

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1117 Athletics

SPONSOR(S): Civil Justice Subcommittee; Workman

TIED BILLS: None **IDEN./SIM. BILLS:** SB 1282

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	12 Y, 1 N, As CS	Cary	Bond
2) Education Committee			
3) Judiciary Committee			

SUMMARY ANALYSIS

The bill requires youth sports organizations, independent sanctioning authorities, the Florida High School Athletic Association, and state and private colleges and universities to develop, adopt, and implement policies and training programs relating to bullying and harassment. The bill also creates an unlawful employment practice for failure of a Florida-based professional sports franchise to prevent abusive conduct, which may include a \$10,000 per incident fine. The bill creates an affirmative defense for a professional franchise if the franchise meets certain criteria.

The bill may have an undetermined negative fiscal impact on the state and the private sector. The bill does not appear to impact local government revenues or expenditures.

The bill provides an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Legislation enacted in 2008 required each district school board to adopt a policy prohibiting bullying and harassment in district schools.¹ Among other things, the law prohibits the bullying or harassment of any public K-12 student or employee during a public K-12 education program or activity; during a school-related or school-sponsored program or activity; on a public K-12 school bus; or through a computer, computer system, or computer network that is within the scope of a public K-12 educational institution.²

The terms “bullying” and “harassment” are defined in the statutes in a K-12 context. Bullying is defined as systematically and chronically inflicting physical hurt or psychological distress on one or more students, which may involve:

- Teasing;
- Social exclusion;
- Threat;
- Intimidation;
- Stalking;
- Physical violence;
- Theft;
- Sexual, religious, or racial harassment;
- Public humiliation; or
- Destruction of property.³

The law was recently amended to include cyberbullying in the definition of bullying.⁴

Harassment is defined as threatening, insulting, or dehumanizing gestures, use of computers, or written, verbal, or physical conduct directed against a student or school employee that causes reasonable fear of harm to person or property; substantially interferes with a student’s educational performance, opportunities, or benefits; or substantially disrupts the orderly operation of a school.⁵

The law further specifies that bullying and harassment include:

- Retaliating against a student or school employee for reporting bullying or harassment;
- Reporting bullying or harassment, which reporting is not made in good faith;
- Perpetuating bullying or harassment with the intent to demean, dehumanize, embarrass, or cause physical harm to a student or school employee by incitement or coercion; use of (or providing access to) a school district’s computer, computer system, or computer network; or conduct substantially similar to bullying or harassment.⁶

¹ Chapter 2008-123, L.O.F.

² Section 1006.147(2), F.S.

³ Section 1006.147(3)(a), F.S.

⁴ Chapter 2013-87, L.O.F.

⁵ Section 1006.147(3)(b), F.S.

⁶ Section 1006.147(3)(d), F.S.

Effect of the Bill

Youth Sports

The bill creates s. 760.12, F.S., to promote respectful conduct in athletics using public accommodations. The bill requires an organization that is permitted to use any state, county, municipal, or school board playing field, athletic facility, or other public accommodations for the purpose of sponsored non-interscholastic athletic competition by minors must agree to substantially comply with the county school board's bullying and harassment policy.

Independent Sanctioning Authority

An independent sanctioning authority is a private, nongovernmental entity that organizes, operates, or coordinates a youth athletic team if the team includes one or more minors and is not affiliated with a private school.⁷ The bill amends s. 943.0438(5), F.S., to require an independent sanctioning authority to adopt bylaws or policies that require a youth who is participating in athletic competition or who is a candidate for an athletic team to sign and return a pledge to not participate in bullying or harassment.

K-12 School Athletics

The Florida High School Athletic Association (FHSAA) is a nonprofit organization that governs athletics in Florida public schools.⁸ State law requires the FHSAA to adopt bylaws, policies and guidelines.⁹ The bill amends s. 1006.20(2), F.S., to require the FHSAA to adopt guidelines for the prevention of bullying and harassment in athletics. The guidelines must include a requirement that every student athlete who seeks to participate in a sport must sign a pledge that he or she will not engage in bullying or harassment while participating. However, neither an athlete nor a school will be sanctioned unless the failure to sign or obtain a form was intentional and willful.

Furthermore, the bill requires guidelines for each coach involved in interscholastic athletics to be trained on the prevention of bullying and harassment in athletics, including instruction on identifying, preventing, and responding to bullying and harassment and taking appropriate preventative action. Neither a school nor a coach will be sanctioned for failure to complete the required training unless the failure was intentional and willful. The bill also requires training of game officials in the prevention of bullying and harassment.

The bill also requires the FHSAA to implement appropriate sanctions for unsportsmanlike conduct related to bullying and harassment during games or competitions. Any sanction must include a warning prior to an ejection, and an ejection from the game or competition is the maximum penalty that the FSHAA may implement. Any ejection must be reported the principal.

Intercollegiate Athletics

The bill creates s. 1006.74, F.S., to prohibit bullying or harassment of any student participating in intercollegiate athletics. Any public or nonpublic postsecondary educational institutions whose student athletes receive state student financial assistance must adopt a written policy on bullying and harassment. The policy must include rules prohibiting students from engaging in bullying or harassment. The policy also must require that each athlete sign a pledge not to engage in bullying or harassment while participating in intercollegiate athletics. No student may participate in a tryout, practice or competition until the pledge is signed. Coaches must also be trained on the prevention of bullying and harassment, including instruction on identifying, preventing, and responding to bullying and harassment in athletics. Coaches must be training on recognizing and preventing behaviors that lead to bullying and harassment in athletics.

⁷ Section 943.0438(1)(b), F.S.

⁸ Section 1006.20(1), F.S.

⁹ Section 1006.20(2), F.S.

This section of the bill does not create a private right of action. A student athlete who violates the policy will be referred to the disciplinary authority of the college or university. Conduct that appears to be hazing¹⁰ must be referred to law enforcement.

Professional Athletics

The bill creates s. 760.101, F.S., to make it an unlawful employment practice for a Florida-based professional sports franchise to fail to take reasonable measures to prevent abusive conduct targeted at any player, including abusive conduct inflicted by another player. The bill does not create a private cause of action, but rather allows the Attorney General to bring a civil action seeking injunctive relief. The Attorney General may also impose a fine of \$10,000, payable to the state, for each willful violation by a franchise.

The bill creates an affirmative defense for a franchise if the franchise takes reasonable measures to prevent a violation of the bill by:

- Adopting and enforcing a written policy prohibiting abusive conduct.
- Requiring players to receive the policy and to pledge not to engage in abusive conduct toward other players; and
- Requiring the coaching staff to be trained in the prevention of abusive conduct. The training must include instruction on identifying, preventing and responding to abusive conduct in athletics and taking appropriate preventive action.

First Amendment

The bill provides that nothing in the bill should be construed or implemented to infringe on First Amendment free speech rights.

B. SECTION DIRECTORY:

Section 1 creates s. 760.12, F.S., relating to promotion of respectful conduct in athletics using public accommodations.

Section 2 amends s. 943.0438, F.S., relating to athletic coaches for independent sanctioning authorities.

Section 3 amends s. 1006.20, F.S., relating to athletics in public K-12 schools.

Section 4 creates s. 1006.74, F.S., relating to bullying and harassment in intercollegiate athletics prohibited.

Section 5 creates s. 760.101, F.S., relating to unlawful employment practices in professional athletics.

Section 6 provides that nothing in the bill should be construed or implemented to infringe on First Amendment free speech rights.

Section 7 provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

¹⁰ Hazing is a third-degree felony and is defined by s. 1006.63, F.S.
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2. Expenditures:

The bill will likely have an undetermined, negative fiscal impact on state expenditures. The bill requires the Florida High School Athletics Association and state colleges and universities to develop, adopt, and implement policies and training programs. It is unclear what the specific fiscal impact to these organizations may entail.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill requires private entities, including youth sports organizations, independent sanctioning authorities, private colleges, and professional sports franchises, to develop, adopt, and implement policies and training programs. It is unclear what the specific fiscal impact to these organizations may entail.

D. FISCAL COMMENTS:

In addition to any fiscal impact that may affect the state government or the private sector, the bill creates a new unlawful employment practice, which could create a civil cause of action for the Attorney General to bring against a sports franchise. The bill provides that the Attorney General may enforce the provisions of the bill with a fine of \$10,000 per incident.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to 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, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

The Florida High School Athletic Association and state colleges and universities are required by the bill to develop, adopt, and implement policies and training programs. This may entail rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 18, 2014, the Civil Justice Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute differs from the bill as filed by removing the legislative findings, FHSAA and university reporting requirement, and the severability clause. This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.