

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7 Individual Freedom  
**SPONSOR(S):** Avila  
**TIED BILLS:** IDEN./SIM. BILLS: SB 148

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Judiciary Committee	14 Y, 7 N	Mawn	Kramer
2) State Affairs Committee		Villa	Williamson
3) Education & Employment Committee			

### SUMMARY ANALYSIS

The Florida Civil Rights Act of 1992 secures for all individuals within the state freedom from discrimination because of race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status in the areas of public accommodation, education, and employment. Florida law also prohibits discrimination on the basis of race, ethnicity, national origin, gender, disability, religion, or marital status in the state's public education system and prescribes the curriculum and sets instructional material requirements for the kindergarten through grade 12 ("K-12") public school system.

HB 7 expands the Florida Civil Rights Act to provide that subjecting a person, 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 concepts constitutes discrimination based on race, color, sex, or national origin under the Act.

The bill also revises provisions within Florida's Education Code to:

- Provide that it constitutes discrimination on the basis of race, color, national origin, or sex under the Code to subject a student or employee to training or instruction that espouses, promotes, advances, inculcates, or compels such student or employee to believe certain concepts.
- State the Legislature's acknowledgment of the fundamental truth that all persons are equal before the law and have inalienable rights.
- Require school instruction and supporting materials to be consistent with specified principles of individual freedom.

The bill may have an indeterminate fiscal impact on state and local governments.

The bill provides an effective date of July 1, 2022.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### The Florida Civil Rights Act

The Florida Civil Rights Act of 1992 (“FCRA”), codified in Part I of chapter 760, Florida Statutes, secures for all individuals within the state freedom from discrimination because of race, color, religion, sex, pregnancy, national origin,<sup>1</sup> age, handicap, or marital status (“protected class”).<sup>2</sup> These protections are in place to safeguard each individual’s interest in personal dignity, making available to the state his or her full productive capacities.<sup>3</sup> These protections also help to secure the state against domestic strife and unrest; preserve the public safety, health, and general welfare; and promote the interests, rights, and privileges of individuals within the state.<sup>4</sup>

##### *Unlawful Employment Practices*

Under the FCRA, it is an unlawful employment practice for:

- An employer<sup>5</sup> of 15 or more employees to:
  - Discharge or fail or refuse to hire a person, or otherwise discriminate against a person with respect to compensation, terms, conditions, or privileges of employment, because of his or her membership in a protected class.<sup>6</sup>
  - Limit, segregate, or classify employees or applicants for employment in any way which would deprive or tend to deprive a person of employment opportunities, or adversely affect a person’s status as an employee, because of his or her membership in a protected class.<sup>7</sup>
- An employment agency<sup>8</sup> to:
  - Fail or refuse to refer for employment, or otherwise to discriminate against, a person because of his or her membership in a protected class.<sup>9</sup>
  - Classify or refer a person for employment on the basis of his or her membership in a protected class.<sup>10</sup>
- A labor organization<sup>11</sup> to:
  - Exclude or expel from its membership, or otherwise discriminate against, a person because of his or her membership in a protected class.<sup>12</sup>
  - Limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer a person for employment, in any way that would deprive or tend to deprive a person of employment opportunities, or adversely affect a person’s status as an employee or as an applicant for employment, because of his or her membership in a protected class.<sup>13</sup>

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<sup>1</sup> “National origin” includes ancestry. S. 760.02(5), F.S.

<sup>2</sup> S. 760.01(2), F.S.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> “Employer” means any person employing 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such person. S. 760.02(7), F.S.

<sup>6</sup> S. 760.10(1)(a), F.S.

<sup>7</sup> S. 760.10(1)(b), F.S.

<sup>8</sup> “Employment agency” means any person regularly undertaking, with or without compensation, to procure employees for an employer or to procure for employees opportunities to work for an employer, and includes an agent of such a person. S. 760.02(8), F.S.

<sup>9</sup> S. 760.10(2), F.S.

<sup>10</sup> *Id.*

<sup>11</sup> “Labor organization” means any organization which exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers about grievances, employment terms or conditions, or other mutual aid or protection in connection with employment. S. 760.02(9), F.S.

<sup>12</sup> S. 760.10(3)(a), F.S.

<sup>13</sup> S. 760.10(3)(b), F.S.

- Cause or attempt to cause an employer to discriminate against a person in violation of unlawful employment practices law.<sup>14</sup>
- An employer, a labor organization, or a joint labor-management committee<sup>15</sup> controlling apprenticeship or other training, including on-the-job-training programs, to discriminate against a person because of his or her membership in a protected class in admission to, or employment in, a program established to provide apprenticeship or other training.<sup>16</sup>
- An employer, a labor organization, an employment agency, or a joint labor-management committee to print, or cause to be printed or published, a notice or advertisement relating to employment, membership, classification, referral for employment, or apprenticeship or other training, indicating a preference, limitation, specification, or discrimination, based on membership in a protected class.<sup>17</sup>
- An employer, a labor organization, an employment agency, or a joint labor-management committee to discriminate against a person because he or she has:
  - Opposed a practice which is an unlawful employment practice under the FCRA; or
  - Made a charge, testified, assisted, or participated in any way in an investigation, proceeding, or hearing involving an unlawful employment practice under the FCRA.<sup>18</sup>

These prohibitions do not apply to a religious corporation, an association, an educational institution, or a society which conditions employment or public accommodation opportunities to its own members or persons who subscribe to its tenets or beliefs.<sup>19</sup> Such a group may give preference in employment to a person of a particular religion to perform work connected with the carrying on by the group of its various activities.<sup>20</sup>

Further, it is not an unlawful employment practice for an employer, a labor organization, an employment agency, or a joint labor-management committee to:

- Observe the terms of a bona fide seniority system, a bona fide employee benefit plan, or a system which measures earnings by quantity or quality of production, which is not designed, intended, or used to evade the FCRA.<sup>21</sup>
- Take or fail to take any action on the basis of:
  - Membership in a protected class when such membership is a bona fide occupational qualification (BFOQ) reasonably necessary for the performance of the particular employment to which such action or inaction is related.<sup>22</sup>
  - Age, under a law or regulation governing any employment or training program designed to benefit individuals of a particular age group.<sup>23</sup>
  - Marital status, if such status is prohibited under its anti-nepotism policy.<sup>24</sup>

In a civil action or administrative proceeding brought under the FCRA, a finding that a person employed by the state or a governmental entity or agency has committed unlawful employment discrimination constitutes, as a matter of law, just or substantial cause for such person's discharge.<sup>25</sup>

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<sup>14</sup> S. 760.10(3)(c), F.S.

<sup>15</sup> Joint labor-management committees are established under the federal Labor Management Cooperation Act of 1978. 29 U.S.C. s. 175a (2022).

<sup>16</sup> S. 760.10(4), F.S.

<sup>17</sup> S. 760.10(6), F.S.

<sup>18</sup> S. 760.10(7), F.S.

<sup>19</sup> S. 760.10(9), F.S.

<sup>20</sup> *Id.*

<sup>21</sup> S. 760.10(8)(b), F.S.

<sup>22</sup> S. 760.10(8)(a), F.S.

<sup>23</sup> S. 760.10(8)(c), F.S.

<sup>24</sup> S. 760.10(8)(d), F.S.

<sup>25</sup> S. 760.11(15), F.S.

The FCRA creates the Florida Commission on Human Relations (“commission”),<sup>26</sup> which is assigned to the Department of Management Services (“DMS”)<sup>27</sup> to promote and encourage fair treatment and equal opportunity for all persons, regardless of membership in a protected class, and mutual understanding and respect among all members of all economic, social, racial, religious, and ethnic groups.<sup>28</sup> The commission is statutorily required to seek to eliminate discrimination against, and antagonism between, religious, racial, and ethnic groups and their members.<sup>29</sup> To accomplish its purpose, the FCRA grants the commission specified powers, including the power to:

- Receive, initiate, investigate,<sup>30</sup> seek to conciliate, hold hearings on, and act upon complaints alleging an unlawful practice under the FCRA,<sup>31</sup>
- Issue subpoenas for, administer oaths or affirmations to, and compel the attendance and testimony of witnesses or issue subpoenas to compel the production of books, papers, and other evidence pertaining to an investigation or a hearing convened by the commission;<sup>32</sup> and
- Promulgate rules to effectuate the FCRA’s purposes and policies and govern the commission’s proceedings in accordance with the Administrative Procedure Act (APA).<sup>33</sup>

### *Remedies for Unlawful Discrimination*

Under the FCRA, a person aggrieved by the violation of a Florida statute making unlawful discrimination due to membership in a protected class in the areas of education, employment, or public accommodation (“discriminatory practice”) may file a complaint with the commission within 365 days of the alleged violation naming the responsible party (“respondent”) and describing the violation and the relief sought.<sup>34</sup> The commission, a commissioner, or the Attorney General (“AG”) may also file a complaint in the same manner.<sup>35</sup> Within five days of its filing, the commission must, by registered mail, send a copy of the complaint to the respondent.<sup>36</sup> The respondent may file an answer to the complaint within 25 days of its filing and must mail a copy of the answer to the aggrieved party.<sup>37</sup>

If another state agency or state government unit has jurisdiction over a complaint’s subject matter and has legal authority to investigate the complaint, the commission may refer the complaint to such agency for investigation.<sup>38</sup> Unless such a referral is made, the commission must investigate the complaint’s allegations and, within 180 days of its filing, determine if there is reasonable cause to believe that a

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<sup>26</sup> The commission is comprised of 12 members appointed by the governor for four-year terms, subject to Senate confirmation. The commission must select one commissioner to serve as chairperson for a two-year term and appoint an executive director who, with the commission’s consent, may employ necessary personnel. The commissioners must be broadly representative of various racial, religious, ethnic, social, economic, political, and professional groups within the state, and at least one commissioner must be at least 60 years old. The governor may only remove a commissioner for cause, subject to removal or reinstatement by the Senate. S. 760.03, F.S.

<sup>27</sup> The commission, in the performance of its duties, is not subject to DMS’s control, supervision, or direction. S. 760.04, F.S.

<sup>28</sup> Six commissioners constitute a quorum for conducting business, but the commission may establish panels of not less than three commissioners to exercise its powers, subject to the procedures and limitations set by commission rule. Three commissioners serving on such panels constitute a quorum for conducting business. Ss. 760.03, 760.04, and 760.05, F.S.

<sup>29</sup> S. 760.05, F.S.

<sup>30</sup> In investigating, the commission and its investigators must have access at all reasonable times to premises, records, documents, and other evidence or possible evidence sources and may examine, record, and copy such materials and take and record the testimony or statements of such persons as are reasonably necessary for the investigation’s furtherance. S. 760.06(6), F.S.

<sup>31</sup> S. 760.06(5), F.S.

<sup>32</sup> Should someone refuse to obey a commission-issued subpoena, the commission may apply to any circuit court of the state, which may order the witness to appear before the commission to give testimony and to produce evidence concerning the matter in question. Failure to obey the court’s order may be punished as contempt of court. If the court issues a contempt order or an order compelling a person to comply with the commission’s order or subpoena, the court shall order the person to pay the commission reasonable expenses, including reasonable attorney fees, accrued by the commission in obtaining the court order. S. 760.06(6), F.S.

<sup>33</sup> The APA, set out in ch. 120, F.S., provides uniform procedures for the exercise of specified authority, including the authority to conduct hearings, engage in rulemaking, and issue or act against professional licenses, by specified government agencies and officers. S. 760.06, F.S.

<sup>34</sup> The commission may require that additional information be in the complaint. S. 760.11(1), F.S.

<sup>35</sup> In lieu of filing a complaint with the commission, a person may file a complaint with the Equal Employment Opportunity Commission or with any unit of state government which is a fair-employment-practice agency under 29 C.F.R. ss. 1601.70-1601.80. S. 760.11(1), F.S.

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

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

<sup>38</sup> S. 760.11(2), F.S.

discriminatory practice occurred.<sup>39</sup> After this determination, the commission must, by registered mail, promptly notify the parties of the determination and the available remedies.<sup>40</sup>

If the commission determines there is reasonable cause to believe that a discriminatory practice occurred, the aggrieved person may either bring a civil action against the respondent or request an administrative hearing under the APA.<sup>41</sup>

A civil action under the FCRA must be brought within one year of the commission's reasonable cause determination.<sup>42</sup> In such an action, the court may:

- Prohibit the discriminatory practice and provide affirmative relief;
- Award compensatory damages, including for intangible injuries;<sup>43</sup>
- Award punitive damages;<sup>44</sup> and
- Award reasonable attorney fees to the prevailing party.<sup>45</sup>

The right to a jury trial is preserved where the plaintiff seeks damages, and any party may demand a jury trial.<sup>46</sup> However, if the statute prohibiting unlawful discrimination provides an administrative remedy, a civil action may be initiated only after such administrative remedy is exhausted.<sup>47</sup>

An administrative hearing under the FCRA must be requested no later than 35 days after the commission's reasonable cause determination.<sup>48</sup> The commission may hear the case if the final order is issued by commissioners who did not conduct the hearing or request that the case be heard by an administrative law judge ("ALJ").<sup>49</sup> If the hearing officer finds that a discriminatory practice has occurred, the hearing officer must issue an appropriate proposed or recommended order prohibiting the practice and providing affirmative relief.<sup>50</sup> The commission must issue a final order within 90 days of the rendering of the proposed or recommended order, but this period may be extended if all parties consent.<sup>51</sup> The commission may also award reasonable attorney fees to the prevailing party.<sup>52</sup>

If the commission determines that it does not have reasonable cause to believe a discriminatory practice occurred, the commission must dismiss the complaint.<sup>53</sup> The aggrieved person may request an administrative hearing within 35 days of the reasonable cause determination, which must be heard by an ALJ.<sup>54</sup> If the ALJ finds that a discriminatory practice occurred, he or she must issue a recommended

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<sup>39</sup> If a complaint is within the commission's jurisdiction, the commission must attempt to correct the alleged discrimination by informal methods of conference, conciliation, and persuasion. The commission may also initiate dispute resolution procedures, including voluntary arbitration, by special magistrates or mediators and may adopt rules as to the qualifications of such special magistrates and mediators. The commission's reasonable cause determination is not final agency action subject to judicial review. S. 760.11(3), (11), and (13), F.S.

<sup>40</sup> S. 760.11(3), F.S.

<sup>41</sup> The aggrieved person's election of a civil or administrative remedy makes such remedy the exclusive remedy available to the aggrieved person. S. 760.11(4), F.S.

<sup>42</sup> The commission loses jurisdiction over the complaint after a civil action is filed but may intervene in the civil action. S. 760.11(5), F.S.

<sup>43</sup> "Compensatory damages," also known as "actual damages," are those damages intended to compensate an injured party for his or her actual, proven loss or injury. The amount of compensatory damages awarded must "be precisely commensurate with the injury suffered." However, under the FCRA, the total amount of recovery against the state and its agencies and subdivisions may not exceed the limitations set forth in s. 768.28(5), F.S. – that is, \$200,000 per person or \$300,000 per incident, unless the payment of any portion of a judgment exceeding such amounts is authorized by act of the legislature. Legal Information Institute, *Actual Damages*, [https://www.law.cornell.edu/wex/actual\\_damages](https://www.law.cornell.edu/wex/actual_damages) (last visited Jan. 27, 2022); *Birsdall v. Coolidge*, 93 U.S. 64 (1876); S. 760.11(5), F.S.

<sup>44</sup> "Punitive damages" are those damages awarded to punish the defendant for behavior that is especially egregious. Under the FCRA, punitive damages awarded to an aggrieved person may not exceed \$100,000, but the state and its agencies and subdivisions are not liable for punitive damages. Legal Information Institute, *Punitive Damages*, [https://www.law.cornell.edu/wex/punitive\\_damages](https://www.law.cornell.edu/wex/punitive_damages) (last visited Jan. 27, 2022); S. 760.11(5), F.S.

<sup>45</sup> S. 760.11(5), F.S.

<sup>46</sup> Ss. 760.07 and 760.11(5), F.S.

<sup>47</sup> S. 760.07, F.S.

<sup>48</sup> S. 760.11(6), F.S.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> The commission's final orders are subject to judicial review under the APA. A judgment for the amount of damages and costs assessed under a final order by the commission may be entered in a court having jurisdiction over the final order and may be enforced like any other judgment. S. 760.11(6), (10), and (13), F.S.

<sup>52</sup> The provision of attorney fees must be interpreted in a manner consistent with federal case law involving a Title VII action. S. 760.11(6), F.S.

<sup>53</sup> S. 760.11(7), F.S.

<sup>54</sup> *Id.*

order prohibiting the practice and recommending affirmative relief.<sup>55</sup> The commission must issue a final order within 90 days of the rendering of the recommended order, but this period may be extended if all parties consent.<sup>56</sup> The commission may also award reasonable attorney fees to the prevailing party.<sup>57</sup> If the commission's final order determines that a discriminatory practice occurred, the aggrieved person may bring a civil action against the respondent within one year of the final order or accept the affirmative relief offered by the commission, but may not pursue both remedies.<sup>58</sup>

If the commission fails to make a reasonable cause determination or conciliate on a complaint within 180 days after its filing:

- An aggrieved person may proceed as if reasonable cause was determined to exist.<sup>59</sup>
- The commission must promptly notify the aggrieved person of its failure, which notice must list all available options and inform the aggrieved person that he or she must file a civil action within one year after the date the notice was mailed.<sup>60</sup>

No liability for back pay may accrue from a date more than two years before the complaint's filing with the commission.<sup>61</sup>

### *Enforcement by the Attorney General (AG)*

In addition to the civil and administrative remedies provided to an aggrieved person, the AG may bring a civil action<sup>62</sup> for damages, injunctive relief, civil penalties not exceeding \$10,000 per violation, and other appropriate relief if he or she has reasonable cause to believe that any person or group has:

- Engaged in a pattern or practice of discrimination as defined by state law; or
- Been discriminated against under state law in a manner that raises an issue of great public interest.<sup>63</sup>

Damages recovered in such a proceeding accrue to the injured party, but the prevailing party is entitled to an award of attorney fees and costs.<sup>64</sup> Further, in any such proceeding, the respondent may request, before a responsive pleading is due, that a hearing be held no earlier than five days after, but no more than 30 days after, the complaint is filed for the court to determine whether the complaint makes a prima facie showing that a pattern or practice of discrimination exists or that, as a result of discrimination, an issue of great public interest exists.<sup>65</sup>

### Florida Public Education Requirements

#### *Florida Educational Equity Act*

The Florida Educational Equity Act<sup>66</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, religion, or marital status.<sup>67</sup> No individual may, on such bases, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any public K-20 education program or activity, or in any employment conditions or practices, conducted by a public educational institution that receives or benefits from federal or state financial

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<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> S. 760.11(8)(a), F.S.

<sup>60</sup> S. 760.11(8)(b), F.S.

<sup>61</sup> S. 760.11(9), F.S.

<sup>62</sup> The AG may file such an action in the circuit court of the county where the cause of action arose or in the circuit court of the Second Judicial Circuit in Leon County, Florida. S. 760.021(2), F.S.

<sup>63</sup> S. 760.021(1), F.S.

<sup>64</sup> S. 760.021(4) and (5), F.S.

<sup>65</sup> S. 760.021(3), F.S.

<sup>66</sup> S. 1000.05(1), F.S.

<sup>67</sup> S. 1000.05(2)(a), F.S.

assistance.<sup>68</sup> Additionally, the prohibition on discrimination, on such bases, extends to participation in any interscholastic, intercollegiate, club, or intermural athletics offered by a public K-20 educational institution; and no K-20 education institution may provide athletics separately on such basis, except as provided by law.<sup>69</sup>

The Act is implemented by the Board of Governors through regulations<sup>70</sup> and rules adopted by the State Board of Education (“SBE”).<sup>71</sup> Additionally, the Office of Equal Educational Opportunity, within the Department of Education (“DOE”), serves implementation functions including, but not limited to, the following:<sup>72</sup>

- Requiring all district school boards and Florida College System institution boards of trustees to develop and submit plans for the implementation of the Act to the DOE.
- Requiring all district school boards and Florida College System institution boards of trustees to submit data and information necessary to determine compliance with the Act.
- Developing and implementing enforcement mechanisms with appropriate penalties to ensure that public K-12 schools and Florida College System institutions comply with Title IX of the Education Amendments of 1972 and the Act.
- Reporting to the Commissioner of Education any district school board or Florida College System institution board of trustees found to be out of compliance with the Act or the SBE rules implementing the Act.

In addition to the above prohibitions, the Act expressly requires any discrimination motivated by anti-Semitic<sup>73</sup> intent be treated in an identical manner to discrimination motivated by race.<sup>74</sup>

The Act provides a cause of action for anyone aggrieved by a violation of the Act. Such an individual is authorized to seek equitable relief and, should he or she prevail, may be awarded reasonable attorney fees and court costs.<sup>75</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 SBE adopted standards in reading and other language arts, mathematics, science, social studies, foreign languages, health and physical education, and the arts.<sup>76</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 and certain prescribed courses of study, including health education and character development.<sup>77</sup> The SBE is encouraged to adopt standards and pursue assessment of

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<sup>68</sup> *Id.* Students may be separated for permissible single gender programs, for portions of a class that deals with human reproduction, or during participation in bodily contact sports. S. 1000.05(2)(d), F.S. All K-20 public education classes and guidance services must be made available to students without regard to any of the bases described above. Ss. 1000.05(2)(c) and (e), F.S.

<sup>69</sup> S. 1000.05(3)(a), F.S. Public K-20 educational institutions are authorized to maintain separate teams for members of each gender or based on ability in certain circumstances. S. 1000.05(3)(b)-(c), F.S. It is the responsibility of the Board of Governors and the Commissioner of Education to determine whether equal athletic opportunities are provided for both genders at state universities and in school districts and Florida College Systems, respectively. S. 1000.05(3)(d), F.S.

<sup>70</sup> Board of Governors, Regulation 2.003 (2020).

<sup>71</sup> Ch. 6A-19, F.A.C.

<sup>72</sup> S. 1000.05(6), F.S.

<sup>73</sup> For purposes of this section, the term “anti-Semitism” includes a certain perception of the 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. S. 1005.05(7), F.S. The Act also lists examples of anti-Semitism. S. 1000.05(7)(a)-(b), F.S.

<sup>74</sup> S. 1000.05(7), F.S.

<sup>75</sup> S. 1000.05(8), F.S.

<sup>76</sup> S. 1003.42(1), F.S.

<sup>77</sup> S. 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. S. 1002.33(16), F.S.

the requirements for prescribed courses of study and methods of instruction employed by public school teachers.<sup>78</sup>

SBE rules regarding required instruction and reporting require 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 the contributions of women and African American and Hispanic people to our country.<sup>79</sup> Pursuant to rules of the DOE, 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>80</sup> Instruction may not utilize material from the 1619 Project<sup>81</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>82</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>83</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 DOE.<sup>84</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>85</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 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,

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<sup>78</sup> S. 1003.42(2), F.S.

<sup>79</sup> Rule 6A-1.094124(3)(b), F.A.C.

<sup>80</sup> *Id.*

<sup>81</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+, [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) (last visited Jan. 27, 2022).

<sup>82</sup> Rule 6A-1.094124(3)(b), F.A.C.

<sup>83</sup> S. 1003.42(2)(n), F.S.

<sup>84</sup> S. 1003.42(2)(s), F.S.

<sup>85</sup> S. 1003.42(2)(s)1., F.S.



workplace ethics, and workplace law; managing stress and expectations; and developing skills that enable students to become more resilient and self-motivated.<sup>86</sup>

The character development curriculum for grades 11 and 12 must include instruction on voting using the uniform primary and general election ballot.<sup>87</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>88</sup>

### *Public School Instruction Materials*

#### *Adoption of State Instructional Material*

At the state level, the Commissioner of Education (commissioner) adopts instructional materials according to a five-year rotating schedule.<sup>89</sup> The SBE adopts the rules for the DOE to evaluate instructional materials submitted by publishers and manufacturers in each adoption.<sup>90</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>91</sup> The commissioner must appoint three state or national experts in the content areas submitted for adoption to review the instructional materials.<sup>92</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>93</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>94</sup>

The district school board is authorized to implement an instructional materials program that includes the review, recommendation, adoption, and purchase of materials.<sup>95</sup> The district school board may utilize the state-adopted instructional materials list or instructional materials adopted through the district instructional materials program.<sup>96</sup> Additionally, the district school 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>97</sup>

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

Reviewers of instructional materials may recommend for adoption only instructional materials aligned with state educational standards.<sup>98</sup> In addition, reviewers must consider the:<sup>99</sup>

- Age of the students who normally could be expected to have access to the material.
- Educational purpose to be served by the material.
- Degree to which the material would be supplemented and explained by mature classroom instruction as part of a normal classroom instructional program.

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<sup>86</sup> S. 1003.42(2)(s)2., F.S.

<sup>87</sup> S. 1003.42(2)(s)3., F.S.

<sup>88</sup> S. 1003.42(2), F.S.

<sup>89</sup> S. 1006.36(1), F.S.

<sup>90</sup> S. 1006.34(1), F.S.; Rule 6A-7.0710, F.A.C.

<sup>91</sup> S. 1006.29(1)(a), F.S.

<sup>92</sup> S. 1006.29(1)(b), F.S.

<sup>93</sup> S. 1006.28(2)

<sup>94</sup> Ss. 1006.28(1) and 1001.03(1), F.S.

<sup>95</sup> S. 1006.283(1).

<sup>96</sup> S. 1006.28(2)(a)1., F.S.

<sup>97</sup> S. 1006.283(1), F.S.

<sup>98</sup> S. 1006.31(2), F.S.

<sup>99</sup> Ss. 1006.31(2) and 1006.34(2)(b), F.S.

- 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>100</sup> and suited to student needs and their ability to comprehend the material presented.<sup>101</sup> Reviewers must consider for recommendation materials developed for academically talented students, such as students enrolled in advanced placement courses.<sup>102</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>103</sup> When recommending instructional materials, each reviewer must:<sup>104</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.

### *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>105</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>106</sup>

## **Effect of Proposed Changes**

### The Florida Civil Rights Act

The bill expands s. 760.10, F.S., to provide that subjecting a person, 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 under the FCRA:

- 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.

<sup>100</sup> S. 847.012, F.S., lists materials that are prohibited from distribution to minors.

<sup>101</sup> S. 1006.31(2), F.S.

<sup>102</sup> *Id.*

<sup>103</sup> S. 1006.31(2)(d), F.S.

<sup>104</sup> S. 1006.31(2), F.S.

<sup>105</sup> S. 1012.98(3)(a), F.S.

<sup>106</sup> S. 1012.98(4)(b), F.S.

- 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.
- 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.

However, the bill specifies that it does not prohibit discussion of the aforementioned concepts as part of a course of training or instruction, provided such training or instruction is given in an objective manner without endorsement of such concepts.

### Florida Educational Equity Act

The bill expands the protections of the Florida Educational Equity Act by explicitly providing that subjecting a student or employee to training or instruction that espouses, promotes, advances, inculcates, or compels such student or employee to believe any of the following concepts constitutes discrimination as contemplated by the Act:

- Members of one race, color, national origin, or sex are morally superior to members of another race, color, national origin, or sex.
- A person, by virtue of his or her race, color, national origin, or sex is inherently racist, sexist, or oppressive, whether consciously or unconsciously.
- A person's moral character or status as either privileged or oppressed is necessarily determined by his or her race, color, national origin, or sex.
- Members of one race, color, national origin, or sex cannot and should not attempt to treat others without respect to race, color, national origin, or sex.
- A person, by virtue of his or her race, color, national origin, or sex 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, national origin, or sex.
- A person, by virtue of his or her race, color, national origin, or sex should be discriminated against or receive adverse treatment to achieve diversity, equity, or inclusion.
- A person should feel discomfort, guilt, anguish, or any other form of psychological distress on account of his or her race, color, national origin, or sex.
- 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, national origin, or sex to oppress members of another race, color, national origin, or sex.

The bill provides that discussion of the concepts as part of a larger course of training or instruction is not prohibited, provided such training or instruction is given in an objective manner without endorsement of the concepts.

The bill amends the provisions of the Act such that "color" replaces the term "ethnicity" and "sex" replaces the term "gender" to conform to the terminology used in the FCRA.

### Required Instruction in Public Schools

The bill reaffirms and acknowledges the fundamental truth that all persons are equal before the law and have inalienable rights. Therefore, all instruction and supporting materials used to teach required topics in Florida's public schools must be consistent with the following principles of individual freedom:

- No person 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 person 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.
- A person, 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.
- A person 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, how personal freedoms have been infringed by sexism, slavery, racial oppression, racial segregation, and racial discrimination, or the enactment and enforcement of laws causing these results. However, the bill provides that classroom instruction and curricula may not be used to indoctrinate or persuade students to a particular viewpoint that is inconsistent with the principles enumerated in the bill or with state academic standards.

The bill updates the required instruction statute to include instruction in life skills that 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, current character development program requirements.

The bill reorganizes the required instruction provisions relating to health education and renames the character development program as civic and character education while retaining all the topics previously covered, except those now included in the life skills program.

The bill requires that health education and life skills instruction and materials do not contradict the principles of individual freedom.

#### Public School Instructional Materials and School Community Professional Development Act

To further safeguard principles of individual freedom, the bill prohibits a person reviewing instructional materials for use in schools from recommending any material that contradicts the principles of individual freedom and requires that each school district's professional development system be reviewed and approved by the DOE for compliance with the principles of individual freedom.

#### Additional Conforming Changes

The bill amends ss. 1002.20 and 1006.40, F.S., to make conforming changes.

#### Effective Date

The bill provides an effective date of July 1, 2022.

#### B. SECTION DIRECTORY:

**Section 1:** Amends s. 760.10, F.S., relating to unlawful employment practices.

**Section 2:** Amends s. 1000.05, F.S., relating to discrimination against students and employees in the Florida K-20 public education system prohibited; equality of access required.

**Section 3:** Amends s. 1003.42, F.S., relating to required instruction.

**Section 4:** Amends s. 1006.31, F.S., relating to duties of the Department of Education and school district instructional materials reviewer.

**Section 5:** Amends s. 1012.98, F.S., relating to school community professional development act.

**Section 6:** Amends s. 1002.20, F.S., relating to K-12 student and parent rights.

**Section 7:** Amends s. 1006.40, F.S., relating to use of instructional materials allocation; instructional materials, library books, and reference books; repair of books.

**Section 8:** Provides an effective date of July 1, 2022.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may expand the state's civil liability exposure if it commits a discriminatory practice involving a prohibited concept outlined in the bill.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may expand a local government's civil liability exposure if it commits a discriminatory practice involving a prohibited concept outlined in the bill.

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

The bill may expand a private employer's civil liability exposure under the FCRA if the employer commits a discriminatory employment practice prohibited by the bill.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

The First Amendment to the United States Constitution generally protects the right to free speech. Public employees have a general First Amendment right to free speech when acting in their personal capacities.<sup>107</sup> However, a public employee's right to speak in his or her employment capacity is limited by the government's interest in preserving the efficiency of the public services it performs

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<sup>107</sup> *Pickering v. Bd. of Ed. of Township High School Dist. 205, Will Cnty., Ill.*, 391 U.S. 563 (1968); see also *Tinker v. Des Moines Independent Community School Dist.*, 393 U.S. 503 (1969).

through its employees.<sup>108</sup> Thus, courts generally authorize a public employer to reasonably regulate employee speech that is part of the scope of employment.<sup>109</sup>

**B. RULE-MAKING AUTHORITY:**

The rule-making authority necessary to implement this bill is already granted under existing law.

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

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

None.

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<sup>108</sup> *Belyeu v. Coosa Cnty. Bd. of Ed.*, 998 F.2d 925 (11th Cir. 1993).

<sup>109</sup> *Kennedy v. Bremerton School Dist.*, 139 S. Ct. 634 (2019), citing *Garcetti v. Ceballos*, 547 U.S. 410 (2006).