

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 61 Code of Student Conduct  
**SPONSOR(S):** Rogers and others  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 228

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) K-20 Innovation Subcommittee	14 Y, 0 N	Ourand	Sherry
2) PreK-12 Appropriations Subcommittee	13 Y, 0 N	Keith	Heflin
3) Education Committee			

### SUMMARY ANALYSIS

The bill prohibits students from wearing their clothing in a manner that exposes underwear or body parts in an indecent or vulgar manner. Wearing clothing in such a manner is often referred to as “sagging.” The bill requires school boards to include an explanation of the responsibilities of each student regarding appropriate dress within their code of student conduct. Additionally, each school board must adopt a dress code policy which forbids wearing clothing in such a way as to expose underwear or body parts in an indecent or vulgar manner or in a manner that disrupts the orderly learning environment. The bill also provides both an escalating series of disciplinary actions for students who violate the dress code, as well as a requirement for adherence to appropriate dress and other student conduct codes as a prerequisite for participation in interscholastic extracurricular activities.

This bill amends ss. 1006.07 and 1006.15, F.S. The bill reenacts s. 1002.23, F.S.

The bill does not have a fiscal impact on state or local governments.

The bill has an effective date of July 1, 2011.

For a discussion of the applicable First Amendment precedent, see the Part entitled “Constitutional Issues.”

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

###### *The "Sagging" Phenomenon*

The bill is a response to the manner of wearing pants known colloquially as "sagging." Although no rigidly academic analysis of the history of "sagging" has yet been conducted, it is commonly thought that "sagging" originated in prisons where belts are not issued because they may be used to commit suicide or used as weapons.<sup>1</sup> The lack of belts combined with loose, ill-fitting pants result in pants falling below the waist. "Sagging" has been banned in several cities, with anti-sagging advocates going so far as to call for statewide bans.<sup>2</sup> The town of Opa-locka recently enacted a ban on "saggy pants in city parks, city hall and other city properties."<sup>3</sup> Moreover, several Florida school districts have confronted the issue of "sagging." For instance, the Duval County School Board's Code of Student Conduct states: "The waistband of shorts, slacks, skirts, and similar garments shall not be worn below the hips. Underwear, midriff and backs should not be exposed."<sup>4</sup> The Orange County School Board's student code specifies that: "[c]lothes shall be worn as they are designed-suspenders over the shoulders, pants secured at the waist, belts buckled, no underwear as outerwear, no underwear exposed."<sup>5</sup> The Santa Rosa County School Board's Code of Student Conduct specifies that undergarments shall not be shown.<sup>6</sup>

###### *Current Student Code of Conduct Statutory Requirements*

District school boards are required to "[a]dopt a code of student conduct for elementary schools and a code of student conduct for middle and high schools and distribute the appropriate code to all teachers, school personnel, students, and parents, at the beginning of every school year."<sup>7</sup> Currently, a district school board's code of student conduct must include such items as:

- "[c]onsistent policies and specific grounds for disciplinary action, including in-school suspension, out-of-school suspension, expulsion, and any disciplinary action that may be imposed for the possession or use of alcohol on school property or while attending a school function or for the illegal use, sale, or possession of controlled substances;"<sup>8</sup>
- "[p]rocedures to be followed for acts requiring discipline, including corporal punishment;"<sup>9</sup> and
- "[a]n explanation of the responsibilities and rights of students with regard to attendance, respect for persons and property, knowledge and observation of rules of conduct, the right to learn, free

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<sup>1</sup> Niko Koppel, *Are Your Pants Sagging? Go Directly to Jail.*, THE NEW YORK TIMES (Aug. 30, 2007), available at: <http://www.nytimes.com/2007/08/30/fashion/30baggy.html> (last accessed Jan. 20, 2011).

<sup>2</sup> *Id.*

<sup>3</sup> Art Levy, *Can State Legally Outlaw Saggy Pants?*, FLORIDA TREND (Apr. 1, 2008), available at [http://www.floridatrend.com/print\\_article.asp?aID=48655](http://www.floridatrend.com/print_article.asp?aID=48655) (last visited Jan. 19, 2011).

<sup>4</sup> Duval County Public Schools, *Code of Appearance*, available at <http://www.duvalschools.org/static/students/codeofconduct/codeofappearance.asp> (last visited Jan. 19, 2011).

<sup>5</sup> Orange County Public Schools, *Code of Student Conduct*, 5 (2010-11), available at <https://www.ocps.net/SiteCollectionDocuments/Docs%20Continually%20Updated/Code%20of%20Conduct.pdf> (last visited Jan. 19, 2011).

<sup>6</sup> Santa Rosa County School District, *Code of Student Conduct* (Aug. 23, 2010), available at <http://www.santarosa.k12.fl.us/files/csc.pdf> (last visited Jan. 19, 2011).

<sup>7</sup> Section 1006.07(2), F.S.

<sup>8</sup> Section 1006.07(2)(a), F.S.

<sup>9</sup> Section 1006.07(2)(b), F.S.

speech and student publications, assembly, privacy, and participation in school programs and activities.”<sup>10</sup>

District school boards may also impose dress code restrictions, including the requirement of school uniforms, where “those requirements are necessary for the safety or welfare of the student body or school personnel.”<sup>11</sup> Section 1006.07, F.S., does not specifically address the issue of dress code requirements, but it does state that “[t]he district school board shall provide . . . for proper attention to health, safety, and other matters relating to the welfare of students.”<sup>12</sup> There are no specific statutory prohibitions on exposing undergarments by students at public schools.

### *Student Requirements to Participate in Extracurricular Activities*

Section 1006.15, F.S, establishes that in order to participate in interscholastic and intrascholastic extracurricular activities, a public school student must:

- Maintain a grade point average of 2.0 or above on a 4.0 scale, or its equivalent, in the previous semester or a cumulative grade point average of 2.0 or above on a 4.0 scale, or its equivalent, in the courses required by s. 1003.43(1), F.S.;<sup>13</sup>
- Execute and fulfill the requirements of an academic performance contract between the student, the district school board, the appropriate governing association, and the student’s parents, if the student’s cumulative grade point average falls below 2.0, or its equivalent, on a 4.0 scale in the courses required by s. 1003.43(1), F.S.;<sup>14</sup>
- Have a cumulative grade point average of 2.0 or above on a 4.0 scale, or its equivalent, in the courses required by s. 1003.43(1), F.S, during his or her junior or senior year;<sup>15</sup> and
- Maintain satisfactory conduct.<sup>16</sup>

The school board may also implement additional requirements for participation.<sup>17</sup>

### **Proposed Changes**

This bill amends section 1006.07, F.S, to require school districts to include within their student conduct codes provisions relating to appropriate dress. Additionally, school boards must adopt a dress code policy prohibiting students from wearing clothing which exposes underwear or body parts in an indecent or vulgar manner or that disrupts the orderly learning environment during the school day while on school grounds.

Moreover, the bill requires the code of conduct to prescribe the following punishments for violations of the dress code policy:

- First offense: verbal warning and the school principal shall call the student’s parent or guardian;
- Second offense: ineligibility to participate in any extracurricular activity for at most five days and a meeting between the student’s parent or guardian and the principal;
- Third offense: in-school suspension pursuant to section 1003.01(5)(b), F.S.,<sup>18</sup> for a maximum of 3 days; ineligibility to participate in extracurricular activities for a maximum of 30 days; and the principal shall call the student’s parent or guardian and send the parent or guardian a written

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<sup>10</sup> Section 1006.07(2)(c), F.S.

<sup>11</sup> Section 1001.43(1)(b), F.S.

<sup>12</sup> Section 1006.07, F.S.

<sup>13</sup> Section 1006.15(3)(a)1., F.S.

<sup>14</sup> Section 1006.15(3)(a)2., F.S.

<sup>15</sup> Section 1006.15(3)(b)3., F.S.

<sup>16</sup> Section 1006.15(3)(b)4., F.S.

<sup>17</sup> Section 1006.15(4), F.S.

<sup>18</sup> Section 1003.01(5)(b), F.S., provides that “[i]n-school suspension means the temporary removal of a student from the student’s regular school program and placement in an alternative program, such as that provided in s. 1003.53, under the supervision of district school board personnel, for a period not to exceed 10 school days.”

letter regarding the student's in-school suspension and ineligibility to participate in extracurricular activities.

The bill also amends section 1006.15, F.S., to make adherence to the dress code requirements described above a prerequisite for participation in interscholastic extracurricular activities.

The bill has an effective date of July 1, 2011.

**B. SECTION DIRECTORY:**

Section 1: Amends section 1006.07, F.S., requiring school boards to include within their dress codes provisions relating to appropriate dress and specifying escalating punishments based upon the number of violations of these provisions.

Section 2: Amends section 1006.15, F.S., providing that adherence to appropriate dress and other codes of student conduct is a prerequisite for a student to be eligible to participate in interscholastic extracurricular student activities.

Section 3: Reenacts section 1002.23(7), F.S., relating to a parent guide to successful student achievement to be adopted by each school district board, to incorporate the amendment made to section 1006.07.

Section 4: Provides an effective date of July 1, 2011.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

This bill would have a minimal fiscal impact to district school boards. District school boards may incur costs for adding student dress policy to the existing codes on student conduct. The bill would also require monitoring and enforcement of the student dress component of the conduct code.

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

None.

**D. FISCAL COMMENTS:**

This bill has indeterminate cost impacts for adding student dress policy to existing codes on student conduct as well as monitoring and enforcing the conduct code.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

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

The bill does not appear to require a city or county to expend funds or take any action requiring the expenditure of funds. The bill does not appear to reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not appear to reduce the percentage of state tax shared with counties or municipalities.

##### 2. Other:

The First Amendment of the United States Constitution states that “Congress shall make no law . . . abridging the freedom of speech.”<sup>19</sup> The Supreme Court has extended the protection afforded by this provision to include expressive conduct as well as actual spoken words.<sup>20</sup> Moreover, the Court has stated that students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate,”<sup>21</sup> but has also recognized the authority of states and schools “to prescribe and control conduct in the schools.”<sup>22</sup>

However, it is also true that “the constitutional rights of students in public school are not automatically coextensive with the rights of adults in other settings.”<sup>23</sup> Additionally, the Court has drawn a distinction between political speech and lewd and obscene speech, providing greater protection to political speech.<sup>24</sup>

There have been numerous examples of dress restrictions which have been found constitutional in that they did not limit expressive conduct, including a ban on wearing “clothing that is too tight, revealing or baggy as well as tops and bottoms that do not ‘overlap,’”<sup>25</sup> and preventing a group of students from wearing their own class t-shirt exclaiming their “gifted” status.<sup>26</sup>

A United States District Court found that wearing “sagging” pants was not shown to be expressive conduct.<sup>27</sup> There, the court applied the following test for determining expressive conduct: “First, the actor must intend to convey a particularized message, and, second, there must be a great likelihood that the message would be understood by those who observe the conduct.”<sup>28</sup> The Defendant presented evidence that the “Plaintiff’s subjective message supposedly conveyed by wearing sagging pants is by no means apparent to those who view it.”<sup>29</sup> Specifically, the evidence showed that while “sagging is understood by some as associated with street gang activity and as a sign of gang affiliation . . . it is also understood by some as would-be gang affiliation, because it is often adopted by ‘wannabes,’ those who are seeking to become affiliated with a gang.”<sup>30</sup> The Defendant also presented evidence that “[s]agging is not necessarily associated with a single racial or cultural group, and sagging is seen by some merely as a fashion trend followed by many adolescents all over the United States.”<sup>31</sup> The court then held that the Plaintiff’s mere statement that “there is a great likelihood that those who observe this expressive conduct will understand the message” was

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<sup>19</sup> U.S. Const., Amend. 1.

<sup>20</sup> *Texas v. Johnson*, 491 U.S. 397, 404 (1989).

<sup>21</sup> *Tinker v. Des Moines Independent Community School Dist.*, 393 U.S. 503, 506 (1969).

<sup>22</sup> *Id.* at 507.

<sup>23</sup> *Bethel School Dist. No. 403 v. Fraser*, 478 U.S. 675, 682 (1986).

<sup>24</sup> *Id.* at 682.

<sup>25</sup> *Blau v. Fort Thomas Public School Dist.*, 401 F.3d 381, 385 (6th Cir. 2005).

<sup>26</sup> *Brandt v. Board of Educ. of City of Chicago*, 480 F.3d 460, 468 (7th Cir. 2007).

<sup>27</sup> *Bivens By and Through Green v. Albuquerque Public Schools*, 899 F.Supp. 556, 561 (U.S.D.C. N.M., 1995).

<sup>28</sup> *Id.* at 560, citing *Johnson*, 491 U.S. at 404.

<sup>29</sup> *Bivens*, 899 F. Supp. at 561.

<sup>30</sup> *Id.*

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

insufficient “to demonstrate a genuine issue for trial as to whether his wearing of sagging pants is constitutionally protected speech under the First Amendment.”<sup>32</sup>

Moreover, even where a Plaintiff is able to show that the conduct at issue is “sufficiently ‘imbued with elements of communication’” to engender some First Amendment protection, the regulation may still be found to be constitutional under intermediate scrutiny where it is “content-neutral on its face and as applied.”<sup>33</sup> For instance, the Eleventh Circuit, in an unreported decision, stated that even if a restriction on wearing non-otic pierced jewelry were to place an “incidental restriction . . . on expressive conduct [that] is viewpoint and content-neutral on its face and as applied,” the Plaintiff still failed to show an unconstitutional abridgement of her rights.<sup>34</sup> The court reasoned that “the content and viewpoint neutral Dress Code was promulgated in furtherance of legitimate educational objectives,” which were “avoid[ing] extreme dress or appearance which might create a school disturbance, or which could be hazardous to the student or to others.”<sup>35</sup> In addition, “the jewelry limitation was narrowly tailored,” and there remained “ample communicative alternatives.”<sup>36</sup>

#### B. RULE-MAKING AUTHORITY:

None.

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

The bill does not include a definition for either “indecent” or “vulgar,” and as such the school boards would have to define these terms. The school boards would have to ensure that the definitions they craft are not overly broad or vague in order to avoid First Amendment concerns.<sup>37</sup>

This could also result in differentiated enactment between school boards. Additionally, the previously discussed student conduct codes which prevent the display of undergarments may lose effect depending upon how the terms “indecent” and “vulgar” are defined within those codes. However, the bill’s reference to the “disruption of the orderly learning environment” may be able to remedy this unintended effect.

The bill states that this requirement applies to students “while on the grounds of a public school during the regular school day.” As such, this may not apply to after-school programs, events taking place on school grounds but occurring after the “regular school day,” school-sanctioned field trips, and bus stops. Furthermore, it is not specified whether this prohibition is to extend to school transportation.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

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<sup>32</sup> *Id.* But see *Canady v. Bossier Parish School Bd.*, 240 F.3d 437, 440-41 (5th Cir. 2001) (discussing, but not deciding, the possibility of student dress being expressive conduct, stating that: “[S]tudents in particular often choose their attire with the intent to signify the social group to which they belong, their participation in different activities, and their general attitudes toward society and the school environment. While the message students intend to communicate about their identity and interests may be of little value to some adults, it has a considerable affect, whether positive or negative, on a young person's social development. Although this sort of expression may not convey a particularized message to warrant First Amendment protection in every instance, we cannot declare that expression of one's identity and affiliation to unique social groups through choice of clothing will never amount to protected speech.”)

<sup>33</sup> *Bar-Navon v. Brevard County School Bd.*, 290 Fed. Appx. 273, 277 (11th Cir. 2008), quoting *Spence v. State of Wash.*, 418 U.S. 405, 409 (1974).

<sup>34</sup> *Bar-Navon*, 290 Fed. Appx. at 277 (citations omitted). Non-otic pierced jewelry refers to jewelry worn in piercings that are not located in the ear. *Id.* at 274.

<sup>35</sup> *Id.* at 277.

<sup>36</sup> *Id.*

<sup>37</sup> See *Board of Airport Com'rs of City of Los Angeles v. Jews for Jesus, Inc.*, 482 U.S. 569, 570 (1987) (finding “a resolution banning all ‘First Amendment activities’ at Los Angeles International Airport” unconstitutional under the overbreadth doctrine).

