

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 335 Indecent Wearing of Below-Waist Underwear

SPONSOR(S): Bullard and others

TIED BILLS: IDEN./SIM. BILLS: SB 302

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|--|-----------------|---------------|----------------|
| 1) <u>Committee on K-12</u> | <u>9 Y, 1 N</u> | <u>Kutasi</u> | <u>Ahearn</u> |
| 2) <u>Schools & Learning Council</u> | <u></u> | <u></u> | <u></u> |
| 3) <u></u> | <u></u> | <u></u> | <u></u> |
| 4) <u></u> | <u></u> | <u></u> | <u></u> |
| 5) <u></u> | <u></u> | <u></u> | <u></u> |

SUMMARY ANALYSIS

HB 335 prohibits students from “wear[ing] and expos[ing] below-waist underwear while on the grounds of a public school in a manner that exposes or exhibits one’s covered or uncovered sexual organs.” The bill provides disciplinary measures to be imposed upon a student for violating the bill’s provisions.

This bill does not appear to have a fiscal impact on state or local governments.

On February 5, 2008, the Committee on K-12 adopted a substitute strike everything amendment, offered by Representative Legg, and reported the bill favorably. The strike everything amendment deletes all references to the prohibition against “wearing and exposing below-waist underwear while on the grounds of a public school,” as well as the disciplinary measures for students found in violation of the prohibition. Section 1001.43(1)(b), F.S., is amended to direct that criteria and instructions for dress-related requirements be recommended by a committee established by the district school board. See IV. Amendments/Council Substitute Changes.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Background

The origin of wearing pants below the waist, otherwise known as “sagging,” is often believed to result from ill-fitting prison clothing.¹ In prison, belts are forbidden for safety reasons and clothing is not tailored to fit individual inmates, resulting in saggy pants.²

Present Situation

Florida law requires, among other things, that a district school board

[i]n accordance with the provisions of chapters 1003 and 1006, provide for the proper accounting for all students of school age, for the attendance and control of students at school, and for proper attention to health, safety, and other matters relating to the welfare of students.³

Furthermore, Florida law requires a district school board to

(1) CONTROL OF STUDENTS.—

(a) Adopt rules for the control, discipline, in-school suspension, suspension, and expulsion of students and decide all cases recommended for expulsion

(2) CODE OF STUDENT CONDUCT.—Adopt a code of student conduct for elementary schools and a code of student conduct for middle and high schools and distribute the appropriate code to all teachers, school personnel, students, and parents, at the beginning of every school year.⁴

Finally, a district school board may exercise supplemental powers and duties, such as

adopt programs and policies to ensure the safety and welfare of individuals, the student body, and school personnel, which programs and policies may:

(b) Require uniforms to be worn by the student body, or impose other dress-related requirements, if the district school board finds that those requirements are necessary for the safety or welfare of the student body or school personnel.⁵

¹ Katie Menzer, *Underwear trend may be bottoming out*, The Dallas Morning News, Aug. 30, 2006, available at www.khou.com/topstories/stories/khou060830_ac_saggypants.4d67fcd2.html.

² *Id.*

³ Fla. Stat. §1001.42(6)(a)

⁴ Fla Stat. §1006.07

⁵ Fla. Stat. §1001.43(1)(b)

Other school boards have addressed this issue. For example, on December 10, 2007, the Atlanta School Board voted unanimously to ban students from wearing sagging pants that expose underwear.⁶

Similarly, Opa-locka, Florida, along with cities in Louisiana and Georgia, have enacted ordinances prohibiting sagging pants on all city property.⁷ More particularly, Opa-locka prohibits sagging in “city parks, the library and other municipal buildings.”⁸

Florida law does not specifically prohibit the exposure of undergarments by students at public schools.

Effects of Proposed Changes

The bill creates an unnumbered section of law that prohibits students from “wear[ing] and expos[ing] below-waist underwear while on the grounds of a public school in a manner that exposes or exhibits one’s covered or uncovered sexual organs in a vulgar and indecent manner;” for example:



A student found in violation of the bill’s provisions is subject to the following disciplinary actions:

- For a first offense, a verbal warning and telephone call by the school principal to the student’s parents;
- For a second offense, a three-day in-school suspension⁹, telephone call by the school principal to the student’s parents, and a written letter regarding the student’s suspension;
- For a third offense, a ten-day in-school suspension and the school principal must meet with the student’s parents; and
- For any subsequent violations, an out-of-school suspension¹⁰ for a period not to exceed ten school days.

⁶ *Atlanta School Board Unanimously Bans Saggy Pants*, The Associated Press, Dec. 10, 2007, available at <http://www.foxnews.com>

⁷ *City Unlikely to Pass Saggy Pants Ban*, The South Florida Sun Sentinel, Nov. 19, 2007, available at <http://tallahassee.com/legacy/special/blogs/2007/11/city-unlikely-to-pass-saggy-pants-ban.html>; see also Niko Koppel, *Are Your Jeans Sagging? Go Directly to Jail.*, N.Y. Times, Aug. 30, 2007, available at <http://www.nytimes.com>

⁸ Laura Parker, *Several U.S. Cities Snapping Over Baggy Pants*, USA Today, Oct. 14, 2007, available at http://www.usatoday.com/news/nation/2007-10-14-Baggy_N.htm.

⁹ Fla. Stat. §1003.01(5)(b) defines “in-school suspension” as, “the temporary removal of a student from the student’s regular school program and placement in an alternative program, such as that provided in s.1003.53, under the supervision of district school board personnel, for a period not to exceed 10 school days.”

¹⁰ Fla. Stat. §1003.01(5)(a) defines “suspension,” also referred to as “out-of-school suspension” as, “the temporary removal of a student from all classes of instruction on public school grounds and all other school-sponsored activities, except as authorized by the principal or the principal’s designee, for a period not to exceed 10 school days and remanding of the student to the custody of the student’s parent with specific homework assignments for the student to complete.”

C. SECTION DIRECTORY:

This bill creates an unnumbered section of law that effects student dress code requirements.

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:

A school district may experience an increase in in-school suspensions and thus costs associated therewith. These costs, although indeterminate, should not be significant.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require a city or county to expend funds or to take any action requiring the expenditure of funds.

This bill does not appear to reduce the authority that municipalities or counties have to raise revenues in the aggregate.

This bill does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Public school students maintain a certain degree of freedom of speech within the classroom context that is balanced against the need to foster an appropriate educational atmosphere free from undue disruptions.¹¹ The wearing of a particular type of style of clothing is not usually considered expressive conduct and not labeled as “speech.”¹² Florida courts have not specifically addressed the constitutionality of school dress codes prohibiting “sagging.” However, a U.S. District Court in New Mexico found wearing sagging pants was not “speech” and not subject to First Amendment protection.¹³

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

In order to provide adequate notice to students and parents of the implementation of the provisions of this bill, school districts will need to include the bill’s provisions in its Code of Student Conduct. Therefore, it appears that an appropriate placement of the bill’s provisions may be in s.1006.07(2), F.S., pertaining to the Code of Student Conduct.

D. STATEMENT OF THE SPONSOR

Waived by sponsor due to time constraints.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On February 5, 2008, the Committee on K-12 adopted a substitute strike everything amendment, offered by Representative Legg, and reported the bill favorably.

The strike everything amendment:

- Deletes all references to the prohibition against “wearing and exposing below-waist underwear while on the grounds of a public school” as well as the disciplinary measures for students found in violation of the prohibition.
- Amends s. 1001.43(1)(b), F.S., to direct that criteria and instructions for dress-related requirements be recommended by a committee established by the district school board.

¹¹ *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969).

¹² *Id.* at 507-08.

¹³ *Bivens v. Albuquerque Pub. Sch.*, 899 F. Supp. 556 (USDC NM 1995).