



Choice & Innovation Subcommittee

Tuesday, February 4, 2014

1:30 PM – 3:30 PM

306 HOB

Meeting Packet

**Will Weatherford
Speaker**

**Michael Bileca
Chair**



AGENDA

Choice & Innovation Subcommittee
Tuesday, February 4, 2014
1:30 p.m. – 3:30 p.m.
306 HOB

- I. Call to Order/Roll Call
- II. Opening Remarks
- III. Consideration of the following proposed committee substitutes:
 - PCS for HB 195- Education Data Privacy
 - PCS for HB 313- Gender Specific Schools
- IV. Closing Remarks and Adjournment

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Choice & Innovation Subcommittee

Start Date and Time: Tuesday, February 04, 2014 01:30 pm
End Date and Time: Tuesday, February 04, 2014 03:30 pm
Location: 306 HOB
Duration: 2.00 hrs

Consideration of the following proposed committee substitute(s):

PCS for HB 195 -- Education Data Privacy
PCS for HB 313 -- Gender-Specific Schools

Pursuant to rule 7.12, the deadline for amendments to bills on the agenda by a member who is not a member of the subcommittee shall be 6:00 pm, Monday, February 3, 2014.

By request of the Chair, all subcommittee members are asked to have amendments to bills on the agenda submitted by 6:00 pm, Monday, February 3, 2014.

NOTICE FINALIZED on 01/28/2014 15:45 by Flynn.Kaley

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 195 Education Data Privacy
SPONSOR(S): Choice & Innovation Subcommittee
TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Choice & Innovation Subcommittee		Rininger <i>GR</i>	Fudge <i>GF</i>

SUMMARY ANALYSIS

Currently, student education records are protected by the Family Educational Rights and Privacy Act (FERPA) and state law. However, neither FERPA nor state law specify which information may or may not be collected.

State law also requires each district school board to request the social security number (SSN) of each enrolled student; however, a student may choose to withhold his or her SSN and school boards are prohibited from requiring students to furnish a SSN as a condition of enrollment or graduation. The student's SSN must be used as his or her student identification number in the school district's management information system and in the student's permanent records.

At the direction of the Governor, the Commissioner of Education conducted a review of the state's student data privacy and security measures. The commissioner recommended several changes to state law regarding education records privacy. This bill codifies the commissioner's recommendations by:

- Clarifying that parents must be notified annually regarding their rights with respect to education records.
- Clarifying that a parent may be awarded attorney's fees and court costs if the parent is granted injunctive relief in an action to enforce his or her rights regarding education records.
- Prohibiting any agency or institution from collecting information regarding political affiliation, voting history, religious affiliation, or biometric information of a student or student's parent or sibling.
- Prohibiting the disclosure of confidential and exempt education records to any person, public body, body politic, or political subdivision unless disclosure is authorized by FERPA or in response to a subpoena or court order. Disclosure to federal government agencies is also prohibited, unless authorized by FERPA, required by federal law, or in response to a subpoena or court order.
- Requiring that governing boards of agencies or institutions may only designate directory information in accordance with FERPA at a regularly scheduled meeting at which time the board must consider any potential risks to student privacy from such designation.

In addition, the bill requires the Florida Department of Education to create a statewide process for assigning students identification numbers that are not SSNs, thereby phasing out the use of SSNs for that purpose.

The bill does not have a fiscal impact on state or local governments.

The bill takes effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Education Records Privacy

Present Situation

Federal Law

The Family Educational Rights and Privacy Act¹ (FERPA) is a federal law that grants parents the right to inspect, review, and challenge the content of their child's education records and, subject to certain exceptions, control the disclosure of education records or personally identifiable information² contained in the records.³ When a student turns 18 years of age, or enters a postsecondary institution at any age, the rights under FERPA transfer from the parents to the student (eligible student).⁴

Educational agencies and institutions⁵ must comply with FERPA as a condition to receiving federal education funds.⁶ An educational agency or institution that receives federal education funds must annually notify parents and eligible students of their rights under FERPA.⁷

Among other things, FERPA requires educational agencies and institutions to obtain written consent from a parent or eligible student before disclosing education records or personally identifiable information contained therein.⁸ The written consent must be signed and dated and must specify the records that may be disclosed; state the purpose of the disclosure; and identify the party or class of parties to whom the disclosure may be made.⁹

There are several exceptions to the "prior consent" requirement which authorize disclosure of education records or personally identifiable information. Generally, these exceptions address specific situations in which disclosure without consent is necessary for the efficient operation of the school or school district; to comply with court orders and federal audit and grant reporting requests; and to protect the health, safety, and welfare of students. These exceptions include disclosure:

- To the parent of a student who is not an eligible student or to an eligible student if he or she is not claimed as a dependent on his or her parent's income taxes.¹⁰

¹ 20 U.S.C. s. 1232g and 34 C.F.R. part 99.

² FERPA defines "personally identifiable information" to include, without limitation, the names of the student and his or her parents or other family members; the address of the student or student's family; the student's social security number, student number, biometric record, or other personal identifier; indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name; and other information that could reasonably identify a student. 34 C.F.R. s. 99.3 (definition of "personally identifiable information").

³ 20 U.S.C. s. 1232g(a) and (b); 34 C.F.R. part 99. In cases of divorced, separated, or never-married parents, each parent is presumed to have rights under FERPA unless a state statute, court order, or other legally binding document provides to the contrary. 34 C.F.R. s. 99.4.

⁴ 20 U.S.C. s. 1232g(d); 34 C.F.R. ss. 99.3 (definition of "eligible student") and 99.5(a).

⁵ FERPA defines "educational agency or institution" to mean any public or private agency or institution that receives federal education funding. 20 U.S.C. s. 1232g(a)(3). This includes educational institutions that provide instruction or educational services and educational agencies that are authorized to control and direct postsecondary institutions or public elementary or secondary schools, i.e., state and local educational agencies. 34 C.F.R. s. 99.1.

⁶ 20 U.S.C. s. 1232g(a) and (b); 34 C.F.R. s. 99.1.

⁷ 20 U.S.C. s. 1232g(e); 34 C.F.R. s. 99.7(a).

⁸ 20 U.S.C. s. 1232g(b)(1); 34 C.F.R. ss. 99.30-99.39. Florida's policy for the disclosure of education records is similar to the relevant FERPA provisions. See rule 6A-1.0955(6)(f) and (g), F.A.C.

⁹ 34 C.F.R. s. 99.30.

¹⁰ 20 U.S.C. s. 1232g(b)(1)(H); 34 C.F.R. s. 99.31(a)(8) and (12); see 26 U.S.C. s. 152 (Internal Revenue Code definition of dependent child).

- To other school officials, including teachers, within the agency or institution.¹¹
- To officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll, or where the student is already enrolled so long as the disclosure is related to the student's enrollment or transfer.¹²
- To authorized representatives of the U.S. Comptroller General, U.S. Attorney General, U.S. Secretary of Education, or state and local educational authorities for purposes related to audits, evaluations, or enforcement of federal legal requirements.¹³
- In connection with an application for student financial aid to determine eligibility, amount, and terms and conditions for such aid.¹⁴
- Authorized by a state statute concerning the juvenile justice system to enable specified state and local officials to effectively serve a juvenile prior to adjudication.¹⁵
- To organizations conducting studies for, or on behalf of, educational agencies or institutions to develop, validate, or administer predictive tests; administer student aid programs; or improve instruction.¹⁶
- To accrediting organizations to carry out their accrediting functions.¹⁷
- To comply with a judicial order or lawfully issued subpoena.¹⁸
- In connection with a health or safety emergency and disclosure is necessary to protect the health or safety of the student or others.¹⁹
- Of directory information.²⁰
- To the victim of an alleged perpetrator of a violent crime or non-forcible sex offense²¹ which is limited to the final results of a disciplinary proceeding conducted on the matter by a postsecondary institution, regardless of outcome.²²
- In connection with a disciplinary proceeding conducted by a postsecondary institution regarding an alleged crime of violence or non-forcible sex offense perpetrated by a student in which the student is determined to have violated the institution's rules or policies.²³
- To a parent of a student at a postsecondary institution regarding the student's violation of any Federal, State, or local law or institutional rule or policy governing the use or possession of

¹¹ 20 U.S.C. s. 1232g(b)(1)(A); 34 C.F.R. s. 99.31(a)(1). Disclosure to outside contractors, consultants, and others is permitted if they perform a function typically served by employees; are directly controlled by the educational agency or institution; are permitted access only to records in which they have a legitimate educational interest; and are required to comply with FERPA requirements for redisclosure of education records. *Id.*

¹² 20 U.S.C. s. 1232g(b)(1)(B); 34 C.F.R. s. 99.31(a)(2).

¹³ 20 U.S.C. s. 1232g(b)(1)(C) and (3); 34 C.F.R. s. 99.31(a)(3). Authority to conduct an audit, evaluation, or enforcement action must be established under other federal, state, or local authority and controls must be in place to prevent disclosure to unauthorized persons. 34 C.F.R. s. 99.35(a)(2) and (b).

¹⁴ 20 U.S.C. s. 1232g(b)(1)(D); 34 C.F.R. s. 99.31(a)(4).

¹⁵ 20 U.S.C. s. 1232g(b)(1)(E); 34 C.F.R. ss. 99.31(a)(5) and 99.38.

¹⁶ 20 U.S.C. s. 1232g(b)(1)(F); 34 C.F.R. s. 99.31(a)(6)(i). Disclosure is only permitted if the educational agency or institution and organization conducting the study enter into a written agreement which specifies the purpose, scope and duration of the study; prohibits personal identification of parents and students to third parties; and requires the destruction of personally identifiable information of parents and students upon completion of the study. 34 C.F.R. s. 99.31(a)(6)(iii).

¹⁷ 20 U.S.C. s. 1232g(b)(1)(G); 34 C.F.R. s. 99.31(a)(7).

¹⁸ 20 U.S.C. s. 1232g(b)(1)(J); 34 C.F.R. s. 99.31(a)(9). The educational agency or institution must make a reasonable effort to notify the parent or eligible student of the order or subpoena in advance of compliance, so that the parent or eligible student may seek protective action. Notification is not required if the disclosure is in compliance with an ex parte court order obtained by the United States Attorney concerning investigations or prosecutions of terrorism or with a federal grand jury or other law enforcement subpoena in which the court or issuing agency has ordered that information in the subpoena not be disclosed. *Id.*

¹⁹ 20 U.S.C. s. 1232g(b)(1)(I); 34 C.F.R. ss. 99.31(a)(10) and 99.36(a).

²⁰ 20 U.S.C. s. 1232g(a)(5); 34 C.F.R. s. 99.31(a)(11).

²¹ For purposes of FERPA, an "alleged perpetrator" means another student at the postsecondary institution. Crimes of violence include arson, assault, burglary, criminal homicide, destruction of property, vandalism, kidnapping, robbery, and forcible sex offenses. Non-forcible sex offenses include acts committed by a student which constitute statutory rape or incest. 34 C.F.R. s. 99.39.

²² 20 U.S.C. s. 1232g(b)(6)(A); 34 C.F.R. s. 99.31(a)(13).

²³ 20 U.S.C. s. 1232g(b)(6)(B); 34 C.F.R. s. 99.31(a)(14). The institution may not disclose the name of any other student, including a victim or witness, without the prior written consent of the other student. This provision pertains only to disciplinary proceedings concluded on or after Oct. 7, 1998. *Id.*

alcohol or controlled substances if the student is under 21 years of age and the institution determines that the student committed the violation.²⁴

- Regarding sex offenders and other individuals who are required to register with law enforcement under federal law.²⁵

In addition, an educational agency or institution or recipient of education records may release education records without prior consent if all personally identifiable information is removed from the records and the agency, institution, or party reasonably determines that the student's identity cannot be ascertained from the records.²⁶

One of the most frequently used exceptions concerns "directory information." FERPA defines directory information as "the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student."²⁷ An educational agency or institution must give public notice regarding the types of personally identifiable information that the agency or institution has designated as directory information and allow a reasonable opportunity for parents or eligible students to object to such release.²⁸

State Law

Florida law regarding education records privacy establishes a public records exemption for records held by Florida educational agencies and institutions²⁹ and requires that such records be protected in accordance with FERPA. In order to maintain the eligibility of public educational institutions and agencies for federal funding, the law directs the State Board of Education to comply with FERPA after evaluating and determining that FERPA is consistent with the following principles:

- Students and their parents shall have the right to access their education records, including the right to inspect and review those records.
- Students and their parents shall have the right to waive their access to their education records in certain circumstances.
- Students and their parents shall have the right to challenge the content of education records in order to ensure that the records are not inaccurate, misleading, or otherwise a violation of privacy or other rights.
- Students and their parents shall have the right of privacy with respect to such records and reports.
- Students and their parents shall receive notice of their rights with respect to education records.³⁰

The state board must also monitor changes to FERPA and advise the Legislature of any changes necessitating amendments to state law.³¹

²⁴ 20 U.S.C. s. 1232g(i); 34 C.F.R. s. 99.31(a)(15).

²⁵ 20 U.S.C. s. 1232g(b)(7)(A); 34 C.F.R. s. 99.31(a)(16); *see* 42 U.S.C. s. 14071 (federal requirements for sexual offender registration).

²⁶ 34 C.F.R. s. 99.31(b)(1).

²⁷ 34 C.F.R. s. 99.3 (definition of "directory information").

²⁸ 20 U.S.C. s. 1232g(a)(5), 34 CFR 99.37. *See e.g.* U.S. Department of Education, *Model Notice for Directory Information*, <http://www2.ed.gov/policy/gen/guid/fpco/ferpa/mndirectoryinfo.html> (last visited Jan. 25, 2014).

²⁹ Florida's education records privacy law defines "agency" to mean any board, agency, or other entity that provides administrative control or direction of or performs services for public elementary or secondary schools, centers, or other institutions. Section 1002.22(1)(a), F.S. "Institution" means any public elementary, middle or high school; center; or institution; and the Florida School for the Deaf and the Blind and Florida Virtual School. Section 1002.22(2)(b), F.S.

³⁰ Section 1002.22(2), F.S.

³¹ Section 1002.22 (3), F.S.

State law allows a student or parent who has his or her rights under FERPA vindicated in court to collect attorney fees and court costs, but does not specify what constitutes such a "vindication of rights." The law is silent regarding the collection of information regarding political affiliation, voting history, religious affiliation, and biometric information. Release of directory information must be consistent with FERPA.³²

Commissioner Review and Legislative Recommendations

On September 23, 2013, after receiving feedback from stakeholders during the Governor's Education Summit, the Governor issued an Executive Order which, among other things, directed the Commissioner of Education to make improvements to state policies regarding student data privacy and security. The order directed the commissioner to:

- Conduct a student data security review;
- Issue policies, including internal protocols and operating procedures, for the Florida Department of Education (DOE), school districts, and any assessment provider or other entity with access to student data, in order to protect student information and prevent its misuse;
- Ensure that protections are in place to prevent the release of student education records without the written consent of the student or parent, except as specifically provided by Florida law; and
- Make recommendations by December 31, 2013, for rule changes or legislation needed to protect student privacy.³³

Accordingly, DOE reviewed its compliance with state and federal education records privacy laws and its internal protocols and procedures governing information security. DOE also commissioned SecureWorks to conduct an independent assessment of DOE's information security protocols and procedures. The Auditor General is independently auditing DOE's compliance with state laws and rules related to information security.³⁴ Among other things, DOE's report on these activities indicates that:

- Individual, personally identifiable student information collected and maintained by the department may only be accessed by authorized individuals as prescribed by FERPA;
- Access to the student databases themselves is restricted to properly authorized individuals or school districts by user ID and password; and
- Data security requirements are incorporated into the procurement process for information technology services to ensure that contracts and agreements require outside contractors to protect the privacy of student information.³⁵
- Based upon the results of SecureWorks' assessment, DOE will consider, among other things, establishing an information systems steering committee to develop and oversee its information security policies and take measures to review and modify various information security policies, as needed.³⁶

DOE's report includes data security recommendations for both the department and school districts. The Auditor General's audit has not been completed; however, DOE indicates its willingness to consider any improvements suggested by the auditors.³⁷

In addition, the commissioner recommended several changes to state law regarding education records privacy, including:

³² See s. 1002.22, F.S.

³³ Fla. Exec. Order No. 13-276 (Sept. 23, 2013).

³⁴ Florida Department of Education, *Student Data Privacy Recommendations*, at 5-9 (Dec. 2013).

³⁵ *Id.* at 5.

³⁶ *Id.* at 11-13.

³⁷ *Id.* at 9.

- Clarifying that students and parents must be notified annually regarding their rights with respect to education records.
- Clarifying that a parent or student may be awarded attorney fees and court costs if the parent or student is granted injunctive relief in an action to enforce his or her rights regarding education records.
- Prohibiting any educational agency or institution from collecting, obtaining, or retaining information on the political affiliation, voting history, religious affiliation, or biometric information of a student or student's parent or sibling.
- Prohibiting the disclosure of confidential and exempt education records to any person, public body, body politic, political subdivision, or any agency of the federal government, except when authorized or required by law or in response to a subpoena or court order.
- Requiring that governing boards of agencies or institutions may only designate directory information in accordance with FERPA at a regularly scheduled meeting after considering whether such disclosure risks violating student privacy.³⁸

Effect of Proposed Changes

The bill codifies the commissioner's legislative recommendations regarding student data privacy and security to clarify and strengthen several aspects of state law. By specifying that students and parents must be notified annually about their rights regarding education records, the bill aligns state law with FERPA's annual notice requirement. Provisions specifying that attorney's fees and court costs may be awarded to a student or parent who receives "injunctive relief" more clearly indicate what constitutes a vindication of rights meriting such an award.

The bill prohibits any educational agency or institution from collecting, obtaining, or retaining information on the political affiliation, voting history, religious affiliation, or biometric information of a student, a student's parent, or a student's sibling. The bill defines biometric information as information collected from the electronic measurement or evaluation of any physical or behavioral characteristics that may be personally identifiable, including characteristics of fingerprints, hands, eyes, and the voice. The bill would, therefore, not allow agencies or institutions to use fingerprint scans, hand scans, retina or iris scans, face geometry scans, or voice prints. These provisions provide specific protection from the collection of sensitive information that has little, if any, bearing on a student's education.

The bill also prohibits disclosure of confidential and exempt education records to any person, public body, body politic, or political subdivision unless disclosure is authorized by FERPA or in response to a subpoena or court order. Disclosure to federal government agencies is also prohibited, unless authorized by FERPA, required by federal law, or in response to a subpoena or court order. These provisions provide clear guidance as to whom and when information may be disclosed.

Under FERPA, directory information is one of several exceptions to the "prior consent" requirement for disclosing education records or personally identifiable information. The bill provides additional protections regarding the disclosure of directory information by requiring the governing board of an educational agency or institution, when designating student information as directory information, to do so at a regularly scheduled public meeting. The governing board must consider whether designating the information as directory information will put students at risk of being targeted by marketing campaigns, the media, or criminals.

Student Identification Numbers

Present Situation

Florida law requires each district school board to request the social security number (SSN) of each student; however, a student may choose to withhold his or her SSN and school boards may not require

³⁸ *Id.*

students to provide a SSN as a condition of enrollment or graduation. Each school district must use the student's SSN as his or her student identification number in its management information system and in the student's permanent records. The school district must also indicate when the student identification number is not the student's SSN.³⁹

Florida law states the Legislature's acknowledgment that SSNs were originally intended to be used only in the administration of the federal Social Security System. Recognizing this intent, the law expresses the Legislature's intent to maintain a balanced public policy by monitoring agency use and limiting the collection of SSNs, unless the:

- Purpose of the collection is stated in writing; and
- Collection is specifically authorized by law or is imperative for the performance of the agency's duties and responsibilities as prescribed by law.⁴⁰

A 2010 report by the Office of the Inspector General of the United States questioned widespread use of SSNs as primary student identification numbers, given the increasing threat of identity theft. Furthermore, the report determined that unnecessary or redundant collection of SSNs is a significant vulnerability to student privacy. The report recommended that states and K-12 schools nationwide take measures to limit the use of SSNs as primary student identifiers.⁴¹

DOE has also recognized that using the SSN as a student identifier provides multiple opportunities for a student's information to be misused or stolen. Consequently, DOE is implementing changes to statewide data collection practices which will deemphasize the use of SSNs as student identifiers. School districts will continue to collect each student's SSN for enrollment purposes and for initial entry into the state data system; however, once entered into the system, each student will be assigned a primary identification number that is not the SSN. This unique number will then be used to identify the student for record keeping and data collection purposes, thereby decreasing the likelihood that a student's identity can be linked to his or her SSN.

Effect of Bill

The bill requires a school district to request a student's SSN upon initial enrollment in a Florida public school. It also requires DOE to create a statewide process for assigning student identification numbers that are not SSNs. Once the process is implemented, school districts will be prohibited from using SSNs in their management information systems. These changes decrease the likelihood of duplicative requests for student SSNs, thereby increasing the security and confidentiality of student SSNs.

B. SECTION DIRECTORY:

Section 1. Amends s. 1002.22, F.S., relating to Education records and reports of K-12 students.

Section 2. Creates s. 1002.222, F.S., relating to K-12 education records.

Section 3. Amends s. 1008.386, F.S., relating to Social security numbers used as student identification numbers.

Section 4. Amends s. 1011.622, F.S., relating to Adjustments for students without a common student identifier.

Section 5. Provides that the bill takes effect upon becoming law.

³⁹ Section 1008.386, F.S.

⁴⁰ Section 119.071(5)(a)1. and 2., F.S.

⁴¹ U.S. Office of the Inspector General, *Kindergarten Through 12th Grade Schools' Collection and Use of Social Security Numbers* Report No. A-08-10-11057, at 2, 4, and 6 (July 22, 2010), available at <http://oig.ssa.gov/sites/default/files/audit/full/pdf/A-08-10-11057.pdf>.

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:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill gives DOE the authority to adopt rules to create a process for assigning a unique student identification number to each student in the state.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled

2 An act relating to education data privacy; amending s.
 3 1002.22, F.S.; providing for annual notice to K-12
 4 students and parents of rights relating to education
 5 records; revising provisions relating to remedy in
 6 circuit court with respect to education records and
 7 reports of students and parents; creating s. 1002.222,
 8 F.S.; providing limitations on the collection of
 9 information and the disclosure of confidential and
 10 exempt student records; defining the term "biometric
 11 information"; authorizing fees; amending s. 1008.386,
 12 F.S.; revising provisions relating to the submission
 13 of student social security numbers and the assignment
 14 of student identification numbers; requiring the
 15 Department of Education to establish a process for
 16 assigning student identification numbers; amending s.
 17 1011.622, F.S.; conforming provisions; providing an
 18 effective date.

19
 20 Be It Enacted by the Legislature of the State of Florida:

21
 22 Section 1. Paragraph (e) of subsection (2) and subsection
 23 (4) of section 1002.22, Florida Statutes, are amended to read:

24 1002.22 Education records and reports of K-12 students;
 25 rights of parents and students; notification; penalty.—

26 (2) RIGHTS OF STUDENTS AND PARENTS.—The rights of students

27 and their parents with respect to education records created,
 28 maintained, or used by public educational institutions and
 29 agencies shall be protected in accordance with the Family
 30 Educational Rights and Privacy Act (FERPA), 20 U.S.C. s. 1232g,
 31 the implementing regulations issued pursuant thereto, and this
 32 section. In order to maintain the eligibility of public
 33 educational institutions and agencies to receive federal funds
 34 and participate in federal programs, the State Board of
 35 Education shall comply with the FERPA after the board has
 36 evaluated and determined that the FERPA is consistent with the
 37 following principles:

38 (e) Students and their parents shall receive annual notice
 39 of their rights with respect to education records.

40 (4) PENALTY.—If any official or employee of an institution
 41 refuses to comply with this section, the aggrieved parent or
 42 student has an immediate right to bring an action in circuit
 43 court to enforce his or her rights by injunction. Any aggrieved
 44 parent or student who receives injunctive relief ~~brings such~~
 45 ~~action and whose rights are vindicated~~ may be awarded attorney
 46 ~~attorney's~~ fees and court costs.

47 Section 2. Section 1002.222, Florida Statutes, is created
 48 to read:

49 1002.222 Limitations on collection of information and
 50 disclosure of confidential and exempt student records.—

51 (1) An agency or institution as defined in s. 1002.22(1)
 52 may not:

53 (a) Collect, obtain, or retain information on the
 54 political affiliation, voting history, religious affiliation, or
 55 biometric information of a student or a parent or sibling of the
 56 student. For purposes of this subsection, the term "biometric
 57 information" means information collected from the electronic
 58 measurement or evaluation of any physical or behavioral
 59 characteristics that are attributable to a single person,
 60 including fingerprint characteristics, hand characteristics, eye
 61 characteristics, vocal characteristics, and any other physical
 62 characteristics used for the purpose of electronically
 63 identifying that person with a high degree of certainty.
 64 Examples of biometric information include, but are not limited
 65 to, a fingerprint or hand scan, a retina or iris scan, a voice
 66 print, or a facial geometry scan.

67 (b) Provide education records made confidential and exempt
 68 by s. 1002.221 or federal law to:

69 1. A person as defined in s. 1.01(3) except when
 70 authorized by s. 1002.221 or in response to a lawfully issued
 71 subpoena or court order;

72 2. A public body, body politic, or political subdivision
 73 as defined in s. 1.01(8) except when authorized by s. 1002.221
 74 or in response to a lawfully issued subpoena or court order; or

75 3. An agency of the Federal Government except when
 76 authorized by s. 1002.221, required by federal law, or in
 77 response to a lawfully issued subpoena or court order.

78 (2) The governing board of an agency or institution may

79 only designate information as directory information in
 80 accordance with 20 U.S.C. s. 1232g and applicable federal
 81 regulations. Such designation must occur at a regularly
 82 scheduled meeting of the governing board. The governing board of
 83 an agency or institution must consider whether designation of
 84 such information would put students at risk of becoming targets
 85 of marketing campaigns, the media, or criminal acts. An agency
 86 or institution may charge fees for copies of designated
 87 directory information as provided in s. 119.07(4).

88 Section 3. Section 1008.386, Florida Statutes, is amended
 89 to read:

90 1008.386 Florida Social security numbers used as student
 91 identification numbers.-

92 (1) When a student enrolls in a public school in this
 93 state, the ~~Each~~ district school board shall request that the
 94 each student enrolled in a public school in this state provide
 95 his or her social security number and shall indicate whether the
 96 student identification number assigned to the student is a
 97 social security number. A student satisfies this requirement by
 98 presenting his or her social security card or a copy of the card
 99 to a school enrollment official. ~~Each school district shall use~~
 100 ~~social security numbers as student identification numbers in the~~
 101 ~~management information system maintained by the school district.~~
 102 However, a student is not required to provide his or her social
 103 security number as a condition for enrollment or graduation. A
 104 ~~student satisfies this requirement by presenting to school~~

105 ~~enrollment officials his or her social security card or a copy~~
 106 ~~of the card. The school district shall include the social~~
 107 ~~security number in the student's permanent records and shall~~
 108 ~~indicate if the student identification number is not a social~~
 109 ~~security number. The Commissioner of Education shall assist~~
 110 ~~provide assistance to school districts with to assure that the~~
 111 ~~assignment of student identification numbers other than social~~
 112 ~~security numbers is kept to a minimum and to avoid duplication~~
 113 ~~of any student identification number.~~

114 (2) The department shall establish a process for assigning
 115 a Florida student identification number to each student in the
 116 state, at which time a school district may not use social
 117 security numbers as student identification numbers in its
 118 management information systems.

119 (3) The State Board of Education may adopt rules to
 120 implement this section.

121 Section 4. Section 1011.622, Florida Statutes, is amended
 122 to read:

123 1011.622 Adjustments for students without a Florida eommen
 124 student identification number identifier.—The Florida Education
 125 Finance Program funding calculations, including the calculations
 126 authorized in ss. 1011.62, 1011.67, 1011.68, and 1011.685, shall
 127 include funding for a student only when all of the student's
 128 records are reported to the Department of Education under a
 129 Florida eommen student identification number identifier. The
 130 State Board of Education may adopt rules pursuant to ss.

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131 | 120.536(1) and 120.54 to implement this section.

132 | Section 5. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 313 Gender-Specific Schools
SPONSOR(S): Choice & Innovation Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Choice & Innovation Subcommittee		Rininge <i>gr</i>	Fudge <i>gr</i>

SUMMARY ANALYSIS

The No Child Left Behind Act of 2001 (NCLB) states that federal funds may be provided to local educational agencies (LEA) for the purpose of implementing innovative assistance programs, which may include single-gender schools and classrooms. In May of 2002, the U.S. Department of Education (USDOE) announced its intent to adopt revised Title IX regulations to provide flexibility to LEAs seeking to establish single-gender schools and classrooms. The 2006 regulations establish separate standards for single-gender classes, including extracurricular activities, and schools.

Single-gender classrooms and schools are permitted under Florida law. The bill requires district school boards establishing single-gender schools to:

- Separate students into single-gender classes for instruction in core courses.
- Open enrollment to all students within the district.
- Require administrators and teachers to participate in professional development that includes scheduling and instructional strategies.
- Compare the academic performance of students in gender-specific schools with the academic performance of students in other public schools in the school district.

The bill does not have a fiscal impact on state or local governments.

The bill takes effect July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Federal Law: The No Child Left Behind Act of 2001 (NCLB) states that federal funds may be provided to local educational agencies (LEA) for the purpose of implementing innovative assistance programs, which may include single-gender schools and classrooms.¹ At the time of NCLB's passage, these provisions were in conflict with regulations implementing Title IX of the Education Amendments of 1972 (Title IX).² Title IX prohibits gender-based discrimination by educational institutions that receive federal funding.³ Thus, in May of 2002, the U.S. Department of Education (USDOE) announced its intent to adopt revised Title IX regulations to provide flexibility to LEAs seeking to establish single-gender schools and classrooms.⁴ These regulations became effective in November of 2006.⁵

The 2006 regulations establish separate standards for single-gender classes, including extracurricular activities,⁶ and schools. In general, both single-gender classes and schools must be nonvocational⁷ in nature and may only serve elementary or secondary students.⁸ Additionally for single-gender classes, the regulations require that:

- The LEA's purpose in establishing a single-gender classroom be substantially related to achieving one of two important governmental objectives: (a) to improve student achievement as part of a policy of providing diverse learning opportunities; or (b) to meet the specific learning needs of students.
- The LEA implements single-gender classrooms in an evenhanded manner.
- Enrollment be voluntary.
- Single-gender classrooms be evaluated every two years. The LEA must demonstrate that it is adhering to the important governmental objectives for which its single-gender classrooms were established to serve. It must also demonstrate that its program continues to operate free from overly-broad gender stereotypes.⁹

A LEA choosing to offer a single-gender class: (a) must provide all other students, including members of the other gender, a coeducational option that is of substantially equal quality,¹⁰ and (b) may also be required to offer a substantially equal single-gender option to members of the other gender.¹¹ A LEA

¹ 20 U.S.C.A. § 7215(a)(23).

² See 34 C.F.R. 106.34(b)-(f) and 34 C.F.R. 106.35(both amended in 2006).

³ 20 U.S.C.A. § 1681. (Title IX also prohibits gender-based discrimination pertaining to participation in extracurricular activities).

⁴ Federal Register, Vol. 67, No. 89 (May 8, 2002) available at <http://www.ed.gov/legislation/FedRegister/proprule/2002-2/050802a.html>.

⁵ Federal Register, Vol. 71, No. 206 (October 24, 2006) available at <http://www.ed.gov/legislation/FedRegister/finrule/2006-4/102506a.pdf>.

⁶ The regulation does not define the terms "class" or "extracurricular activity," but it does specify that the terms do not include interscholastic, club, or intramural athletics. 34 C.F.R. 106.34(5).

⁷ The regulation does not define the term "nonvocational," but definitions for the regulation provide that an, "institution of vocational education" means, "a school or institution (except an institution of professional or graduate or undergraduate higher education) which has as its primary purpose preparation of students to pursue a technical, skilled, or semiskilled occupation or trade, or to pursue study in a technical field, whether or not the school or institution offers certificates, diplomas, or degrees and whether or not it offers fulltime study." 34 CFR 106.2(o).

⁸ 34 C.F.R. s. 106.34.

⁹ 34 C.F.R. s. 106.34(b).

¹⁰ 34 C.F.R. s. 106.34(b)(1)(iv).

¹¹ 34 C.F.R. s. 106.34(b)(2).

choosing to offer a single-gender school must provide students of the other gender a substantially equal single-gender school or coeducational school.¹²

The U.S. Department of Education commissioned a review of literature on single-sex education published in 2005. The subsequent report identified a need for professional development for teachers to be equipped to meet the gender specific needs of boys and girls. Teachers were also found to have recognized the need for such training.¹³

State Law: Single-gender classrooms and schools are permitted under Florida law. Participation in single-gender schools, classes, and extracurricular activities must be voluntary. At least every two years, the school district must evaluate each single-gender school, class, and extracurricular activity to ensure compliance with federal regulations.¹⁴

There are 54 single-gender schools in 33 school districts in Florida. A variety of school models employ single-gender classes, e.g., alternative schools, charter schools, virtual schools, and traditional public schools.¹⁵

Effect of Proposed Changes

The bill creates additional requirements for gender-specific schools. Enrollment must be open to all students within the school district, and core courses must be separated into boys-only and girls-only classes. Additionally, administrators and teachers will be required to undergo professional development in scheduling and instructional strategies. School districts must also provide the Florida Department of Education with a comparison of the academic performance of students in gender-specific schools with the academic performance of students in other public schools.

B. SECTION DIRECTORY:

Section 1. Amends s. 1002.311, F.S., relating to single-gender programs.

Section 2. Provides that the bill takes effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

¹² 34 C.F.R. s. 106.34(c)(1).

¹³ RMC Research Corporation, *Early Implementation of Public Single-Sex Schools: Perceptions and Characteristics* (2008), available at <http://www2.ed.gov/rschstat/eval/other/single-sex/characteristics/characteristics.pdf>.

¹⁴ Section 1002.311, F.S.

¹⁵ Email, Florida Department of Education, Legislative Affairs Director, (Jan. 17, 2014).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The law requires each school district to develop a professional development system for school administrators and instructional personnel.¹⁶ Funding for professional development is annually appropriated by the Legislature through the Florida Education Finance Program (FEFP). Each school district has full discretion to determine the professional development needs of the district and how much of its FEFP allocation to spend on professional development.¹⁷

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not Applicable.

¹⁶ Section 1012.98(4)(b), F.S.

¹⁷ Section 1011.62, F.S.; Specific Appropriation 87, s. 2, ch. 2013-40, L.O.F.

1 A bill to be entitled
2 An act relating to single-gender public school
3 programs; amending s. 1002.311, F.S.; providing
4 requirements for a district school board when
5 establishing a gender-specific elementary, middle, or
6 high school; requiring school administrative and
7 instructional personnel to participate in professional
8 development; providing accountability requirements;
9 providing an effective date.

10

11 Be It Enacted by the Legislature of the State of Florida:

12

13 Section 1. Subsection (2) of section 1002.311, Florida
14 Statutes, is amended to read:

15 1002.311 Single-gender programs authorized.—

16 (2) A district school board that establishes a single-
17 gender class, extracurricular activity, or school:

18 (a) May not require participation by any student. The
19 district school board must ensure that participation in the
20 single-gender class, extracurricular activity, or school is
21 voluntary.

22 (b) Must evaluate each single-gender class,
23 extracurricular activity, or school in the school district at
24 least once every 2 years in order to ensure that it is in
25 compliance with this section and 34 C.F.R. s. 106.34.

26 (c) Must comply with the following requirements when

27 establishing a gender-specific elementary, middle, or high
 28 school:

29 1. Separate into grade-level boys-only classes and girls-
 30 only classes during instruction in core courses.

31 2. Open enrollment to all students within the school
 32 district.

33 3. Require the school's administrative and instructional
 34 personnel to participate in professional development that
 35 includes scheduling and instructional strategies.

36 4. Provide to the department a comparison of the academic
 37 performance of students in the gender-specific elementary,
 38 middle, or high school with the academic performance of students
 39 in other public elementary, middle, or high schools, as
 40 appropriate, in the school district.

41 Section 2. This act shall take effect July 1, 2014.