for noncompliance with reporting requirements. The withholding of Safe Schools funds may adversely affect other district safety and security activities

The bill requires school districts to adopt policies, revise codes of student conduct and employee handbooks, train employees, and revise reporting of student discipline and school safety data. DOE estimates that there would be costs associated with implementing these requirements but does not quantify an estimate.<sup>44</sup>

### 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.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not create new authority for rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

In subsection (4) of section 1, the bill requires a school district to adopt a “policy prohibiting bullying and harassment.” Subsection (5) of section 1 authorizes a district to establish separate “discrimination policies” that include categories of students. Since current law prohibits discrimination on the basis of race, ethnicity, national origin, gender, disability, or marital status against a student or employee in the state system of public K-20 education,<sup>45</sup> the bill is unclear whether it authorizes school districts to prohibit discrimination against new categories of students or whether it allows a school district to establish separate bullying and harassment policies for different categories of students (e.g., one policy for elementary school, a second policy for middle school, and a third policy for high school).

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<sup>42</sup> See *supra* note 29.

<sup>43</sup> DOE, *2008 Bill Analysis for HB 669* (Jan. 29, 2008).

<sup>44</sup> *Id.*

<sup>45</sup> Fla. Stat. § 1000.05(2)(a).

#### D. STATEMENT OF THE SPONSOR

Section (3) (b) page 2 line 49-52, of the bill, includes “use of data or computer software, or written, verbal, or physical conduct directed against a student.” This addresses the concern of cyberbullying.

There is no fiscal impact as long as school districts comply with the law.

#### **IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**