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.)

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL:	SB 1642
INTRODUCER:	Senator McClain
SUBJECT:	Gender Identity Employment Practices
DATE:	January 30, 2026
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	White	McVaney	GO	**Pre-meeting**
2.			JU	
3.			RC	

I. Summary:

SB 1642 creates s. 110.1051, F.S., the "Freedom of Conscience in the Workplace Act," to prohibit specific behaviors that accommodate the use of preferred pronouns that do not correspond to a person's sex within the context of employment by the state or a county, municipality, special district, or any subdivision or agency thereof.

Additionally, the bill makes it an unlawful employment practice for an employer to:

- Take adverse personnel action against an applicant, employee, or contractor because of their sincerely held religious, moral, conscience-based, or biology-based beliefs against gender ideology, whether those views are expressed at or away from the worksite.
- Require, as a condition of employment, any training, instruction, or other activity on sexual orientation, gender identity, or gender expression.

The bill provides that an employee or contractor may not be required, as a condition of employment or to avoid adverse personnel action, to refer to another individual by that person's preferred pronouns if such pronouns do not correspond with that person's sex. Similarly, an employee or contractor cannot require an employer to use his or her preferred pronouns.

Job applications and other similar employment forms cannot provide a nonbinary option on questions of a person's sex.

The bill grants the Department of Management Services authority to adopt rules to implement portions of the bill.

The bill may result in increased costs for the state and local governments.

The bill takes effect July 1, 2025.

II. Present Situation:

Unlawful Discrimination in Florida

Florida has long guaranteed civil rights protections in the State Constitution, which prohibits, in relevant part, forms of discrimination on the basis of gender, race, religion, national origin, and physical disability, and guarantees equality under the laws to all peoples.[1]

In 2019, Governor DeSantis reaffirmed the policy of nondiscrimination 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.[2]

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

The Florida Civil Rights Act (FCRA) protects persons from discrimination based on race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status. The FCRA establishes the Florida Commission on Human Relations (the Commission) within the Department of Management Services. The Commission is empowered to receive, initiate, investigate, conciliate, hold hearings on, and act upon complaints alleging discriminatory practices.[3] 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.[4] The Governor appoints, and the Senate confirms, the 12 members of the Commission.[5]

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, disability, or marital status.[6]

Administrative and Civil Remedies

Following a potential violation of the FCRA, an aggrieved person, the Commission, a commissioner, or the Attorney General has 365 days to file a complaint with the Commission naming the person responsible for the violation and describing the violation.[7] Within 180 days of the filing, the Commission must make a determination of whether reasonable cause exists to believe that a discriminatory practice has occurred.[8]

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[1] FLA. CONST. art. I *passim*.
[2] Office of the Governor, *Executive Order Number 19-10*, Jan. 8, 2019 (Reaffirming Commitment to Diversity in Government).
[3] Section 760.06(5), F.S.
[4] Section 760.021(1), F.S.
[5] Section 760.03(1), F.S.
[6] *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.
[7] Section 760.11(1), F.S.
[8] Section 760.11(3), F.S.

If the Commission issues a finding of reasonable cause, the aggrieved person may request an administrative hearing or bring a civil action.[9] A civil action must be brought within a year after the determination of reasonable cause.[10] The FCRA expressly requires a plaintiff to exhaust his or her administrative remedies as a prerequisite to filing a civil action alleging unlawful discrimination, including housing discrimination.[11] The remedies available through an administrative hearing are affirmative relief from the effects of the practice, including back pay and attorney's fees. While remedies available through a civil action include affirmative relief such as back pay, injunctive relief, compensatory damages, punitive damages up to $100,000, and attorney's fees.[12]

Alternatively, under s. 760.11(7), F.S., if the Commission makes a determination that there is not reasonable cause, the claimant may request an administrative hearing but must do so within 35 days of the date of the "no cause" determination. If the claim is not made within 35 days, the claim is barred.[13]

III. Effect of Proposed Changes:

Section 1 provides the title "Freedom of Conscience in the Workplace Act."

Section 2 creates s. 110.1051, F.S., to address the use of pronouns in the context of the public workplace where those pronouns do not correspond to an individual's sex. This act, in part, declares as the state's policy 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. Sex is defined to mean "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."

An employer, for purposes of the prohibitions and protections created by the bill, is the state or any county, municipality, or special district or any subdivision or agency thereof. A "political subdivision" is defined in s. 1.01(8), F.S., as cities, towns, villages, special tax school districts, special road and bridge districts, bridge districts, and all other districts in Florida. The bill defines "employee" to mean any individual employed by, or attempting to be employed by, an employer, and "contractor" to mean an individual or business entity that enters, or attempts to enter into, a contract for services with an employer.

This section provides that:

- An employer may not require an applicant, employee, or contractor, within the context of their state or county employment, to use a person's preferred pronouns if the pronouns do not correspond to that person's sex;

[9] Section 760.11(4), F.S.
[10] Section 760.11(5), F.S. If, however, the commission fails to make a determination of reasonable cause, the four-year statute of limitations for cause of action based on statutory liability applies. *Joshua v. City of Gainesville*, 768 So.2d 432 at 439 (Fla. 2000).
[11] Section 760.07, F.S.
[12] Section 760.11(5), (6), and (7), F.S.
[13] Section 760.11(7), F.S.

- An applicant, employee, or contractor may not require a public employer to use his or her preferred pronouns if they do not correspond to his or her sex; and
- An application or other employment form that asks about sex may *only* offer male or female as answers and may not provide a nonbinary or other option.

This section additionally prohibits taking adverse personnel actions against an employee or contractor for certain actions protected under the bill. "Adverse personnel action" means the discharge, suspension, transfer, demotion, or lack of promotion of an employee or a contractor or the withholding of bonuses, the withholding of promotional opportunities, the reduction in salary or benefits, or any other adverse action taken against an employee or a contractor within the terms and conditions of employment by an employer. Under this bill, it is an unlawful employment practice for an employer to take any adverse personnel action against an applicant, employee, or contractor because of his or her sincerely held religious, moral, conscience-based, or biology-based beliefs against gender ideology. Gender ideology means "the false belief that replaces the biological category of sex with an ever-shifting concept of self-assessed gender identity, permitting the false claim that males can identify as and become women and vice versa, and requiring all institutions of society to regard this false claim as true." The bill provides that the phrase gender ideology "includes the idea that there is a vast spectrum of genders that are disconnected from a person's sex." Gender ideology, according to the bill, "is internally inconsistent in that it diminishes sex as an identifiable or useful category but nevertheless maintains that it is possible for a person to be born in the wrong sexed body."

An applicant, employee, or contractor's expression of such beliefs against gender ideology both at and away from the worksite is protected from adverse personnel action. An aggrieved party can seek a remedy for the violation pursuant to the Florida Civil Rights Act. Such a complaint must be filed with either the Florida Commission on Human Rights, the Equal Employment Opportunity Commission, or the fair employment practice agency under federal law within 365 days of the alleged violation. Additionally, the bill provides that a court must award reasonable attorney fees and costs to the prevailing party in such a matter.

The bill grants the Department of Management Services rulemaking authority to adopt rules implementing section 2.

Section 3 amends s. 760.10, F.S., to classify it as an unlawful employment practice under the Florida Civil Rights Act for an employer who receives funding from the state to require, as a condition of employment, any training, instruction, or other activity on sexual orientation, gender identity, or gender expression. The term employer, for the purposes of this prohibition, includes the state and any county, municipality, or special district or any subdivision or agency thereof.

Section 4 reenacts s. 760.11, F.S., for the purpose of incorporating by reference the changes made to s. 760.10, F.S., by this act. This law provides administrative and civil remedies for violations of the Florida Civil Rights Act.

Section 5 provides that the bill takes effect July 1, 2026.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None identified.

C. Trust Funds Restrictions:

None identified.

D. State Tax or Fee Increases:

None identified.

E. Other Constitutional Issues:

Freedom of Speech

The state and federal constitutions protect freedom of speech. The First Amendment to the U.S. Constitution guarantees that "Congress shall make no law ... abridging the freedom of speech;"[14] and the State Constitution's free speech protections are "the same as is required under the First Amendment."[15] If the government is able to meet the applicable level of judicial scrutiny, the law is constitutional, even if it restricts free speech.

The most exacting scrutiny test is applied to regulations that suppress, disadvantage, or impose different burdens upon speech on the basis of its content; such laws are subject to strict judicial scrutiny regardless of the government's benign motive.[16] Government regulation of speech that is content-based or is focused on a specific viewpoint is presumptively unconstitutional.[17]

The bill protects an "employee's or contractor's sincerely held. . . beliefs against gender ideology." In this manner, the bill only protects one type of view—those *against* gender ideology. The bill does not, however, extend such protections to views *for* or ambivalent to gender ideology. In this way, the bill may violate freedom of speech principles because it treats speech differently based on the position it takes. The Legislature may wish to

[14] U.S. CONST. amend. I.
[15] *Dep't of Educ. v. Lewis*, 416 So. 2d 455, 461 (Fla. 1982); *Scott v. State*, 368 So. 3d 8, 10 (Fla. 4th DCA 2023), *review denied*, No. SC2023-1188 (Fla. Nov. 22, 2023), and *cert. denied sub nom.*, No. 23-7786 (U.S. Oct. 7, 2024).
[16] *Turner Broad. Sys., Inc. v. F.C.C.*, 512 U.S. 622, 641 (1994); *Reed v. Town of Gilbert*, 576 U.S. 155, 165 (2015).
[17] *United States v. Alvarez*, 567 U.S. 709, 717 (2012)

clarify, instead, that the protections in the bill are for sincerely held beliefs *on* gender ideology.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None identified.

B. Private Sector Impact:

Those companies that provide human resources training may have to tailor their offerings to conform to the bill's requirement that no training be offered on sexual orientation, gender identity, or gender expression.

It is unclear whether contractors could be subject to colorable claims of discrimination or hostile work environment when enforcing the bill. As a result of the bill's prohibition on adverse actions against an individual for sincerely held beliefs against gender ideology, a contractor and the contractor's employees may be subject to discriminatory acts or unlawful harassment on the basis of his or her sex. If such action constitutes unlawful discrimination or harassment, an employer who participates in or fails to stop such actions may be subject to suit. This could increase costs relating to litigation.

C. Government Sector Impact:

As a result of the bill's prohibition on adverse actions against employees who act in the workplace based on their deeply held beliefs, public employees may be subject to discriminatory acts on the basis of the employee's status in a protected class (sex) in the workplace; this could constitute an unfair labor practice. The employer would not be legally permitted to take appropriate action to protect the employee from that unfair labor practice (or continued violations) and therefore may be subject to suit by the aggrieved employee. This could increase costs relating to litigation.

State agencies and local governments will be required to examine their employment requirements to remove prohibited training, amend employment forms, and adopt policies to conform to the law. Such agencies will have an increased workload to conduct such reviews and make necessary conforming updates. The cost of conducting such reviews and updates is unknown.

The Department of Management Services may be required to adopt rules to implement section 2 of the bill. The Department of Management Services should be able to absorb such duties into its current workload.

The Commission on Human Relations, Equal Employment Opportunity Commission, and similar agencies that can hear allegations of unfair labor practices may see an increase in workload as a result of the creation of new unfair labor practices.

VI. Technical Deficiencies:

Section 2 of the bill creates in chapter 110, F.S., a public employer policy regarding the use of personal pronouns that is applicable to "the state or any county, municipality, or special district or any subdivision or agency thereof." However, chapter 110, F.S., is typically limited to *state* employment. The Legislature may consider moving this new provision to chapter 112, F.S., which relates to more of the public employers discussed in the bill.

VII. Related Issues:

Discrimination Under Title VII

Title VII of the Civil Rights Act of 1964 (Title VII) prohibits employment discrimination on several different bases, including by barring covered employers from discriminating against any individual "because of . . . sex."[18] It is unclear whether using different pronouns can give rise to a claim of discrimination based on transgender identity, and whether such discrimination would be considered discrimination "on the basis of sex." The legal landscape regarding use of pronouns in the context of Title VII in U.S. labor law is shifting.

Federal Courts on Transgender Status and Title VII

The Supreme Court of the United States held in *Bostock* that Title VII forbids employers from firing an individual for being gay or transgender; the Court found that such discrimination is on the basis of that individual's sex.[19] The Court reasoned that it is impossible to act on the basis of transgender status without considering sex. The Court noted, if an employer fires a transgender man (assigned female gender at birth who now identifies as a man) for being transgender, the employer penalizes that person for being assigned the female gender at birth for traits that it would tolerate in a person assigned the male gender at birth.[20]

In *Copeland*, the Eleventh Circuit addressed a Title VII hostile work environment claim predicated on the plaintiff's transgender identity. The Court determined that consistently and publicly identifying an individual by terms not aligning with their gender identity (in this case, referring to someone as ma'am, she, her, it, and that, instead of masculine pronouns as requested) can constitute unlawful sexual harassment. The Court noted that "most people have a special sense of privacy in their genitals," and the consistent reference to an individual with gendered pronouns and honorifics that disagreed with the individual's requested identity "transgressed this boundary in a humiliating way." By doing so, the plaintiff's "supervisors, subordinates, and

[18] 42 U.S.C. ss. 2000e - 2000e17 (as amended).
[19] *Bostock v. Clay County*, 590 U.S. 644 (2020) (Title VII covers discrimination based on sexual orientation and reaches bias against transsexuals; Justice Gorsuch in writing for six Justices stated that by discriminating against homosexuals, the employer intentionally penalizes men for being attracted to men and women for being attracted to women; by discriminating against transgender persons, the employer unavoidably discriminates against persons with one sex identified at birth and another today; the employer intentionally refuses to hire applicants in part because of the affected individuals' sex, even if it never learns any applicant's sex; the ruling rejected the argument put forward by dissenting Justice Kavanaugh that because homosexuality and transgender status can't be found on that the Title VII list and because they are conceptually distinct from sex, the employers reason, they are implicitly excluded from Title VII's reach).
[20] *Bostock v. Clayton Cnty*, 590 U.S. 644 (2020)

peers publicly humiliated him because his gender identity differs from the sex he was assigned at birth." The Court held that "Title VII does not countenance such behavior."[21]

It is unclear the extent to which utilizing pronouns that are different from the ones an individual prefers can alone constitute a hostile work environment or form the basis for other discrimination-based challenges. In *Copeland*, the harassment at issue additionally included other incidents of insubordination and aggression based on the plaintiff's transgender identity. In *Bostock*, the Court explicitly limited its opinion to the context of firing an employee, sidestepping issues such as "bathrooms, locker rooms… or anything else of the kind."[22]

Federal Executive and Agency Policy Developments

Whether refusal to use an individual's preferred pronouns, if indeed was previously considered impermissible harassment, *continues* to constitute impermissible harassment is further unclear given the new policy directions of the Trump administration and U.S. Equal Employment Opportunity Commission (EEOC). Among the slew of his executive actions his first day back in office, President Trump signed the executive order *Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government*, declaring "[i]t is the policy of the United States to recognize two sexes, male and female."[23] On January 22, 2026, the EEOC rescinded anti-harassment guidance issued in 2024 under the Biden administration, which included guidance related to issues of gender identity discrimination and harassment, including the refusal to use preferred pronouns, against LGBTQ+ individuals. The rescission follows through on the policy priorities of the Trump administration, including the shift in federal policy to a binary interpretation of "sex."[24]

Recent Decisions on Freedom of Speech and Pronouns in Classrooms

Governments can typically restrict speech that is a part of an employee's official duties without encroaching on freedom of speech, but the restrictions must be on employee speech that has the potential to affect the employer's operations.[25] Courts typically apply a two-part test to determine the constitutional protection afforded to a public employee's speech. The test first asks whether the employee was speaking as a private citizen or government employee, with the latter having limited First Amendment protections from an employer's reaction to the speech. The second part of the test is a more detailed inquiry into whether the government entity has an adequate justification for treating the employee differently from any other member of the public.[26]

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[21] *Copeland v. Georgia Dep't of Corr.*, 97 F.4th 766 (11th Cir. 2024)
[22] *Id.* at 681.
[23] Exec. Order No. 14168 (Jan. 20, 2025), available at https://www.whitehouse.gov/presidential-actions/2025/01/defending-women-from-gender-ideology-extremism-and-restoring-biological-truth-to-the-federal-government/ (last visited Jan. 27, 2026).
[24] U.S. Equal Employment Opportunity Commission, *Meeting of January 22, 2026*, available at https://www.eeoc.gov/meetings/meeting-january-22-2026 (last visited Jan. 27, 2026); Claire Savage and Leah Askarinam, *Workplace rights agency scraps anti-harassment guidance, citing Trump's orders*, THE ASSOCIATED PRESS, Jan. 22, 2026, available at https://apnews.com/article/eeoc-harassment-workplace-gender-trump-lucas-lgbtq-0ac048763668ae4f8946aa26a3a6a907 (last visited Jan. 27, 2026).
[25] *Connick v. Myers*, 461 U.S. 138, 143 (1983).
[26] *Id.* at 142-148; *Garcetti v. Ceballos,* 547 U.S. 410 (majority); *Rankin v. McPherson*, 483 U.S. 378, 388 (1987); 16A AM. JUR. 2D *Constitutional Law* s. 491 (2024); Legal Almanac: *The First Amendment: Freedom of Speech* s. 8:4; 63C AM. JUR. 2D *Public Officers and Employees* s. 195 (2024) (citing *Smith v. Gilchrist*, 749 F.3d 302, 309 (4th Cir. 2014)).

Section 1000.071(1), F.S., provides that "[a]n employee or contractor of a public K-12 educational institution may not provide to a student his or her preferred personal title or pronouns if [it does] not correspond to his or her sex." A teacher alleged that enforcing the law violated their freedom of speech in *Wood v. Florida Department of Education*. The U.S. Northern District Federal Court found that this is a viewpoint-discriminatory prohibition that chills the First Amendment right of the employees' right to speak freely.[27] The Eleventh Circuit, however, disagreed and held that a teacher was speaking in her capacity as a government employee, and not as a private citizen, when the teacher identified requested students in the classroom to use the honorific "Ms." and the pronouns "she," "her," and "hers."[28]

In *Wood*, the teacher did not raise a question of harassment or Title VII protections. The extent to which s. 1000.071, F.S., could form a basis for a defense to harassment or sex-based discrimination claims is unclear. However, at least within the context of the teacher's First Amendment claim, the *Wood* Court did not find s. 1000.071, F.S., to patently offend notions of free speech.

Potential Impact

Given the shifting landscape in employment law, it is unclear if (and to what extent) the refusal to use one's preferred pronouns constitutes sexual harassment or discrimination. It is unlikely that state law—the bill—could form a basis for a defense for a violation of a federal law, such as Title VII. It is therefore further unclear whether, if a refusal to use an individual's preferred pronouns constitutes a violation of Title VII, the bill provides a viable defense.

If the persistent use of an individual's non-preferred pronouns constitutes harassment under Title VII, the fact that such use is permissible under state law does not constitute a colorable defense. Employers may therefore be subject to hostile work environment claims.

Medical Disclosures

The bill prohibits forced use of pronouns that "do not correspond to that person's sex," and provides an exemption for "individuals born with a genetically or biochemically verifiable disorder of sex development [(DSD)]." There are concerns related to the practical application of this portion of the bill. The *Copeland* Court stated that "most people have a special sense of privacy in their genitals," when discussing an individual's sexual and gender identity at work. The Court further provided that violation of that privacy is particularly humiliating and hostile.

To receive the exception recognized in this bill, an individual born with a genetically or biochemically verifiable DSD will have to demonstrate that they fall within the exemption to be called by the "right" pronoun. Presumably, individuals born with a genetically or biochemically verifiable DSD still "have a special sense of privacy in their genitals." It is unclear whether

[27] *Wood v. Fla. Dep't of Educ.*, 729 F. Supp. 3d 1255 (N.D. Fla. 2024), vacated and remanded, 142 F.4th 1286 (11th Cir. 2025).
[28] *Wood v. Fla. Dep't of Educ*., 142 F.4th 1286, 1290 (11th Cir. 2025). *But see Meriwether v. Hartop*, 992 F.3d 492 (6th Cir. 2021) (holding that the First Amendment protects free speech rights of a professor's and the professor couldn't be required to use a student's preferred pronouns).

requiring an individual to reveal such 'DSD to an employer in order to establish what pronouns the employee desires, would violate the "special sense of privacy in their genitals."

Individuals who must now disclose their verifiable DSD in order to be referred to by the 'right' pronoun are now treated differently under the law from individuals without a verifiable DSD. It is unclear if this raises discrimination concerns, as individuals without such disorders do not have to provide medical documentation to be referred to by their "preferred pronouns."

VIII. Statutes Affected:

This bill creates section 110.1051 and substantially amends sections 760.10 and 760.11 of the Florida Statutes.

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.