

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS  
FINAL BILL ANALYSIS**

**BILL #:** CS/CS/HB 741 Anti-Semitism  
**SPONSOR(S):** Education Committee and Criminal Justice Subcommittee, Fine and others  
**TIED BILLS:** IDEN./SIM. **BILLS:** HB 371, CS/SB 1272

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	14 Y, 0 N, As CS	Frost	Hall
2) Education Committee	17 Y, 0 N, As CS	McAlarney	Hassell
3) Judiciary Committee	16 Y, 0 N	Frost	Poche

**FINAL HOUSE FLOOR ACTION:** 114 Y's 0 N's  
**GOVERNOR'S ACTION:** Approved

**SUMMARY ANALYSIS**

CS/CS/HB 741 passed the House on April 11, 2019, and subsequently passed the Senate on April 29, 2019.

The Florida Educational Equality Act (FEEA) requires equal access to, and prohibits discrimination against, any student or employee of the state's K-20 public education system on the basis of race, ethnicity, national origin, gender, disability, or marital status.

Section 1002.20, F.S., provides the rights of students and parents in K-12 public schools, and includes a nondiscrimination provision requiring availability of all programs, activities, and opportunities offered by a public educational institution without discrimination on the basis of race, ethnicity, national origin, gender, disability, or marital status, in accordance with the provisions of the FEEA.

The bill amends the FEEA to add religion as a protected class with regard to discrimination against students and employees in Florida's K-20 public education system. The bill requires a public K-20 educational institution to treat discrimination by students or employees or resulting from institutional policies motivated by anti-Semitism in an identical manner to discrimination motivated by race.

The bill also amends the FEEA to add a definition of anti-Semitism similar to the definition adopted by the U.S. Department of State's Special Envoy to Monitor and Combat Anti-Semitism, providing that "anti-Semitism" is a certain perception of Jewish people, which may be expressed as hatred toward Jewish people, rhetorical and physical manifestations of anti-Semitism directed toward a person, his or her property, or toward Jewish community institutions or religious facilities; the definition includes examples of what classifies as anti-Semitism including those related to Jewish people generally and the State of Israel.

The bill includes legislative intent that the new law defining anti-Semitism may not diminish or infringe upon any right protected under the First Amendment to the U.S. Constitution, or the Florida Constitution, and prohibits construction of the law in conflict with federal or state discrimination laws.

The bill amends s. 1002.20, F.S., to add religion as a protected class in all K-12 education programs, activities, and opportunities, in accordance with the provisions of the FEEA.

The bill does not appear to have a fiscal impact.

The bill was approved by the Governor on May 31, 2019, ch. 2019-59, L.O.F., and became effective on that date.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### Background

##### Educational Equality

The Florida Educational Equality Act<sup>1</sup> (Act) requires equal access to, and prohibits discrimination against, any student or employee of the state's K-20 public education system on the basis of:

- Race;
- Ethnicity;
- Gender;
- National origin;
- Disability; or
- Marital status.

Section 1002.20, F.S., outlines the rights of students and parents in K-12 public schools, and requires all programs, activities, and opportunities offered by a public educational institution to be available without discrimination based on:

- Race;
- Ethnicity;
- National origin;
- Gender;
- Disability; or
- Marital status.

Neither the Act nor s. 1002.20, F.S., currently prohibit discrimination based on religion.

#### *Crimes Evidencing Anti-Semitism*

According to the Office of the Attorney General, there were 169 reported hate crimes in Florida in 2017.<sup>2</sup> Of the total 169 reported hate crimes, 35 were for battery and 22 were for simple assault or other crimes of intimidation. No hate crimes motivated by a victim's physical disability, mental disability, or advanced age were reported in 2017. The motivation for hate crimes were:

- Race: 45.6 percent;
- Religion: 27.2 percent;
- Sexual orientation: 23.7 percent; and
- Ethnicity or national origin: 3.5 percent.

The Federal Bureau of Investigation reports that hate crimes against Jewish people and institutions increased by 37 percent nationally between 2016 and 2017.<sup>3</sup> In addition, Florida's Jewish community has recently been the target of anti-Semitic acts. Two central Florida Jewish centers received bomb threats in January 2017.<sup>4</sup> On Miami Beach, people have painted swastikas on locations such as Congregation Beth Medrash Levi Yitzchok Lubavitch and a historic coral rock house that once housed

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<sup>1</sup> S. 1000.05, F.S.

<sup>2</sup> Attorney General, *Hate Crimes in Florida: January 1, 2017 - December 31, 2017*, [http://myfloridalegal.com/webfiles.nsf/WF/MNOS-B7VRH2/\\$file/2017+Hate+Crimes+in+Florida+Report.pdf](http://myfloridalegal.com/webfiles.nsf/WF/MNOS-B7VRH2/$file/2017+Hate+Crimes+in+Florida+Report.pdf) (last visited on May 7, 2019).

<sup>3</sup> Federal Bureau of Investigation, *2017 Hate Crime Statistics: Victims*, <https://ucr.fbi.gov/hate-crime/2017/topic-pages/victims> (last visited May 7, 2019).

<sup>4</sup> Adrian Whitsett, *Bomb threats called into two Central Florida Jewish centers*, WESH (May 7, 2017), <https://www.wesh.com/article/bomb-threats-called-into-two-central-florida-jewish-centers/8561376> (last visited May 7, 2019).

a Jewish doctor's medical practice.<sup>5</sup> Police have arrested individuals for violent anti-Semitic acts, including threatening behavior and physical assault.<sup>6</sup>

### *Defining Anti-Semitism*

In 2005, the European Monitoring Centre on Racism and Xenophobia adopted a definition of anti-Semitism,<sup>7</sup> and in 2010, as part of a Special Envoy to Monitor and Combat Anti-Semitism,<sup>8</sup> the U.S. Department of State adopted the same definition of anti-Semitism.

The definition of anti-Semitism provides that "anti-Semitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of anti-Semitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities."<sup>9</sup>

The definition describes examples of anti-Semitism as:

- Calling for, aiding, or justifying the killing or harming of Jews (often in the name of a radical ideology or an extremist view of religion).
- Making mendacious, dehumanizing, demonizing, or stereotypical allegations about Jews as such or the power of Jews as a collective – especially but not exclusively, the myth about a world Jewish conspiracy or of Jews controlling the media, economy, government, or other societal institutions.
- Accusing Jews as a people of being responsible for real or imagined wrongdoing committed by a single Jewish person or group, the State of Israel, or even for acts committed by non-Jews.
- Accusing the Jews as a people, or Israel as a state, of inventing or exaggerating the Holocaust.
- Accusing Jewish citizens of being more loyal to Israel, or to the alleged priorities of Jews worldwide, than to the interest of their own nations.<sup>10</sup>

The definition describes examples of anti-Semitism regarding the State of Israel as:

- Using the symbols and images associated with classic anti-Semitism to characterize Israel or Israelis.
- Drawing comparisons of contemporary Israeli policy to that of the Nazis.
- Blaming Israel for all inter-religious or political tensions.
- Applying double standards by requiring of it a behavior not expected or demanded of any other democratic nation.
- Multilateral organizations focusing on Israel only for peace or human rights investigations.
- Denying the Jewish people their right to self-determination, and denying Israel the right to exist.<sup>11</sup>

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<sup>5</sup> Sergio Carmona, *Community leaders concerned over recent wave of anti-Semitic incidents in South Florida*, Sun Sentinel (Dec. 14, 2018), <https://www.sun-sentinel.com/florida-jewish-journal/news/miami-dade/fl-jj-miami-anti-semitism-concerns-20181219-story.html> (last visited May 7, 2019).

<sup>6</sup> Carmona, *supra*.

<sup>7</sup> TIMES OF ISRAEL, *EU Drops its Working Definition of Anti-Semitism*, <https://www.timesofisrael.com/eu-drops-its-working-definition-of-anti-semitism/> (last visited May 7, 2019).

<sup>8</sup> The Special Envoy to Monitor and Combat Anti-Semitism exists to advance U.S. foreign policy on anti-Semitism which is discrimination against or hatred toward Jews. The purpose of the Special Envoy is to develop and implement policies and projects to support efforts to combat anti-Semitism. The Special Envoy was established by the Global Anti-Semitism Review Act of 2004. The Bureau of Democracy, Human Rights and Labor (DRL) produces the State Department's annual reports on human rights practices and international religious freedom, and the Special Envoy provides input on anti-Semitism for these reports. U.S. Department of State, *Monitoring and Combatting Anti-Semitism*, <https://web.archive.org/web/20171128034123/https://www.state.gov/s/rga/seas/index.htm> (last visited May 7, 2019).

<sup>9</sup> U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, *Fact Sheets*, <https://2009-2017.state.gov/j/drl/rls/fs/2010/122352.htm> (last visited May 7, 2019).

<sup>10</sup> U.S. Department of State, Bureaus, Office of Religious and Global Affairs, Resources, *Defining Anti-Semitism*, Jan. 20, 2017, <https://web.archive.org/web/20171128034125/http://www.state.gov/s/rga/resources/267538.htm> (last visited May 7, 2019).

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

The guidance regarding the definition indicates that criticism of Israel similar to that leveled against any other country may not be considered as anti-Semitic.<sup>12</sup> According to the International Holocaust Remembrance Alliance, at least 17 countries have adopted this definition of anti-Semitism.<sup>13</sup>

### *Constitutional Law Regarding Free Speech*

The First Amendment to the U.S. Constitution guarantees freedom of expression, namely the right of an individual to speak freely.<sup>14</sup> The First Amendment to the U.S. Constitution states:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Similarly, Article I, Section 4 of the Florida Constitution states:

Every person may speak, write and publish sentiments on all subjects but shall be responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press. . . .

Also, Article I, Section 2 of the Florida Constitution states:

All natural persons, female and male alike, are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property. No person shall be deprived of any right because of race, religion, national origin, or physical disability.

Both the U.S. Constitution and the Florida Constitution contain free speech clauses, protecting an individual's freedom of speech and expression.<sup>15</sup> Florida courts have generally treated federal and state speech rights the same and have held that in any state issue the federal constitution represents the "floor" for basic freedoms, and the state constitution represents the "ceiling."<sup>16</sup>

The U.S. Supreme Court has emphasized that the First Amendment right to free speech includes a right to make hate speech, holding recently as a "bedrock First Amendment principle: Speech may not be banned on the ground that it expresses ideas that offend."<sup>17</sup> The Establishment Clause of the First Amendment prohibits the government from making any law respecting an establishment of religion.<sup>18</sup> The clause prohibits any government action that unduly favors one religion over another.

The Fourteenth Amendment of the U.S. Constitution provides no state shall deny to any person within its jurisdiction the equal protection of the laws.<sup>19</sup> The Fourteenth Amendment prevents unreasonable discrimination based on the use of classification, thereby preventing laws which draw distinctions between individual classes based solely on differences that do not relate to a legitimate governmental objective.

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

<sup>13</sup> International Holocaust Remembrance Alliance, *Working Definition of Anti-Semitism*, (Jul. 19, 2018), <https://www.holocaustremembrance.com/index.php/news-archive/working-definition-antisemitism> (last visited May 7, 2019).

<sup>14</sup> U.S. Const., amend. 1.

<sup>15</sup> U.S. Const., amend. 1; Fla. Const. art. I, s. 4; Fla. Const. art. I, s. 2.

<sup>16</sup> *Warner v. City of Boca Raton*, 887 So. 2d 1023, 1030 (Fla. 2004) (citing *Traylor v. State*, 596 So. 2d 957, 962 (Fla. 1992)).

<sup>17</sup> *Matal v. Tam*, 137 S. Ct. 1744, 1751 (2017).

<sup>18</sup> U.S. Const. amend. I. See also Article I, Fla. Const.

<sup>19</sup> U.S. Const. amend. XIV. See also Article I, Fla. Const.

## U.S. Department of Education, Office of Civil Rights

The U.S. Department of Education (U.S. DOE), Office of Civil Rights (OCR) uses a complaint-resolution process to enforce a civil right claim under Title VI of the Civil Rights Act of 1964.<sup>20</sup> The OCR ensures equal access to education and enforces civil rights laws.<sup>21</sup> OCR has jurisdiction to enforce civil rights laws which prohibit discrimination on the basis of race, ethnicity, or national origin in programs and activities receiving financial assistance from the U.S. DOE.<sup>22</sup> While, OCR does not have jurisdiction to enforce constitutional rights regarding religious discrimination or political speech,<sup>23</sup> it has interpreted Title VI as protecting students of any religion from discrimination, including harassment, based on a student's actual or perceived shared ancestry or ethnic characteristics, or citizenship or residency in a country with a dominant religion or distinct religious identity.<sup>24</sup>

A complaint of discrimination may be filed by any person or organization which believes that an educational institution that receives federal funds has discriminated against someone on the basis of race, color, national origin, sex, disability, or age. The person or organization filing the complaint need not be the alleged victim.<sup>25</sup>

OCR's jurisdiction extends to all state education agencies, elementary and secondary school systems, colleges and universities, vocational schools, proprietary schools, state vocational rehabilitation agencies, libraries, and museums that receive federal funds. The OCR investigates complaints regarding: academic programs, grading, classroom, assignment, admissions, recruitment, financial aid, student treatment services, guidance counseling, discipline, vocational education, recreation, physical education, athletics, housing, and employment.<sup>26</sup>

For OCR to take action, an alleged discrimination incident must include more than mere expression of views, words, symbols, or thoughts that a student finds personally offensive.<sup>27</sup> The offensiveness of a particular expression, standing alone, is not a legally sufficient basis to establish a hostile environment. In order to establish a hostile environment, conduct must be sufficiently severe, persistent, or pervasive as to limit or deny a student's ability to participate in or benefit from an educational program.<sup>28</sup>

Kenneth S. Stern, former director on anti-Semitism for the American Jewish Committee and the lead author of the European Monitoring Centre on Racism and Xenophobia's anti-Semitism definition, opposes the definition's use in an educational setting. Stern stated the definition of anti-Semitism was intended for data collectors writing reports about anti-Semitism in Europe and for the U.S. State Department to use when discussing anti-Semitism with other countries, and that the definition was never intended as a means to curtail speech on campuses.<sup>29</sup> Stern expressed concern that even if

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<sup>20</sup> See The Civil Rights Act of 1964, 42 U.S.C.S s. 2000d-2.

<sup>21</sup> U.S. Department of Education, Office of Civil Rights, *About OCR*, <https://www2.ed.gov/about/offices/list/ocr/aboutocr.html> (last visited May 7, 2019).

<sup>22</sup> OCR letter to Morton A. Klein, President, Zionists of America, Case No. 02-11-2157, Rutgers University, Jul. 31, 2014, <https://assets.documentcloud.org/documents/1300803/ocr-decision-on-title-vi-complaint-7-31-14.pdf> (last visited May 7, 2019).

<sup>23</sup> U.S. Department of Education, Office of Civil Rights, *RE: Rutgers University – OCR Case No. 02-11-2157*, Letter to Susan B. Tuchman, Footnote 1,

<https://static1.squarespace.com/static/548748b1e4b083fc03ebf70e/t/5bae6de471c10b08c080420a/1538158057692/US+Department+f+Education+and+Working+Definition%5B1%5D+%281%29.pdf> (last visited May 7, 2019).

<sup>24</sup> U.S. Department of Education, Office of Civil Rights, *About ED, Offices, Religious Discrimination*, <https://www2.ed.gov/about/offices/list/ocr/religion.html> (last visited May 7, 2019).

<sup>25</sup> U.S. Department of Education, Office of Civil Rights, *How to File a Discrimination Complaint with the Office for Civil Rights*, <https://www2.ed.gov/about/offices/list/ocr/docs/howto.pdf> (last visited May 7, 2019).

<sup>26</sup> *Id.*

<sup>27</sup> OCR letter, *supra* note 22.

<sup>28</sup> *Id.*

<sup>29</sup> Kenneth S. Stern, *Will Campus Criticism of Israel Violate Federal Law?*, *On Campus*, The New York Times, Dec. 12, 2016, <https://www.nytimes.com/2016/12/12/opinion/will-campus-criticism-of-israel-violate-federal-law.html> (last visited May 7, 2019).

lawsuits alleging Title VI violations fail, students and faculty members will be scared into silence, and administrators will err on the side of suppressing or censoring speech.<sup>30</sup>

For purposes of civil rights cases at educational institutions, the OCR adopted a similar definition of anti-Semitism in 2018. As of March 1, 2019, the OCR has no pending cases in Florida regarding Title VI – National Origin Discrimination Involving Religion.<sup>31</sup> However, there are 24 pending cases regarding Title VI – Racial Harassment.<sup>32</sup>

### *Access to Courts*

A complainant in a Title VI civil rights case may file a private lawsuit against the educational institution in federal court, regardless of whether the OCR finds a civil rights violation against the institution.<sup>33</sup> The court applies strict scrutiny to review such a case, because the case is based upon racial discrimination.<sup>34</sup> Strict scrutiny means the court presumes the law or action is unconstitutional, and an institution must prove that the challenged policy or action is constitutional. To withstand strict scrutiny review, an institution must show that the law, rule, policy, or action is necessary to achieve a compelling state interest, and then that the activity in question is narrowly tailored to achieve the intended result. If an institution is unable to prove each factor, a complainant prevails.<sup>35</sup>

### *Title VI Complaint against Rutgers University*

In 2011, the Zionist Organization of America (ZOA) filed a Title VI complaint against Rutgers University (a public university in New Jersey) alleging that Jewish students were subjected to a hostile environment in violation of Title VI of the Civil Rights Act, because the University failed to protect Jewish students from harassment and discrimination.<sup>36</sup> The ZOA's complaint alleged that Jewish students were harassed and treated differently than other students and the University failed to respond appropriately.<sup>37</sup> The OCR investigated and determined that, regarding one of the allegations, there was insufficient evidence showing the alleged victim was subjected to unlawful harassment based on national origin. The OCR found that the alleged perpetrator's speech was protected under the First Amendment of the U.S. Constitution, and as such, there was insufficient evidence that the University failed to respond appropriately.<sup>38</sup> The OCR closed the case in 2014.<sup>39</sup>

The OCR reopened the Rutgers University investigation in 2018 and is currently reevaluating the evidence using the definition of anti-Semitism similar to the U.S. State Department's definition of anti-Semitism.<sup>40</sup> The investigation seeks to determine whether a hostile environment based on national origin or race existed at the University for students of actual or perceived Jewish ancestry or ethnic characteristics.<sup>41</sup>

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

<sup>31</sup> OCR, Pending Cases Currently Under Investigation, *Race and National Origin Discrimination*, <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/open-investigations/tvi.html?perPage=1000&queries%5Bstate%5D=FL&queries%5Btod%5D=Title+VI+-+National+Origin+Discrimination+Involving+Religion> (last visited May 7, 2019).

<sup>32</sup> OCR, Pending Cases Currently Under Investigation, *Racial Harassment*, <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/open-investigations/tvi.html?perPage=1000&queries%5Bstate%5D=FL&queries%5Btod%5D=Title+VI+-+Racial+Harassment> (last visited May 7, 2019).

<sup>33</sup> OCR letter, *supra* note 22.

<sup>34</sup> *United States v. Carolene Products Co.*, 304 U.S. 144 (1938); *Loving v. Virginia*, 388 U.S. 1 (1967); *McLaughlin v. Florida*, 379 U.S. 184 (1964); *Brown v. Board of Educ.*, 347 U.S. 483 (1954).

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

<sup>36</sup> OCR letter, *supra* note 22.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

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

<sup>40</sup> See Letter to Susan B. Tuchman, *supra* note 23.

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

*Florida Department of Education, Office of Equal Educational Opportunity*

The Florida Department of Education, Office of Equal Educational Opportunity (OEEO) provides services and information to Florida schools, school districts, parents, students, and community groups on topics impacting educational equity.<sup>42</sup> The OEEO, for institutions receiving federal funds, monitors the equal access and equal opportunity in institutional programs, services, and activities to all students and staff on the basis of race, sex, national origin, disability, age, and marital status.<sup>43</sup> The OEEO also ensures that the educational environment is free of bias, stereotyping, discrimination, and harassment through on-site compliance reviews, review of annual equity updates from school districts, and providing appropriate technical assistance.<sup>44</sup>

*Florida Educational Equity Act*

The Florida Educational Equity Act<sup>45</sup> (FEEA) governs students' and employees' civil rights in Florida's public educational systems. The FEEA mirrors civil rights protections under Title VI of the federal Civil Rights Act.<sup>46</sup>

The FEEA requires equal access for all people to the Florida K-20 public education system and prohibits discrimination against any student or employee in the system. The FEEA prohibits discrimination based on race, ethnicity, gender, national origin, disability, or marital status,<sup>47</sup> and requires all education opportunities offered by public educational institutions be made available without discrimination on those basis.<sup>48</sup>

Freedom of religion is protected by both the state and federal constitutions. According to the Florida Department of Education, religion is not included in the FEEA because it is a constitutional right.<sup>49</sup>

**Effect of the Bill**

CS/CS/HB 741 amends the FEEA by adding religion as a protected class with regard to discrimination against students and employees in the Florida K-20 public education system.

The bill requires all public K-20 educational institutions to treat discrimination, motivated by anti-Semitic intent, by students or employees or resulting from institutional policies in an identical manner to discrimination motivated by race.

The bill also amends the FEEA to add a definition of anti-Semitism similar to the definition adopted by the U.S. Department of State's Special Envoy to Monitor and Combat Anti-Semitism, providing that "anti-Semitism" is a certain perception of Jewish people, which may be expressed as hatred toward Jewish people, rhetorical and physical manifestations of anti-Semitism directed toward a person, his or her property, or toward Jewish community institutions or religious facilities; the definition includes examples of what classifies as anti-Semitism including those related to Jewish people generally and the State of Israel.

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<sup>42</sup> Florida Department of Education, Schools, *Equal Educational Opportunity*, <http://www.fldoe.org/schools/equal-educational-opportunity/index.stml> (last visited May 7, 2019).

<sup>43</sup> *Id.*

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

<sup>45</sup> S. 1000.05, F.S.

<sup>46</sup> E-mail from Legislative Affairs Director, Florida Department of Education, *RE: Office of Equal Educational Opportunity*, Feb. 19, 2019.

<sup>47</sup> S. 1000.05, F.S.

<sup>48</sup> S. 1002.20, F.S.

<sup>49</sup> See E-mail from Legislative Affairs Director, *supra* note 46.

The bill includes legislative intent stating that the newly-enacted law governing anti-Semitism may not diminish or infringe upon any right protected under the First Amendment to the U.S. Constitution or the Florida Constitution. The bill prohibits construction of the law in conflict with federal or state discrimination laws.

The bill amends s. 1002.20, F.S., to add religion as a protected class in all K-12 education programs, activities, and opportunities, in accordance with the provisions of the FEEA.

## **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:

None.

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

None.

### **D. FISCAL COMMENTS:**

None.