

**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.)

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Prepared By: The Professional Staff of the Committee on Education

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BILL: SB 148

INTRODUCER: Senator Diaz

SUBJECT: Individual Freedom

DATE: January 14, 2022

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brick, Palazesi</u>	<u>Bouck</u>	<u>ED</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>RC</u>	_____

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**I. Summary:**

SB 148 includes provisions designed to protect individual freedoms and prevent discrimination in the workplace and in public schools.

The bill specifies that subjecting any individual, as a condition of employment, membership, certification, licensing, credentialing, or passing an examination, to training, instruction, or any other required activity that espouses, promotes, advances, inculcates, or compels such individual to believe certain specified divisive concepts constitutes unlawful discrimination.

The bill defines individual freedoms based on the fundamental truth that all individuals are equal before the law and have inalienable rights. Accordingly, the bill requires that instruction, instructional materials, and professional development in public schools be consistent with principles of individual freedom.

The bill does not have an impact on state revenues or expenditures.

The bill takes effect July 1, 2022.

**II. Present Situation:**

**Unlawful Discrimination in Florida**

In 2019, Governor DeSantis reaffirmed the policy of non-discrimination in government employment and declared it the policy of his administration to prohibit discrimination in employment based on age, sex, race, color, religion, national origin, marital status, or disability.<sup>1</sup>

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<sup>1</sup> Office of the Governor, *Executive Order Number 19-10*, Jan. 8, 2019 (Reaffirming Commitment to Diversity in Government).

### ***Unlawful Employment Practices***

Employers, employment agencies, labor organizations, and joint labor-management committees are prohibited from engaging in employment practices that discriminate against individuals based on race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status.<sup>2</sup>

### ***Florida Civil Rights Act (Part I, Chapter 760, F.S.)***

The Florida Civil Rights Act (FCRA) of 1992 protects persons from discrimination based on race, color, religion, sex, pregnancy, national origin, age, handicap, and marital status.<sup>3</sup> The FCRA establishes the Florida Commission on Human Relations (the Commission) within the Department of Management Services.<sup>4</sup>

The Commission is empowered to receive, initiate, investigate, conciliate, hold hearings, and act upon complaints alleging discriminatory practices.<sup>5</sup> Additionally, the Attorney General may initiate a civil action for damages, injunctive relief, civil penalties of up to \$10,000 per violation, and other appropriate relief.<sup>6</sup>

### **Required Instruction in Public Schools**

Each district school board is responsible for providing all courses required for middle grades promotion, high school graduation, and appropriate instruction designed to ensure that students meet State Board of Education (SBE) adopted standards in reading and other language arts, mathematics, science, social studies, foreign languages, health and physical education, and the arts.<sup>7</sup>

Public school teachers are required to teach efficiently and faithfully, using the books and materials required that meet the highest standards for professionalism and historical accuracy, and employing approved methods of instruction, certain prescribed courses of study, including health education and character development.<sup>8</sup> The SBE is encouraged to adopt standards and pursue assessment of the requirements for prescribed courses of study and methods of instruction employed by public school teachers.<sup>9</sup>

SBE rule regarding required instruction and reporting requires that instruction on the required topics must be factual and objective, and may not suppress or distort significant historical events, such as the Holocaust, slavery, the Civil War and Reconstruction, the civil rights movement and

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<sup>2</sup> See s. 760.10, F.S. Limited exceptions apply in bona-fide scenarios where authorized by law or necessary for the performance of the particular employment. See s. 760.10(8), F.S.

<sup>3</sup> Section 760.01, F.S.

<sup>4</sup> Section 760.03-04, F.S.

<sup>5</sup> Section 760.06(5), F.S.

<sup>6</sup> Section 760.021(1), F.S.

<sup>7</sup> Section 1003.42(1), F.S.

<sup>8</sup> Section 1003.42(2), F.S. Required instruction includes, for example, the history and content of the Declaration of Independence, the arguments in support of adopting our republican form of government, flag education, the history of the Holocaust, the history of African Americans, and kindness to animals. *Id.* Instructional staff of charter schools are exempt from the required instruction section of law. Section 1002.33(16), F.S.

<sup>9</sup> Section 1003.42(2), F.S.

the contributions of women, African American and Hispanic people to our country.<sup>10</sup> Examples of theories that distort historical events and are inconsistent with SBE-approved standards include the denial or minimization of the Holocaust, and the teaching of Critical Race Theory, meaning the theory that racism is not merely the product of prejudice, but that racism is embedded in American society and its legal systems in order to uphold the supremacy of white persons.<sup>11</sup> Instruction may not utilize material from the 1619 Project<sup>12</sup> and may not define American history as something other than the creation of a new nation based largely on universal principles stated in the Declaration of Independence.<sup>13</sup>

### ***Health Instruction***

Teachers must provide instruction on comprehensive age-appropriate and developmentally appropriate K-12 health education that addresses concepts of community health, consumer health, environmental health, and family life, including:<sup>14</sup>

- Mental and emotional health.
- Injury prevention and safety.
- Internet safety.
- Nutrition.
- Personal health.
- Prevention and control of disease.
- Substance use and abuse.
- Prevention of child sexual abuse, exploitation, and human trafficking.
- For students in grades 7 through 12, a teen dating violence and abuse component.
- For students in grades 6 through 12, an awareness of the benefits of sexual abstinence as the expected standard and the consequences of teenage pregnancy.

### ***Character Development Program***

Each district school board is required to adopt or develop a character development program for students, which must be approved by the Department of Education (DOE).<sup>15</sup> The character development curriculum must stress the qualities of patriotism; responsibility; citizenship; kindness; respect for authority, life, liberty, and personal property; honesty; charity; self-control; racial, ethnic, and religious tolerance; and cooperation.<sup>16</sup>

In addition, the character development curriculum for grades 9 through 12 must, at a minimum, include instruction on developing leadership skills, interpersonal skills, organization skills, and

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<sup>10</sup> Rule 6A-1.094124(3)(b), F.A.C.

<sup>11</sup> Rule 6A-1.094124(3)(b), F.A.C.

<sup>12</sup> The 1619 Project argues that 1619 is the basis for discussing America's founding. In addition, the author asserted that the Revolutionary War was fought to protect the institution of slavery. Erford, A, *The 1619 Project and the Importance of Historical Significance and Argumentation in the History and Social Studies Classroom* (2021), *Teaching History: A Journal of Methods*, 46(2), 30+, available at [https://go.gale.com/ps/i.do?p=AONE&u=18551\\_mcpls&id=GALE|A688507445&v=2.1&it=r&sid=bookmark-AONE&asid=9b710f88](https://go.gale.com/ps/i.do?p=AONE&u=18551_mcpls&id=GALE|A688507445&v=2.1&it=r&sid=bookmark-AONE&asid=9b710f88).

<sup>13</sup> Rule 6A-1.094124(3)(b), F.A.C.

<sup>14</sup> Section 1003.42(2)(n), F.S.

<sup>15</sup> Section 1003.42(2)(s), F.S.

<sup>16</sup> Section 1003.42(2)(s)1., F.S.

research skills; creating a resume, including a digital resume; exploring career pathways; using state career planning resources; developing and practicing the skills necessary for employment interviews; conflict resolution, workplace ethics, and workplace law; managing stress and expectations; and developing skills that enable students to become more resilient and self-motivated.<sup>17</sup>

The character development curriculum for grades 11 and 12 must include instruction on voting using the uniform primary and general election ballot.<sup>18</sup>

A character development program that incorporates the values of the recipients of the Congressional Medal of Honor and that is offered as part of a social studies, English Language Arts, or other schoolwide character building and veteran awareness initiative satisfies the requirements of the character development curriculum.<sup>19</sup>

## **Public School Instructional Materials**

### ***Adoption of State Instructional Materials***

At the state level, the Commissioner of Education (commissioner) adopts instructional materials according to a five-year rotating schedule.<sup>20</sup> The SBE adopts the rules for the DOE to evaluate instructional materials submitted by publishers and manufacturers in each adoption.<sup>21</sup> The commissioner must determine annually the areas in which instructional materials will be submitted for adoption and the number of titles in each area.<sup>22</sup> The commissioner must appoint three state or national experts in the content areas submitted for adoption to review the instructional materials.<sup>23</sup>

### ***Adoption of School District Instructional Materials***

At the school district level, the district school board has the constitutional duty and responsibility to select and provide adequate instructional materials for all students.<sup>24</sup> The school board must provide adequate instructional materials for its students, ensure the materials are consistent with the district's educational goals, and ensure the materials meet the objectives and the curriculum frameworks adopted by the SBE.<sup>25</sup>

The district school board is authorized to implement an instructional materials program that includes the review, recommendation, adoption, and purchase of materials.<sup>26</sup> The district school board may utilize the state-adopted instructional materials list or instructional materials adopted through the district instructional materials program.<sup>27</sup> Additionally, the district school

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<sup>17</sup> Section 1003.42(2)(s)2., F.S.

<sup>18</sup> Section 1003.42(2)(s)3., F.S.

<sup>19</sup> Section 1003.42(2), F.S.

<sup>20</sup> Section 1006.36(1), F.S.

<sup>21</sup> Section 1006.34(1), F.S.; Rule 6A-7.0710, F.A.C.

<sup>22</sup> Section 1006.29(1)(a), F.S.

<sup>23</sup> Section 1006.29(1)(b), F.S.

<sup>24</sup> Section 1006.28(2)

<sup>25</sup> Section 1006.28(1) and 1001.03(1), F.S.

<sup>26</sup> Section 1006.283(1).

<sup>27</sup> Section 1006.28(2)(a)1., F.S.

superintendent must certify to the DOE on an annual basis that all instructional materials for core courses used by the district are aligned with applicable state standards.<sup>28</sup>

### ***Requirements for Review of Instructional Materials***

Reviewers of instructional materials may recommend for adoption only instructional materials aligned with state educational standards.<sup>29</sup> In addition, reviewers must consider:<sup>30</sup>

- The age of the students who normally could be expected to have access to the material.
- The educational purpose to be served by the material.
- The degree to which the material would be supplemented and explained by mature classroom instruction as part of a normal classroom instructional program.
- The consideration of the broad racial, ethnic, socioeconomic, and cultural diversity of the students.

Instructional materials recommended by each reviewer must be, to the satisfaction of each reviewer, accurate, objective, balanced, noninflammatory, current, free of pornography and other prohibited materials,<sup>31</sup> and suited to student needs and their ability to comprehend the material presented.<sup>32</sup> Reviewers must consider for recommendation materials developed for academically talented students, such as students enrolled in advanced placement courses.<sup>33</sup>

A reviewer may not recommend any instructional materials that contain any matter reflecting unfairly upon persons because of their race, color, creed, national origin, ancestry, gender, religion, disability, socioeconomic status, or occupation.<sup>34</sup> When recommending instructional materials, each reviewer must:<sup>35</sup>

- Include only instructional materials that accurately portray the ethnic, socioeconomic, cultural, religious, physical, and racial diversity of our society, including men and women in professional, career, and executive roles, and the role and contributions of the entrepreneur and labor in the total development of this state and the United States.
- Include only materials that accurately portray, whenever appropriate, humankind's place in ecological systems, including the necessity for the protection of our environment and conservation of our natural resources and the effects on the human system of the use of tobacco, alcohol, controlled substances, and other dangerous substances.
- Include materials that encourage thrift, fire prevention, and humane treatment of people and animals.
- Require, when appropriate to the comprehension of students, that materials for social science, history, or civics classes contain the Declaration of Independence and the Constitution of the United States.

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<sup>28</sup> Section 1006.283(1), F.S.

<sup>29</sup> Section 1006.31(2), F.S.

<sup>30</sup> Sections 1006.31(2) and 1006.34(2)(b), F.S.

<sup>31</sup> Section 847.012, F.S., lists materials that are prohibited from distribution to minors.

<sup>32</sup> Section 1006.31(2), F.S.

<sup>33</sup> Section 1006.31(2), F.S.

<sup>34</sup> Section 1006.31(2)(d), F.S.

<sup>35</sup> Section 1006.31(2), F.S.

## **School Community Professional Development Act**

Each district school board is required to develop a professional development system that supports and increases the success of educators through collaboratively developed school improvement plans.<sup>36</sup> The system must be developed in consultation with teachers, teacher-educators of Florida College System institutions and state universities, business and community representatives, and local education foundations, consortia, and professional organizations, and be approved by the DOE.<sup>37</sup>

## **Requirements Related to Specified Divisive Ideas or Concepts**

### ***White House Executive Order***

In 2020, President Trump issued an Executive Order prohibiting divisive concepts, race or sex stereotyping, and race or sex scapegoating in the Executive Branch. The order defined divisive concepts as concepts that:<sup>38</sup>

- One race or sex is inherently superior to another race or sex.
- The United States is fundamentally racist or sexist.
- An individual, by virtue of his or her race or sex, is inherently racist, sexist, or oppressive, whether consciously or unconsciously.
- An individual should be discriminated against or receive adverse treatment solely or partly because of his or her race or sex.
- Members of one race or sex cannot and should not attempt to treat others without respect to race or sex.
- An individual's moral character is necessarily determined by his or her race or sex.
- An individual, by virtue of his or her race or sex, bears responsibility for actions committed in the past by other members of the same race or sex.
- Any individual should feel discomfort, guilt, anguish, or any other form of psychological distress on account of his or her race or sex.
- Meritocracy or traits such as a hard work ethic are racist or sexist, or were created by a particular race to oppress another race.
- Promote race or sex stereotyping, which means ascribing character traits, values, moral and ethical codes, privileges, status, or beliefs to a race or sex, or to an individual because of his or her race or sex.
- Promote race or sex scapegoating, which means assigning fault, blame, or bias to a race or sex, or to members of a race or sex because of their race or sex. It similarly encompasses any claim that, consciously or unconsciously, and by virtue of his or her race or sex, members of any race are inherently racist or are inherently inclined to oppress others, or that members of a sex are inherently sexist or inclined to oppress others.

President Biden revoked the Executive Order in 2021, declaring that advancing equity, civil rights, racial justice, and equal opportunity is the responsibility of the whole of our Government.<sup>39</sup>

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<sup>36</sup> Section 1012.98(3)(a), F.S.

<sup>37</sup> Section 1012.98(4)(b), F.S.

<sup>38</sup> Exec. Order No. 13,950, 85 Fed. Reg. 60,683 (Sept. 22, 2020).

<sup>39</sup> Exec. Order No. 13,985, 86 Fed. Reg. 7,009 (Jan. 25, 2021).

### *State Actions Regarding Specified Divisive Ideas or Concepts*

In 2021, 10 state governors signed into law or allowed to become law legislation related to the teaching or training about specified divisive concepts in K-12 education, postsecondary education, state agencies, and employers. Specifically, nine states enacted legislation regarding the teaching of specified divisive ideas or concepts, or their inclusion in curricula, in K-12 public schools.<sup>40</sup> Four states enacted legislation regarding teaching at postsecondary institutions.<sup>41</sup> Four states approved laws relating to training by employers or state agencies.<sup>42</sup>

In addition, Montana and Utah have imposed similar restrictions on public school teaching or employer training relating to specified divisive ideas and concepts through attorney general opinion or state board of education action.<sup>43</sup>

### **III. Effect of Proposed Changes:**

SB 148 includes provisions designed to protect individual freedoms and prevent discrimination in the workplace and in public schools. In this regard, the bill defines individual freedoms based on the truth that all individuals are equal before the law and have inalienable rights.

#### **Unlawful Employment Practices.**

The bill adds to s. 760.10, F.S., to clarify that certain behavior constitutes unlawful discrimination based on race, color, sex, or national origin. The bill specifies that subjecting any individual, as a condition of employment, membership, certification, licensing, credentialing, or passing an examination, to training, instruction, or any other required activity that espouses, promotes, advances, inculcates, or compels such individual to believe any of the following concepts constitutes discrimination based on race, color, sex, or national origin:

- Members of one race, color, sex, or national origin are morally superior to members of another race, color, sex, or national origin.
- An individual, by virtue of his or her race, color, sex, or national origin, is inherently racist, sexist, or oppressive, whether consciously or unconsciously.
- An individual's moral character or status as either privileged or oppressed is necessarily determined by his or her race, color, sex, or national origin.
- Members of one race, color, sex, or national origin cannot and should not attempt to treat others without respect to race, color, sex, or national origin.

<sup>40</sup> Arizona (HB 2898), Idaho (HB 377), Iowa (HF 802), New Hampshire (HB 2), North Dakota (HB 1508), Oklahoma (HB 1775), South Carolina (H. 4325), Tennessee (HB 062), Texas (SB 3). However, in Arizona, HB 2898 was invalidated by the Arizona Supreme Court for violating the "title requirement" and "single subject rule" of the Arizona Constitution. Arizona Sch. Boards Ass'n, Inc. v. State, CV-21-0234-T/AP, 2022 WL 57291 (Ariz. Jan. 6, 2022).

<sup>41</sup> Idaho (HB 377), Iowa (HF 802), Oklahoma (HB 1775), South Carolina (H. 4325).

<sup>42</sup> Arkansas (SB 627), Arizona (HB 2906), Iowa (HB 802), New Hampshire (HB 2).

<sup>43</sup> The Montana Attorney General held that use of "Critical Race Theory" (CRT) and "antiracism" programming in education and employment is discriminatory and violates federal and state law. Austin Knudsen, Montana Attorney General, Vol. 58, Opinion No. 1 (May 27, 2021) available at <https://media.dojmt.gov/wp-content/uploads/AGO-V58-OI-5.27.21-FINAL.pdf>. Rule R277-328-1. The Utah state board rule provides local education agencies with the standards for educators and local education agencies regarding professional learning, and guidelines and requirements for curriculum, and classroom instruction on inclusion and educational equity. Utah State Board of Education (Aug. 9, 2021), available at <https://www.schools.utah.gov/file/722ef396-b45a-4dbb-a974-00a9d9dbcac0>. The Alabama and Georgia State Boards of Education have passed resolutions prohibiting certain instruction, which include provisions regarding future rulemaking.

- An individual, by virtue of his or her race, color, sex, or national origin, bears responsibility for, or should be discriminated against or receive adverse treatment because of, actions committed in the past by other members of the same race, color, sex, or national origin.
- An individual, by virtue of his or her race, color, sex, or national origin, should be discriminated against or receive adverse treatment to achieve diversity, equity, or inclusion.
- An individual should feel discomfort, guilt, anguish, or any other form of psychological distress on account of his or her race, color, sex, or national origin.
- Such virtues as merit, excellence, hard work, fairness, neutrality, objectivity, and racial colorblindness are racist or sexist, or were created by members of a particular race, color, sex, or national origin to oppress members of another race, color, sex, or national origin.

The bill clarifies that discussion of the above-listed concepts is allowed as part of a course of training or instruction, provided such training or instruction is given in an objective manner without endorsement of the concepts.

The bill provides that if any provision of the bill that relates to the unlawful employment practices in s. 760.10, F.S., or the provision's application to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the section which can be given effect without the invalid provision or application, and to this end the provisions are severable.

### **Required Instruction in Public Schools**

The bill modifies the instruction required in s. 1003.42, F.S. The bill renames the character development curriculum as civic and character education. The bill also shifts the character development requirements for grades 9 through 12 and the mental and emotional health component of health education into newly required education on life skills.

The bill specifies that the instruction in life skills must build confidence, support mental and emotional health, and enable students to overcome challenges, including:

- Self-awareness and self-management.
- Responsible decisionmaking.
- Resiliency.
- Relationship skills and conflict resolution.
- Understanding and respecting other viewpoints and backgrounds.
- For grades 9 through 12, developing leadership skills, interpersonal skills, organization skills, and research skills; creating a resume, including a digital resume; exploring career pathways; using state career planning resources; developing and practicing the skills necessary for employment interviews; workplace ethics and workplace law; managing stress and expectations; and self-motivation.

The bill specifies that health education and life skills instruction and materials may not contradict principles of individual freedom specified in the bill.



## **Individual Freedom**

The bill provides a legislative acknowledgment of the fundamental truth that all individuals are equal before the law and have inalienable rights. Accordingly, the bill provides that required instruction and supporting materials must be consistent with the following principles of individual freedom:

- No individual is inherently racist, sexist, or oppressive, whether consciously or unconsciously, solely by virtue of his or her race or sex.
- No race is inherently superior to another race.
- No individual should be discriminated against or receive adverse treatment solely or partly on the basis of race, color, national origin, religion, disability, or sex.
- Meritocracy or traits such as a hard work ethic are not racist but fundamental to the right to pursue happiness and be rewarded for industry.
- An individual, by virtue of his or her race or sex, does not bear responsibility for actions committed in the past by other members of the same race or sex.
- An individual should not be made to feel discomfort, guilt, anguish, or any other form of psychological distress on account of his or her race.

The bill provides that instructional personnel may facilitate discussions and use curricula to address, in an age-appropriate manner, the topics of:

- Sexism;
- Slavery;
- Racial oppression;
- Racial segregation;
- Racial discrimination; and
- The enactment and enforcement of laws resulting in sexism, racial oppression, racial segregation, and racial discrimination.

The bill prohibits classroom instruction and curriculum from being used to indoctrinate or persuade students to a particular point of view inconsistent with the principles of individual freedom or state academic standards.

The bill modifies ss. 1006.31 and 1012.98, F.S., to further safeguard principles of individual freedom. The bill specifies that a person reviewing instructional materials for use in schools may not recommend any material that contradicts with principles of individual freedom. The bill also provides that each school district's professional development system must be reviewed and approved by the DOE for compliance with the principles of individual freedom.

The bill takes effect July 1, 2022.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 760.10, 1002.20, 1003.42, 1006.31, 1006.40, and 1012.98.,.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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