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## Higher Education Committee

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### HB 1643

**Brief Description:** Regarding harassment, intimidation, and bullying policies and practices at regional universities.

**Sponsors:** Representatives Sells, Moeller, Quall, Wallace, Simpson, Haigh, Dickerson and Ormsby.

#### Brief Summary of Bill

- Requires regional universities to adopt or amend policies that prohibit harassment, intimidation, and bullying of students and university staff.
- Provides that individuals that are harassed, intimidated, bullied, or verbally abused may pursue private civil action and be awarded general, special, and punitive damages.
- Provides that the university is liable for any civil damage awards if the university has failed to take corrective action to protect victims of harassment, intimidation, or bullying.
- Provides that the person who prevails in a civil liability action is eligible to recover actual attorney's fees in addition to the damage award.

**Hearing Date:** 2/3/09

**Staff:** Andi Smith (786-7304)

#### **Background:**

##### Legal Terms

"General damages" are subjective, nonmonetary losses, also referred to as noneconomic damages, and encompass damages for pain and suffering and emotional harm.

"Special damages", in contrast, are economic damages and include out-of-pocket expenses, such as medical costs and past wage loss, as well as future economic losses.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Absent specific authorization in statute, punitive damages are not permitted in Washington. Few Washington statutes provide for punitive damages. Washington's Law Against Discrimination, which prohibits harassment and discrimination based upon sex, race, ethnicity, creed, and sexual orientation, does not provide for punitive damages. Where Washington statutes do so permit, the amount is usually capped.

#### Washington law regarding discrimination

There are currently no statutes, pertaining specifically to higher education, that would prohibit harassment, intimidation, and bullying in addition to the prohibitions of Washington's Law Against Discrimination. The anti-discrimination law applies to almost all classes of institutions and prohibits harassment and discrimination based upon sex, race, ethnicity, creed, and sexual orientation. Protections against other forms of intimidation and bullying may be addressed in institutional policies, procedures, or administrative rule.

#### Washington law regarding bullying in public schools

Washington laws specific to institutions of higher education do not include provisions specific to harassment, bullying, intimidation, and verbal abuse. However, in 2002 the Legislature required school districts to adopt a policy prohibiting the harassment, intimidation, or bullying of any student by August 1, 2003. The office of the Superintendent of Public Instruction (OSPI), provided school districts and educational service districts with a model policy and training materials regarding harassment, intimidation, and bullying prevention. The current definition of bullying, intimidation, or harassment includes intentional written, verbal, or physical acts that have a negative impact on the student or the educational environment.

Statutes governing K-12 provide that school officials who make appropriate reports regarding harassment and bullying, in compliance with the procedures in the district's policy, are immune from a cause of action for damages arising from any failure to remedy the reported incident.

#### **Summary of Bill:**

Each regional university must adopt or amend a policy regarding harassment, intimidation, and bullying by September 1, 2009. In formulating the policy, the universities should include parents, students, university employees, administrators, and members of the community.

Harassment, intimidation, and bullying are defined as any of the following: (1) physical harm to an individual's property, (2) substantially effecting a student's education or employee's working conditions, (3) pervasive and persistent to the point that it creates an intimidating or threatening educational or work environment, (4) substantially disrupts the orderly operation of the institution.

Pervasive and persistent harassment and bullying are prohibited. Individuals who are victims of harassment and bullying may pursue civil action against the alleged perpetrator and may recover general, special, and punitive damages. Institutions are jointly held liable for any civil damage award if the victim of harassment lodged two formal complaints and the institution failed to take corrective action. A person who prevails in the civil action is entitled to recover actual attorney's fees in addition to any damage award.

**Appropriation:** None.

**Fiscal Note:** Requested on February 2, 2009

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.