

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1223 Public PreK-12 Educational Institution and Instruction Requirements

SPONSOR(S): Choice & Innovation Subcommittee, Anderson

TIED BILLS: None. **IDEN./SIM. BILLS:** SB 1320

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Choice & Innovation Subcommittee	14 Y, 4 N, As CS	Wolff	Sleap
2) Education & Employment Committee			

SUMMARY ANALYSIS

In 2021, the Legislature adopted the Parental Bill of Rights specifically enumerating the rights of parents to direct the upbringing, education, and care of their minor children. In 2022, the Legislature built on this landmark legislation by providing additional authority for parents to be involved in the education and health services provided by a school district to their students.

The bill expands existing parental authority over a child's education by extending the existing prohibition on instruction relating to sexual orientation and gender identity in kindergarten through grade 3 to include prekindergarten through grade 8 and expressly stating that charter schools must comply with this requirement. The prohibition includes private prekindergarten providers that participate in the voluntary prekindergarten program. Consistent with existing law, the bill requires that instruction on sexual orientation and gender identity in grades 9 through 12 be age-appropriate or developmentally appropriate for students. Additionally, the bill requires additional transparency regarding school district policies and procedures.

The bill also defines, for the purposes of the Early Learning-20 Education Code, "sex" as the classification of a person as either female or male based on the organization of the body of such person for a specific reproductive role, as indicated by the person's sex chromosomes, naturally occurring sex hormones, and internal and external genitalia present at birth and reenacts a number of provisions in the education code to incorporate the definition of "sex" throughout. The bill implements new requirements relating to the use of personal titles and pronouns in Florida's public schools, with an exception for individuals with specified conditions. Specifically, the bill prohibits:

- an employee, contractor, or student, as a condition of employment, enrollment, or participation, at a public K-12 educational institution, be required to refer to another individual by a personal title or pronouns that do not align with the person's sex;
- a K-12 public institution employee or contractor from providing a student with the individuals preferred personal title or pronouns if they do not correspond to the employee or contractors sex;
- any requirement that a student provide his or her preferred personal title or pronouns; and
- any penalty or adverse action against a student for not providing his or her preferred title or pronouns.

The State Board of Education is granted rulemaking authority to adopt rules to implement the requirements relating to personal titles or pronouns.

The bill does not appear to have a fiscal impact.

The bill has an effective date of July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Constitutional Rights of Parents

It is well settled that the interest of parents in the care, custody, and control of their children is perhaps the oldest of the recognized fundamental liberty interests protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution.¹ This fundamental liberty interest is rooted in the fundamental right of privacy in making important decisions relating to marriage, family relationships, and child rearing and education.² The United States Supreme Court has explained the fundamental nature of this right is rooted in history and tradition:³

The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.

The Florida Supreme Court has likewise recognized that parents have a fundamental liberty interest in determining the care and upbringing of their children.⁴ These rights may not be intruded upon absent a compelling state interest.⁵ According to the Florida Supreme Court, when analyzing a statute that infringes on the fundamental right of privacy, the applicable standard of review requires that the statute survive the highest level of scrutiny:⁶

The right of privacy is a fundamental right which we believe demands the compelling state interest standard. This test shifts the burden of proof to the state to justify an intrusion on privacy. The burden can be met by demonstrating that the challenged regulation serves a compelling state interest and accomplishes its goal through the use of the least intrusive means.

The United States Supreme Court has held that students in schools are ‘persons’ under the constitution and that they are possessed of fundamental rights which the state must respect.⁷ Florida’s constitution provides broad protections to its citizens right to privacy⁸ and the Florida Supreme Court has held that

¹ *Santosky v. Kramer*, 455 U.S. 745, 748 and 753 (1982) (holding the fundamental liberty interest of natural parents in the care, custody, and management of their child is protected by the Fourteenth Amendment, and termination of any parental rights requires due process proceedings); *Troxel v. Granville*, 530 U.S. 57, 66 (2000) (holding there is a fundamental right under the Fourteenth Amendment for parents to oversee the care, custody, and control of their children).

² *Carey v. Population Svcs. Int'l*, 431 US 678, 684-685 (1977) (recognizing the right of privacy in personal decisions relating to marriage, family relationships, child rearing, and education); *See Wisconsin v. Yoder*, 406, U.S. 205, 232-33 (1972) (holding a state law requiring that children attend school past eight grade violates the parents’ constitutional right to direct the religious upbringing of their children); *See Parham v. J.R.*, 442 U.S. 584, 602 (1979) (recognizing the presumption that parents act in their children’s best interest); *Meyer v. Nebraska*, 262 U.S. 390, 400-01 (1923) (affirming that the Constitution protects the preferences of the parent in education over those of the state); *Pierce v. Society of Sisters*, 268 U.S. 510, 534-35 (1925) (recognizing the right of parents to direct the upbringing of and education of their children).

³ *Wisconsin v. Yoder*, 406, U.S. 205, 232 (1972).

⁴ *Beagle v. Beagle*, 678 So. 2d 1271, 1272 (Fla. 1996) (holding a state law violated a parent’s constitutional right to privacy by imposing grandparent visitation rights over objection of the parent without evidence of harm to the child or other compelling state interest).

⁵ *Id. See, e.g., Shevin v. Byron, Harless, Schaffer, Reid & Assocs., Inc.*, 379 So. 2d 633, 637 (Fla. 1980) and *Belair v. Drew*, 776 So. 2d 1105, 1107 (Fla. 5th DCA 2001).

⁶ *Winfield v. Division of Pari-Mutuel Wagering, Dept. of Bus. Regulation*, 477 So. 2d 544, 547 (Fla. 1985).

⁷ *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 511 (1969).

⁸ Art. I, s. 23, Fla. Const.

such protections extend to minors.⁹ However, the rights to privacy granted to minors do not invalidate a state's effort to protect minors from the conduct of others¹⁰ nor do they necessarily override the fundamental rights of parents related to child rearing.¹¹

Parents' Bill of Rights

Overview

In 2021,¹² the legislature created the Parents' Bill of Rights (PBOR) which enumerates parental rights with respect to a minor child for education, health care, and criminal justice procedures.¹³ The PBOR expressly prohibits the state, its political subdivisions, any other governmental entities and any other institutions from infringing upon the fundamental right of a parent to direct the upbringing, education, health care, and mental health of his or her minor child without demonstrating a compelling state interest for such actions.¹⁴

Additionally, the Legislature found that important information relating to a minor child should not be withheld, either inadvertently or purposefully, from his or her parent, including information relating to the minor child's health, well-being, and education, while the minor child is in the custody of the school district. Therefore, the PBOR provides for a consistent mechanism for parents to be notified of information relating to the health and well-being of their minor children.¹⁵

Parents' Rights Related to the Education of their Child

The PBOR enumerates several rights of a parent, such as:¹⁶

- The right to direct the education and care of his or her minor child.
- The right to direct the upbringing and the moral or religious training of the minor child.
- The right to access and review all school records relating to the minor child.
- The right to make health care decisions for his or her minor child, unless otherwise prohibited by law.
- The right to access and review all medical records of the minor child, unless prohibited by law or if the parent is the subject of an investigation of a crime committed against the minor child and a law enforcement agency or official requests that the information not be released.

The PBOR is not exhaustive but, unless required by law, the rights of a parent of a minor child in Florida may not be limited or denied.¹⁷ To this end, any employee of the state, or any of its political subdivisions, or any governmental entity may be subject to disciplinary action if they encourage or coerce a minor child to withhold information from his or her parent.¹⁸

However, the PBOR specifies that it does not:¹⁹

- Authorize a parent of a minor child in this state to engage in conduct that is unlawful or to abuse or neglect his or her minor child in violation of general law.
- Condone, authorize, approve, or apply to a parental action or decision that would end life.

⁹ *B.B. v. State*, 659 So. 2d 256, 258 (Fla. 1995).

¹⁰ *Id.* at 259.

¹¹ *Frazier ex rel. Frazier v. Winn*, 535 F.3d 1279, 1285 (11th Cir. 2008) (holding that a law requiring a parent's approval for a student to refuse to stand during the pledge of allegiance survived a facial challenge as the rights of a parent to raise their children would control in a substantial number of cases). The court did acknowledge that in individual cases, such as those involving mature high school students, the balance of rights between parents, the school, and the student could favor the student. *Id.*

¹² Chapter 2021-199, L.O.F.

¹³ Chapter 1014, F.S.

¹⁴ Section 1014.03, F.S.

¹⁵ See Section 1014.02(1), F.S.

¹⁶ Section 1014.04(1), F.S.

¹⁷ Section 1014.04(4), F.S.

¹⁸ Section 1014.04(3), F.S.

¹⁹ Section 1014.04(2), F.S.

- Prohibit a court of competent jurisdiction, law enforcement officer, or employees of a government agency that is responsible for child welfare from acting in his or her official capacity within the reasonable and prudent scope of his or her authority.
- Prohibit a court of competent jurisdiction from issuing an order that is otherwise permitted by law.

In addition to the above enumerated rights, the PBOR requires Florida's school districts to adopt policies designed to promote parental involvement in the public school system.²⁰ Such policies must provide for:²¹

- A plan for parental participation in schools to improve parent and teacher cooperation in such areas as homework, school attendance, and discipline.
- A procedure for a parent to learn about his or her child's course of study, including the source of any supplemental education materials.
- Procedures for a parent to object to instructional materials. Such objections may be based on beliefs regarding morality, sex, and religion or the belief that such materials are harmful.
- Procedures for a parent to withdraw his or her student from any portion of the school district's comprehensive health education that relates to sex education or instruction in acquired immune deficiency syndrome education or any instruction regarding sexuality if the parent provides a written objection to his or her child's participation. Such procedures must provide for a parent to be notified in advance of such course content so that he or she may withdraw his or her student from those portions of the course.
- Procedures for a parent to learn about the nature and purpose of clubs and activities offered at his or her child's school, including those that are extracurricular or part of the school curriculum.

Parents must be explicitly notified about a number of parental rights and responsibilities set forth in the education code.²² A school district may comply with these notice requirements by providing information to parents electronically or by publishing it to its website.²³

In 2022, the Legislature further supported the rights of parents to direct the education of their students by requiring school districts to comply with the following:

- adopt procedures for notifying parents if there is a change in the student's services or monitoring related to a student's mental, emotional, or physical health or well-being;
- prohibit classroom instruction by school personnel and third parties about sexual orientation or gender identity in kindergarten through grade 3 or in a manner that is not age-appropriate or developmentally appropriate for students in accordance with state standards;
- notify parents of each health care service available to their student through the school district and allow parents to consent to, or decline, each service individually; and
- provide any questionnaire or health screening form to a parent and obtain permission of the parent prior to administering it to a student in kindergarten through grade 3.²⁴

School districts are required to develop a process for parents to notify the school or principal regarding compliance with these new requirements. Additionally, school districts must adopt policies to notify parents of these procedures. Parents are required to attempt to resolve any dispute over implementation of the above requirements with the school district, however, if the concern is not timely resolved by the district, a parent may seek the appointment of a special magistrate by the Department of Education or file an action for declaratory judgment and injunctive relief.²⁵

Instruction Related to Reproductive Health

²⁰ Section 1014.05(1), F.S.

²¹ *Id.*

²² Section 1014.05(1)(f), F.S. For example, school districts must provide parents notice about the right to exempt their student from immunizations, the right to inspect school district instructional materials, and the right to opt out of any school district data collection not required by law. *Id.*

²³ Section 1014.05(2), F.S.

²⁴ Section 1001.42(8)(c)1.-6., F.S.

²⁵ Section 1001.42(8)(c)7., F.S.

School districts are required to provide health education instruction to Florida's students.²⁶ This instruction must cover, among other topics, the prevention and control of disease, prevention of child sexual abuse, exploitation, and human trafficking, teen dating violence and abuse,²⁷ and the benefits of sexual abstinence and the consequences of teen pregnancy.^{28, 29} Additionally, school districts are authorized to provide instruction in HIV/AIDS as part of their health education programs.³⁰ School districts are required to permit parents to exempt their children from instruction related to reproductive health and any disease, including HIV/AIDS.³¹

Throughout instruction in acquired immune deficiency syndrome, sexually transmitted diseases, or health education, when such instruction and course material contains instruction in human sexuality, a school must:

- Teach abstinence from sexual activity outside of marriage as the expected standard for all school-age students while teaching the benefits of monogamous heterosexual marriage.
- Emphasize that abstinence from sexual activity is a certain way to avoid out-of-wedlock pregnancy, sexually transmitted diseases, including acquired immune deficiency syndrome, and other associated health problems.
- Teach that each student has the power to control personal behavior and encourage students to base actions on reasoning, self-esteem, and respect for others.
- Provide instruction and material that is appropriate for the grade and age of the student.³²

Current law provides additional requirements for instructional materials used to teach reproductive health and any disease, including HIV/AIDS. All instructional materials used to provide this instruction must be approved annually by the district school board in an open, noticed public meeting.³³ The instructional materials must be available through a link on the school district homepage for review by parents.³⁴ As the instruction in these topics occurs over a range of grades, instruction and materials used must always be appropriate for the grade and age of the student.³⁵

Effect of Proposed Changes

The bill expands the existing prohibition on instruction relating to sexual orientation and gender identity in kindergarten through grade 3 to include prekindergarten through grade 8 and expressly states that charter schools must comply with this requirement. Additionally, the bill prohibits private prekindergarten providers participating in Florida's voluntary prekindergarten program from providing instruction on sexual orientation nor gender identity in prekindergarten. Consistent with existing law, the bill requires that instruction on sexual orientation and gender identity in grades 9 through 12 be age-appropriate or developmentally appropriate for students.

The bill requires a school district to publish on its website its policies for notifying parents of the appeals process regarding concerns with the school district's implementation of requirements regarding a parent's involvement in changes to services provided by the school district to his or her student, instruction on sexual orientation or gender identity, or school district health services.

The bill defines, for the purposes of the Early Learning-20 Education Code, "sex" as the classification of a person as either female or male based on the organization of the body of such person for a specific

²⁶ Section 1003.42(2)(n), F.S.

²⁷ Instruction in teen dating violence and abuse occurs in grades 7 through 12. Section 1003.42(2)(n)2., F.S.

²⁸ Instruction in sexual abstinence and the consequences of teen pregnancy occurs in grades 6 through 12. Section 1003.42(2)(n)3., F.S.

²⁹ Section 1003.42(2)(n), F.S.

³⁰ Section 1003.46(1), F.S.

³¹ Section 1003.42(5)

³² Section 1003.46(2), F.S.

³³ Section 1003.42(1)(b), F.S.

³⁴ Section 1003.42(5), F.S.

³⁵ Section 1003.46(2)(d), F.S.

reproductive role, as indicated by the person's sex chromosomes, naturally occurring sex hormones, and internal and external genitalia present at birth.

The bill implements new requirements for Florida's public K-12 educational institutions relating to personal titles and pronouns. The bill requires that it be the policy of every public K-12 educational institution that a person's sex is an immutable biological trait and that it is false to ascribe to a person a pronoun that does not correspond to such person's sex. The bill prohibits:

- an employee, contractor, or student, as a condition of employment, enrollment, or participation, at a public K-12 educational institution, be required to refer to another individual by a personal title or pronouns that do not align with the person's sex;
- a K-12 public institution employee or contractor from providing a student with the individuals preferred personal title or pronouns if they do not correspond to the employee or contractors sex;
- any requirements that a student provide his or her preferred personal title or pronouns; and
- any penalty or adverse action against a student for not providing his or her a preferred title or pronouns.

The bill provides an exception to these prohibitions for individuals with verified disorders of sexual development, including, but not limited to 46, XX disorder of sex development; 46, XY disorder of sex development; sex chromosome disorder of sex development; XX or XY sex reversal; and ovotesticular disorder.

The State Board of Education (SBE) may adopt rules to implement requirements related to personal titles and pronouns.

B. SECTION DIRECTORY:

Section 1: Amends s. 1000.21, F.S.; defining the term "sex" for the Florida Early Learning-20 Education Code.

Section 2: Creates s. 1000.071, F.S.; requiring specified policies relating to a person's sex at certain educational institutions; providing applicability; prohibiting employees, contractors, and students of such educational institutions from being required to use, from providing, and from being asked to provide certain titles and pronouns; prohibiting students from being penalized or subjected to certain treatment for not providing certain titles and pronouns; authorizing the State Board of Education to adopt rules.

Section 3: Amends s. 1001.42, F.S.; prohibiting classroom instruction on sexual orientation or gender identity from occurring in prekindergarten through grade 8, rather than kindergarten through grade 3; providing requirements if such instruction is provided in grades 9 through 12; providing that such prohibition applies to charter schools; requiring school districts to post specified policies on their websites.

Section 4: Amends s. 1002.68, F.S.; prohibiting private prekindergarten providers and public schools from providing instruction on sexual orientation or gender identity.

Section 5: Reenacts ss. 1000.05(2), (3), (4)(a), (5), and (6)(d), 1001.453(2)(c), 1002.42(3)(a), 1003.27(2)(b) and (c), 1003.42(3)(a), (c), (e), and (f), 1004.43(2), 1006.205(2)(b) and (3), 1009.23(7), 1009.24(10)(b), 1009.983(6), 1009.986(3)(e), and 1014.05(1)(c), (d), and (f), F.S., to incorporate the amendment made to s. 1000.21, F.S., in references thereto.

Section 6: Provides for severability.

Section 7: Provides an effective date.

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.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The SBE is authorized to adopt rules to implement the new requirements associated with personal titles and pronouns.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 14, 2023, the Choice & Innovation Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- updates the definition to “sex” for the purposes of the Early Learning-20 Education Code; and
- provides an exception to the prohibitions related to personal titles and pronouns for individuals with verified disorders of sexual development.

This analysis is drafted to the committee substitute adopted by the Choice & Innovation Subcommittee.