



Schools & Learning Council Meeting Packet

Tuesday, March 18, 2008

1:00 – 3:00 PM

212 Knott Building

**Marco Rubio
Speaker**

**Joe H. Pickens
Council Chair**

Council Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Marco Rubio

Schools & Learning Council

Start Date and Time: Tuesday, March 18, 2008 01:00 pm

End Date and Time: Tuesday, March 18, 2008 03:00 pm

Location: 212 Knott Building

Duration: 2.00 hrs

Consideration of the following proposed council bill(s):

PCB SLC 08-01 -- Curriculum Reform
PCB SLC 08-08 -- Class Size Reduction Implementation Flexibility
PCB SLC 08-07 -- Teacher Lead Program Revision

Consideration of the following bill(s):

HB 337 Management of Historic Pensacola Properties by Ford
HB 445 Intergovernmental Cooperation by Proctor
HB 603 Textbook Affordability by Flores
HB 1021 Prekindergarten Education Pilot Program by Ausley
HB 213 Education by Legg
HB 207 Educator Certification Requirements by Sachs
HB 669 School Safety by Thompson, N., Bogdanoff, Aubuchon

Discussion of FY 2008-09 budget issues.


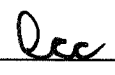
NOTICE FINALIZED on 03/14/2008 14:11 by TJG

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB SLC 08-01 Public School Curricular Standards

SPONSOR(S): Schools & Learning Council

TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Schools & Learning Council		Gillespie 	Cobb 
1)			
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

The proposed council bill (PCB) requires the State Board of Education to review the Sunshine State Standards and replace them, by December 31, 2011, with enhanced curricular standards that are rigorous, provide increased content specificity, and establish grade-by-grade expectations of student learning for all subjects at most grade levels. The state board must also establish a schedule for the periodic review and revision of the enhanced curricular standards.

The PCB directs the Commissioner of Education to add social studies to the subjects assessed by the Florida Comprehensive Assessment Test (FCAT) in middle school. The commissioner must also administer high school end-of-course assessments in high school. The commissioner is authorized to administer end-of-course assessments in other subjects in addition to the FCAT's assessment of those subjects. The PCB prohibits various practices by school districts, schools, and instructional materials publishers which may contribute to "FCAT frenzy" in which schools suspend a regular program of curricula to administer practice tests and engage in other FCAT-preparation activities. The PCB establishes limits on FCAT testing and reporting dates and limits the norm-referenced tests administered with the FCAT to grades 3, 7, and 9.

The PCB allows a school to expend up to 10 percent of the funds it uses to purchase instructional materials not on the state-adopted list for the purchase of technology devices with digital content or online content aligned to the Sunshine State Standards.

The PCB results in significant annual cost savings to the state in the statewide assessment program but also establishes new program components requiring additional expenditures. The PCB does not appear to create a net fiscal impact on the state or local governments (see II. FISCAL ANALYSIS).

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The PCB does not appear to implicate any of the House principles.

B. EFFECT OF PROPOSED CHANGES:

Sunshine State Standards:

Present Situation:

Academic content standards describe what a state hopes or expects its students to learn.¹ They “identify what public school students should know and be able to do [sic]. These standards delineate the academic achievement of students for which the state will hold its public schools accountable.”²

In 1996, the State Board of Education adopted Florida’s academic content standards, known as the “*Sunshine State Standards*.”³ The 1996 standards included seven subject areas: language arts, mathematics, science, social studies, foreign languages, the arts, and health and physical education.⁴ The 1996 standards were divided into four separate grade clusters: prekindergarten through grade 2, grades 3-5, grades 6-8, and grades 9-12.⁵

National Evaluations of the Sunshine State Standards:

Fordham Reports. From 2003 through 2006, the Thomas B. Fordham Institute and Foundation conducted a series of nationwide evaluations of state academic content standards in U.S. history (2003),⁶ English (2005),⁷ mathematics (2005),⁸ science (2005),⁹ and world history (2006).¹⁰ Florida was evaluated based on its 1996 standards. A 2006 report summarized Fordham’s findings across

¹ Thomas B. Fordham Foundation, *The Fordham Report 2006: How Well are States Educating Our Neediest Children?* 17 (2006), available at <http://www.fordhamfoundation.org/doc/TFR06FULLREPORT.PDF> (last visited Mar. 14, 2008).

² Section 1000.21(7), F.S.

³ Bureau of Instruction and Innovation, Florida Department of Education, *Sunshine State Standards*, at <http://www.fldoe.org/bii/curriculum/sss> (last visited Mar. 14, 2008).

⁴ *Id.*; § 1003.41, F.S.

⁵ *Id.*; rule 6A-1.09401(1), F.A.C.

⁶ Sheldon M. Stern, et al., *Effective State Standards for U.S. History: A 2003 Report Card* (Thomas B. Fordham Institute, Sept. 2003), available at http://www.edexcellence.net/doc/History_Standards2003.pdf (last visited Mar. 14, 2008).

⁷ Sandra Stotsky, *The State of State English Standards 2005* (Thomas B. Fordham Foundation, Jan. 2005), available at [http://www.edexcellence.net/doc/FullReport\[01-03-05\].pdf](http://www.edexcellence.net/doc/FullReport[01-03-05].pdf) (last visited Mar. 14, 2008).

⁸ David Klein, et al., *The State of State Math Standards 2005* (Thomas B. Fordham Foundation, Jan. 2005), available at <http://www.edexcellence.net/doc/mathstandards05FINAL.pdf> (last visited Mar. 14, 2008).

⁹ Paul R. Gross, et al., *The State of State Science Standards 2005* (Thomas B. Fordham Institute, Dec. 2005), available at <http://www.edexcellence.net/doc/Science%20Standards.FinalFinal.pdf> (last visited Mar. 14, 2008).

¹⁰ Walter Russell Mead, et al., *The State of State World History Standards 2006* (Thomas B. Fordham Institute, June 2006), available at <http://www.edexcellence.net/doc/State%20of%20State%20World%20History%20Standards%202006.pdf> (last visited Mar. 14, 2008).

each of these subject areas.¹¹ Fordham assigned Florida's standards an overall letter grade of "D minus":¹²

Subject	Grade
U.S. History	D
English	C
Mathematics	F
Science	F
World History	F
FLORIDA OVERALL GRADE	D-

U.S. History Standards. Fordham's review of U.S. history standards was based on three criteria: comprehensive historical content, sequential development, and balance.¹³ Do the standards teach U.S. history comprehensively—including the most important political, social, cultural, and economic events and references to major historical figures? Do the standards teach history in a coherent and structured sequence that begins with a solid introduction in the early grades and is cumulatively reinforced through the high school years? Are the standards evenhanded and place historical events in context, avoiding moralistic judgments or politically correct posturing, distortions, or omissions?¹⁴

Fordham determined that Florida's 1996 social studies standards did not include a "specific breakdown of exactly what U.S. history materials will be included and in what sequence.... [The standards are] extremely vague about identifying specific periods, issues, and personalities covered in particular grades, making it difficult to assess the comprehensiveness, sequential development, and coherence of this U.S. history curriculum."¹⁵ Fordham assigned a letter grade of "D" to the state's U.S. history standards and recommended that the state add a "grade-by-grade listing or a grade-range listing of the specific core content that should be taught at each grade level."¹⁶

English Standards. Fordham's evaluation of English standards was based on 28 criteria, which were organized into eight categories: (A) purposes and expectations, (B) organization, (C) disciplinary coverage, (D) quality, and (E) negative criteria.¹⁷ These criteria included, for example:

- **A-5:** The standards acknowledge the existence of a corpus of literary works called American literature, however diverse its origins and the social groups it portrays.
- **B-1:** The standards are presented grade by grade or in spans of no more than two grade levels.
- **C-3:** The standards clearly address the reading, interpretation, and critical evaluation of literature. They include knowledge of diverse literary elements and genres, use of different kinds of literary responses, and use of a variety of interpretive and critical lenses. They also specify those key authors, works, and literary traditions in American literature and in the literary and civic heritage of English-speaking people that all students should study because of their literary quality and cultural significance.

¹¹ Chester E. Finn, Jr., et al., 2006 *The State of State Standards* (Thomas B. Fordham Foundation, Aug. 2006), available at <http://www.edexcellence.net/doc/State%20of%20State%20Standards2006FINAL.pdf> (last visited Mar. 14, 2008).

¹² *Id.* at 59-60.

¹³ Stern, *supra* note 6, at 11-12.

¹⁴ *Id.*

¹⁵ *Id.* at 34.

¹⁶ *Id.* at 33-34.

¹⁷ Stotsky, *supra* note 7, at 92-113.

- D-3: The standards are of increasing intellectual difficulty at each higher educational level and cover all important aspects of learning in the area they address.
- D-4: The standards index or illustrate growth through the grades for reading by referring to specific reading levels or to titles of specific literary and academic works as examples of a reading level.

Thus, like its U.S. history criteria, Fordham's criteria for English standards reflect its recommendation that state standards include a comprehensive listing of specific core content (*i.e.*, literature) that is sequentially developed grade by grade. Fordham determined that Florida's 1996 language arts standards did not "point to any culturally or historically significant authors, literary works, literary periods, or literary traditions."¹⁸ Fordham assigned a grade letter of "C" to the state's language arts standards and recommended that Florida "work out some content-rich and specific standards pointing to culturally and historically significant authors, works, literary periods, and literary traditions, drawn from classical, British, and American literature—broadly conceived—that outline the essential content of the English curriculum from grade 7 to grade 12."¹⁹ Fordham also recommended that the standards include "some selective lists of authors and/or titles to accompany each grade level from which teachers might draw for their core classroom curriculum."²⁰

Mathematics Standards. Fordham's review of mathematics standards was based on four criteria: clarity, content, reason, and negative qualities. In terms of clarity, Fordham's criteria ask whether a state's standards are understandable and free of needless jargon, whether they are clear and definite about what is being asked of students and teachers, and whether the standards can be tested in the school environment.²¹ In the area of content (or "subject coverage"), Fordham's criteria ask whether the topics offered and the performance demanded at each level are sufficient and appropriate. "[I]s the state asking K-12 students to learn the correct skills, in the best order and at the proper speed?"²² The criteria also ask whether the standards explicitly include that mathematics facts are to be taught with information on their standing within the overall structure of mathematical reasoning, thereby allowing students to understand the logical interconnections within mathematics.²³ Finally, Fordham's criteria reduce a state's grade for negative qualities, including, for example, "false doctrines" (standards, according to Fordham, that contain curricular or pedagogical errors).²⁴

Fordham determined that Florida's 1996 mathematics standards include "[o]ccasional strong coverage of some topics [but] glaring deficiencies in the whole, an overemphasis on calculators, and technology, and a few inexplicable hang-ups that seem disconnected from the main body of mathematical study."²⁵ Fordham specifically notes that the standards' "unrelenting insistence on use of calculators and computers in the early grades is potentially damaging.... as the heavy use of

¹⁸ *Id.* at 37.

¹⁹ *Id.* at 37-38.

²⁰ *Id.*

²¹ Klein, *supra* note 8, at 31.

²² *Id.* at 32.

²³ *Id.* at 32-34.

²⁴ *Id.* at 34-36.

²⁵ *Id.* at 52.

calculators in the early grades undermines number sense and arithmetic.”²⁶ Fordham assigned a grade letter of “F” to the state’s mathematics standards.²⁷

Science Standards. Fordham’s evaluation of state science standards was based on 21 criteria, which were organized into five categories: (A) expectations, purpose, and audience; (B) organization; (C) science content and approach; (D) quality; and (E) seriousness.²⁸ These criteria included, for example:

- **B1:** The standards are organized grade by grade or by clusters of no more than four grades.
- **C1:** The standards provide explicitly for substantial laboratory and (as appropriate) field experience.
- **C6:** The primary curriculum content is an adequately representative set of basic principles, explicit or contained within science themes.
- **C7:** These principles are first introduced via facts and simple examples; they emerge as themes and theories in higher grades.
- **D3:** The standards, taken as a whole, define a core scientific literacy for all students in all public schools of the state. At the same time, they are sufficiently challenging to ensure that students who achieve proficiency by the final year will be ready for college work.
- **E1:** The standards do not offer or encourage—as though they were science—psuedo-scientific or discredited proposals.²⁹

Fordham determined that Florida’s 1996 science standards were “reasonably well organized but sorely lacking in content”; included errors in fact and presentation; and were vague and ambiguous.³⁰ Fordham assigned a grade letter of “F” to the state’s science standards.³¹

World History Standards. Fordham’s review of world history standards was based on 14 criteria, which were organized into two categories: content and instructional focus. The content category evaluated the extent to which a state’s standards are specific, rigorous, and focused in 11 subject areas: geography; ancient Mediterranean; the non-western world; Mexico and the western hemisphere; the Anglo-American context; modern contexts; history of religion; science and technology; culture, arts, and philosophy; democratic values; and “balance.”³² The last of these criteria, *balance*, evaluated whether a state’s standards presented a balanced view between Western and non-Western civilizations.³³ The instructional focus category included three criteria: selectivity and coherence; teachability; and sequencing.³⁴ Has the content been well selected, it being apparent that the standard writers have compiled a coherent body of the most essential content, which is presented in a clear, logical, and manageable way? Are the standards easy to read and follow for educators, such that a textbook author, teacher, test maker, curriculum director, or parent can actually find useful guidance from the standards? Are the standards cumulative and sequential, so that each grade builds in a rational, coherent way on what was done in previous grades?

²⁶ *Id.* at 53.

²⁷ *Id.* at 52.

²⁸ Gross, *supra* note 9, at 11-15.

²⁹ *Id.* at 14-15.

³⁰ *Id.* at 34.

³¹ *Id.*

³² Mead, *supra* note 10, at 19-25.

³³ *Id.* at 19 & 21.

³⁴ *Id.* at 25 & 27.

Fordham determined that Florida's 1996 social studies standards include "a number of important cultures, events, and themes, but nothing is addressed with any depth or sincerity."³⁵ Fordham found that the state's standards do not "attempt to supply any grade specificity in the high school years" and that its "approach is so superficial that [the state's standards are], for all intents and purposes, worthless."³⁶ Fordham assigned a grade letter of "F" to Florida's social studies standards and recommended that the state "supply some actual content to the standards" and "specify at the high school level what material should be learned in which grades."³⁷

Koret Task Force. In 2006, the Hoover Institution's Koret Task Force on K-12 Education conducted a review of Florida's public education system.³⁸ The task force concluded that the *Sunshine State Standards* were vague about what students are expected to learn in each grade,³⁹ especially the general background knowledge needed for reading proficiency;⁴⁰ were not sufficiently detailed to guide curriculum development or testing;⁴¹ and were the "weakest link" in the state's education reform efforts.⁴²

The task force recommended that Florida revise and strengthen its standards and that the standards should provide greater grade-by-grade content specificity,⁴³ should focus on the essential knowledge—not just the skills—required for stronger academic performance,⁴⁴ and should describe the sequential development of knowledge and skills grade by grade.⁴⁵

Review and Revision of the Sunshine State Standards:

On January 8, 2002, President George W. Bush signed into law the federal *No Child Left Behind (NCLB) Act of 2001*.⁴⁶ The act, among other provisions, required that each state demonstrate that it has adopted "challenging academic content standards"⁴⁷ in, at least, "mathematics, reading or language arts, and (beginning in the 2005-2006 school year) science."⁴⁸ The standards must:

- "Specify what children are expected to know and be able to do [sic]";
- "Contain coherent and rigorous content"; and
- "Encourage the teaching of advanced skills."⁴⁹

³⁵ *Id.* at 42.

³⁶ *Id.*

³⁷ *Id.*

³⁸ Hoover Institution, Koret Task Force on K-12 Education, *Reforming Education in Florida: A Study Prepared by the Koret Task Force on K-12 Education* (2006).

³⁹ Hoover, *supra* note 38, *Executive Summary, Thirty Major Recommendations*, at xx.

⁴⁰ Hoover, *supra* note 38, E. D. Hirsch, Jr., chapter 5, *Essential Reading*, at 85, 91-92, and 93-94.

⁴¹ Hoover, *supra* note 38, chapter 1, *Full Statement of Recommendations*, at 13.

⁴² Hoover, *supra* note 38, Diane Ravitch, chapter 7, *High School Reform Begins in First Grade*, at 128.

⁴³ Hoover, *supra* note 39; Hoover, *supra* note 41, at 7.

⁴⁴ Hoover, *supra* note 42, at 120 and 132.

⁴⁵ Hoover, *supra* note 41, at 14.

⁴⁶ Pub. L. 107-110 (2002).

⁴⁷ Section 1111(b)(1)(A), Pub. L. 107-110 (2002) (codified at 20 U.S.C. § 6311(b)(1)(A)).

⁴⁸ Section 1111(b)(1)(C), Pub. L. 107-110 (2002) (codified at 20 U.S.C. § 6311(b)(1)(C)).

⁴⁹ Section 1111(b)(1)(D), Pub. L. 107-110 (2002) (codified at 20 U.S.C. § 6311(b)(1)(D)).

In 2005, DOE initiated a review of the *Sunshine State Standards*, and, by June 2005, began to revise the standards for language arts. On January 17, 2006, the State Board of Education adopted a 6-year review and revision schedule for each subject area of the *Sunshine State Standards*. Under the schedule, all of the standards were planned for revision by 2011:

	Subject Area	Start	Complete
Initial Review and Revision Schedule	Language Arts, Reading (as part of Language Arts), and English for Speakers of Other Languages (ESOL)	June 2005	June 2006
	Mathematics	June 2006	Feb. 2007
	Science	June 2007	Feb. 2008
	Social Studies	June 2007	Feb. 2009
	Electives: Computer, Business, Technical, Industrial, Health, Foreign Languages, Physical Education, Family and Consumer Sciences, Humanities	June 2009	Feb. 2010
	Visual and Performing Arts	June 2010	Feb. 2011

SOURCE: Florida Department of Education (2006).⁵⁰

The review and revision schedule outlined two 6-year cycles for 2011-2016 and 2017-2022:

	Subject Area	Review and Revision
Six-Year Cycle	Reading and Language Arts, ESOL	2011
	Mathematics	2012
	Science	2013
	Social Studies	2014
	Electives: Computer, Business, Technical, Industrial, Health, Foreign Languages, Physical Education, Family and Consumer Sciences, Humanities	2015
	Visual and Performing Arts	2016
	Next Six-Year Cycle	Same as above

SOURCE: Florida Department of Education (2006).⁵¹

On January 25, 2007, the State Board of Education adopted revised reading and language arts standards.⁵² Instead of organizing the standards into four grade clusters, the 2007 standards include individual grade-level standards for kindergarten and grades 1, 2, 3, 4, 5, 6, 7, and 8. The standards for high school are grouped into two grade clusters: grades 9-10 and grades 11-12. At each grade level or grade cluster, the 2007 standards are divided into six content strands. Among the changes made from the 1996 standards, the 2007 standards include a stronger emphasis on technology and information literacy. The standards do not, however, as recommended by Fordham, identify any culturally or historically significant authors, literary works, literary periods, or literary

⁵⁰ Florida Department of Education, *Sunshine State Standards, Proposed Six-Year Cycle: Standards Revision, Instructional Materials Adoption, and Assessment Alignment 1-4* (June 2006).

⁵¹ *Id.* at 4-5.

⁵² Florida Department of Education, *2006 Sunshine State Standards, K-12 Reading and Language Arts* (Jan. 25, 2007), available at http://etc.usf.edu/flstandards/la/la_sss.pdf (last visited Mar. 14, 2008).

traditions. The Koret Task Force observed that Florida’s standards were “vague about what students are expected to know in each grade.”⁵³ The task force recommended that the standards be “given greater grade-by-grade content specificity for all subjects including language arts to ensure that students are taught a well-defined, coherent body of content at each grade level.”⁵⁴ Although the 2007 standards are organized by individual grades levels for students in grades K-8, a closer inspection of the standards reveals that standards for one grade level are substantially similar (and in many instances identical) to the standards of other grade levels, thereby obscuring the distinctions of what is taught at one grade level compared to another. The standards also appear to describe language arts skills rather than identify the specific content that a student is expected to learn.

Reading and Language Arts Content Strands (Grades K-12)

1996	2007
Reading	Reading Process
Literature	Literary Analysis
Writing	Writing Process
Language	Writing Applications
Listening, Viewing, and Speaking	Communication
	Information and Media Literacy

On September 18, 2007, the State Board of Education adopted revised mathematics standards.⁵⁵ Like the revised reading and language arts standards, the revised mathematics standards include individual grade-level standards for kindergarten through grade 8. The standards for high school are grouped into a single grade cluster covering grades 9-12 but are subdivided into eight “bodies of knowledge”:

Mathematics Standards (Grades 9-12)

1996 Strands	2007 Bodies of Knowledge
Number Sense, Concepts, and Operations	Algebra
Measurement	Calculus
Geometry and Spatial Sense	Discrete Mathematics
Algebraic Thinking	Financial Literacy
Data Analysis and Probability	Geometry
	Probability
	Statistics
	Trigonometry

On February 19, 2008, the State Board of Education adopted revised science standards.⁵⁶ Like the revised reading and language arts standards and the revised mathematics standards, the revised science standards include individual grade-level standards for kindergarten through grade 8. Also like the revised mathematics standards, the revised science standards for high school are grouped into a single grade cluster covering grades 9-12 and are subdivided into bodies of knowledge. Unlike the high school mathematics standards, which are subdivided into eight bodies of

⁵³ Hoover, *supra* note 38, at 5.

⁵⁴ *Id.* (emphasis added).

⁵⁵ Florida Department of Education, *Mathematics Sunshine State Standards* (Sept. 18, 2007), available at http://www.fldoestem.org/uploads/1/docs/2007_FL_Mathematics_Standards_9_13_07.pdf (last visited Mar. 14, 2008).

⁵⁶ Florida Department of Education, *Science Florida Sunshine State Standards* (Feb. 19, 2008), available at <http://www.fldoestem.org/Uploads/1/docs/FLDOE/Science%20Standards%20-%20combined.pdf> (last visited Mar. 14, 2008).

knowledge, the revised science standards for high school are subdivided into four bodies of knowledge:

Science Standards (Grades 9-12)
2007 Bodies of Knowledge
Nature of Science
Earth and Space Science
Physical Science
Life Science

The revised science standards, as recommended by Fordham, include an increased emphasis on evolutionary biology. The standards specify that evolution is to be taught as the “scientific theory of evolution.” DOE is currently reviewing and revising the *Sunshine State Standards* for social studies.

Proposed Changes:

The PCB directs the State Board of Education, by December 31, 2011, to review and replace the *Sunshine State Standards* with enhanced curricular standards, which must:

- Establish the core content of the curricula to be taught in Florida K-12 public schools;
- Describe the core content knowledge and skills that students are expected to acquire;
- Provide distinct grade-level expectations for what a student is expected to have learned by grade level, as follows:

Language Arts	Grade-by-grade expectations for each individual K-12 grade level
Science, Mathematics, and Social Studies	Grade-by-grade expectations for each individual K-8 grade level (standards for grades 9-12 may be organized by grade clusters of more than one grade level)
Visual and Performing Arts, Physical Education, Health, and Foreign Languages	Grade-by-grade expectations for each individual K-5 grade level (standards for grades 6-12 may be organized by grade clusters of more than one grade level)

- Identify the core curricular content that students are expected to learn for reading comprehension;
- Provide for rigorous and relevant standards;
- Provide for the logical, sequential progression of core curricular content that incrementally increases a student’s knowledge and skills over time; and
- Use a uniform structure and format consistent for each subject for organizing the standards;
- Identify the standards using the same alphanumeric coding system for each subject and grade level; and
- Align to expectations for success in postsecondary education and high-skill, high-wage employment.

The PCB requires the language arts standards to include reading, grammar, literature, and writing and specify a list of authors, literary works, and literary traditions that students are expected to read. Science standards must include the nature of science, earth and space science, physical science, and life science. Mathematics standards must include algebra, geometry, probability, statistics, calculus, discrete mathematics, financial literacy, and trigonometry. The PCB requires the social studies standards to include geography, history, government, civics, economics, U.S. patriotism, and national sovereignty.

The PCB also requires the enhanced curricular standards to integrate the following skills:

- Critical thinking and problem solving;
- Communication, reading, and writing;
- Mathematics;
- Collaboration;
- Contextual and applied learning;
- Technology literacy;
- Information and media literacy; and
- Civic engagement.

The PCB requires the State Board of Education, by December 31, 2008, to establish an expedited schedule for replacing the *Sunshine State Standards* with enhanced curricular standards. The PCB specifically requires the state board to review and replace the 2007 reading and language arts standards with enhanced curricular standards. The PCB also requires the state board to adopt rules establishing a schedule for the review and revision of the enhanced curricular standards.

The PCB establishes the following process for the adoption or revision of the enhanced curricular standards:

- The Commissioner of Education develops proposed standards in consultation with renowned curricular and content experts in language arts, science, mathematics, social studies, visual and performing arts, physical education, health, and foreign languages (the commissioner may also consult with experts in other subjects). The commissioner must consider standards regarded by the experts as exceptionally rigorous which are implemented by other states and nations.
- The commissioner submits the proposed standards for review and comment by Florida educators, school administrators, community college and state university representatives, and leaders in business and industry.
- The commissioner submits the proposed standards, as revised based on any comments received, to the renowned curricular and content experts for a written evaluation.
- The commissioner finalizes the proposed standards and submits the standards and the experts' written evaluations to the Governor and Legislature at least 21 days before the state board's consideration of the standards.
- The commissioner submits the proposed standards to the State Board of Education and the state board determines whether to adopt the standards.

The PCB authorizes the State Board of Education to adopt rules to implement the adoption and revision of the enhanced curricular *Sunshine State Standards*.

The PCB also makes several conforming changes to the review and adoption of the enhanced curricular *Sunshine State Standards*, including:

- Revises the definition of "Sunshine State Standards" that applies throughout the Florida K-20 Education Code;
- Revises the powers and duties of the State Board of Education concerning the adoption and review of public K-12 curricular standards;
- Revises the general powers of district school boards which require the boards to provide students with a complete education program, including instruction in the subjects in the *Sunshine State Standards*; and
- Requires a district school board's career and technical education standards and policies to integrate and reinforce the Sunshine State Standards.

Florida Comprehensive Assessment Test:

Present Situation:

In 1971, the Legislature established Florida's statewide assessment program,⁵⁷ and the first statewide assessment was administered in reading in 1971-1972.⁵⁸ Between 1971 and 1995, the state administered various statewide assessments, including several versions of the State Student Assessment Test (SSAT). In 1995, the former Florida Commission on Education Reform and Accountability recommended procedures for the assessment of student learning in the state which would raise educational expectations for students and help them compete for jobs in a global marketplace.⁵⁹ In June 1995, the State Board of Education adopted the commission's recommendations and directed the development of new statewide assessments. In addition, the state board directed that educational content standards be developed and adopted, which became known as the *Sunshine State Standards*.

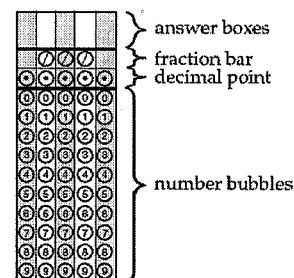
From 1995 to 1998, the Florida Comprehensive Assessment Test (FCAT) was developed and field tested. The FCAT is a series of criterion-referenced tests (CRTs) designed to measure a student's proficiency in the content specified in the *Sunshine State Standards*. In January 1998, the FCAT was administered for the first time to students in grades 4, 5, 8, and 10 in reading and mathematics.

Under current law, FCAT assessments are administered in reading, writing, science, and mathematics.⁶⁰ Students in grades 3-10 are annually required to take FCAT assessments in reading and mathematics.⁶¹ Assessment in writing and science are required at least once for students at the elementary, middle, and high school levels. To implement these requirements, DOE administers the FCAT, as follows:

- FCAT Reading and FCAT Mathematics for students in grades 3-10;
- FCAT Writing+ for students in grades 4, 8, and 10; and
- FCAT Science for students in grades 5, 8, and 11.⁶²

FCAT test items appear in various formats. These include:

- **Multiple choice.** Test items that present students with several options from which to choose. Multiple-choice items are included in testing for each FCAT subject and grade level.
- **Gridded response.** Test items that require students to solve a problem for which the answer is numerical. Answers must be written and bubbled into a number grid. Gridded-response items are included in FCAT Mathematics (grades 5-10) and FCAT Science (grades 8 and 11). See figure at right.



⁵⁷ Chapter 71-197, L.O.F. (1971).

⁵⁸ Florida Department of Education, *History of Statewide Assessment Program, A Chronology of Events: 1968-1978*, at <http://www.fldoe.org/asp/hsap/hsap6878.asp> (last visited Mar. 14, 2008).

⁵⁹ Florida Department of Education, *History of Statewide Assessment Program, A Chronology of Events: 1990-2000*, at <http://www.fldoe.org/asp/hsap/hsap9000.asp> (last visited Mar. 14, 2008).

⁶⁰ Section 1008.22(3)(c), F.S.

⁶¹ *Id.*

⁶² Florida Department of Education, *About the FCAT*, at <http://fcat.fldoe.org/aboutfcate/english/about.html> (last visited Apr. 11, 2007).

- Performance tasks. Test items that require students to provide either a short or extended written response. Short-response items may, for example, ask students to describe a character in a story, write a mathematical equation, or explain a scientific concept. Examples of extended-response items include comparing two characters, constructing a graph, or describing the steps in an experiment. Performance tasks are included in FCAT Reading (grades 4, 8, and 10), FCAT Mathematics (grades 5, 8, and 10), and FCAT Science (grades 5, 8, and 11).
- Writing prompt or prompted essay. Test items in which the student is given a topic on which to write an essay. Writing-prompt items are included in the essay portion of FCAT Writing+ (grades 4, 8, and 10).

Current law requires the FCAT to “measure and report student proficiency levels of all students assessed in reading, writing, mathematics, and science.”⁶³ The State Board of Education has adopted a rule establishing five achievement levels for FCAT.⁶⁴ Level 5 represents the greatest achievement, while Level 1 signifies the lowest achievement.⁶⁵ The rules identify ranges of scale scores, by grade level, for each achievement level. For example, a student scoring in Level 1 on FCAT Reading earned a scale score that falls within a range from 100 to 258, while a student scoring at Level 5 earned a scale score within a range from 394 to 500. The upper and lower scale scores of each achievement-level range are known as “cut-point scores.” DOE periodically establishes standards-setting committees to recommend cut-point scores for the five achievement levels through a process, known as “bookmarking,” for reviewing grade-level expectations for student performance on FCAT test items. Committee members include teachers from the targeted grade levels and subject areas, school and district curriculum specialists, school and district administrators, university faculty from the discipline areas, and business and community leaders.

Students who score at Levels 3, 4, or 5 are performing at or above grade-level expectations. Students who score at Level 1 or 2 are performing below expectations and need additional instruction in the content assessed at that grade level.

Current law requires the Commissioner of Education to document procedures used to ensure that versions of the FCAT taken by students retaking the grade 10 FCAT are “equally challenging and difficult as the tests taken by students in grade 10 which contain performance tasks.”⁶⁶ As previously discussed, FCAT includes multiple-choice items, gridded-response items, performance task (short and extended response), and writing prompt (essay). However, test items on assessments for students retaking the grade 10 FCAT Reading and FCAT Mathematics are exclusively multiple choice.

Proposed Changes:

The PCB requires FCAT assessments to be aligned to the core curricular content in the *Sunshine State Standards*. As the *Sunshine State Standards* are reviewed and replaced with enhanced curricular standards, the Commissioner of Education must revise the FCAT in accordance with the changes made to the standards.

⁶³ Section 1008.22(3)(c)1., F.S.

⁶⁴ Rule 6A-1.09422(5), F.A.C.

⁶⁵ *Id.*

⁶⁶ Section 1008.22(3)(c), F.S.

If the changes made to an FCAT assessment are significant, the state board may need to revise the proficiency levels or, in the case of the grade 10 FCAT, passing scores required for a standard high school diploma. As previously discussed, the FCAT's proficiency (i.e., achievement) levels are periodically established by standards-setting committees that recommend cut-point scores for the FCAT's five achievement levels. Once the committees recommend cut-point scores, the State Board of Education must adopt rules establishing the official cut-point scores. According to DOE, to set cut-point scores, it is necessary for the revised assessment to be administered in order to obtain data about student performance on the assessment. The PCB authorizes the Commissioner of Education, until the state board adopts the cut-point scores for the revised assessment, to adjust student scores on the revised assessment for statistical equivalence to student scores on the former assessment.

Current law requires a student to meet the testing requirements for high school graduation which are in effect when the student enters grade 9.⁶⁷ According to DOE, under this provision, some students are currently required to take the high school competency test (HSCT), which the Legislature replaced with the grade 10 FCAT in 2001.⁶⁸ DOE explains that:

This current provision limits the Department of Education's authority to phase out exit exams when new testing programs are created. For example, the High School Competency Test (HSCT) continues to be administered despite the Department's intent to phase this exam out in 2003. The last group of students for whom the HSCT was the graduation requirement (scheduled graduation date – spring 2002) have had a total of 22 opportunities to pass. Approximately 300 students participate in each administration; a total of 605 students participated in 2006. Of the 605 students, 110 students participated in both administrations. In 2006, the cost to administer the HSCT per student was approximately \$373.86, compared to \$12.84 per student for the FCAT.

The PCB allows the Commissioner of Education to discontinue administration of former assessments (e.g., HSCT), for which passage is required for a standard high school diploma, once the assessment (e.g., FCAT) is revised and students who entered grade 9 after the revised assessment's administration have graduated (i.e., 4 years). For students who remain enrolled after an assessment is discontinued, the PCB requires the State Board of Education to adopt rules providing for students to be assigned scores on the revised assessment which are statistically equivalent to what the students' scores would have been on the former assessment.

Current law requires the Commissioner of Education, if possible, to identify scores on widely used high school achievement tests (e.g., PSAT, SAT and ACT) which are "concordant" (i.e., equivalent) to scores on the FCAT.⁶⁹ If identified, concordant scores may be substituted for passing scores required for a standard high school diploma, college placement, or scholarship awards (e.g., Florida Bright Futures Scholarship Program). If the commissioner identifies a concordant score, the commissioner must adopt the score and specify which requirement is satisfied by achieving the concordant score.⁷⁰ Once a concordant score is identified, if the FCAT or "one of the identified

⁶⁷ Section 1008.22(8), F.S.

⁶⁸ Sections 368 & 1058, ch. 2002-387, L.O.F. (2002).

⁶⁹ Section 1008.22(9)(a), F.S.

⁷⁰ *Id.*

tests” is changed, new concordant scores must be identified.⁷¹ The PCB clarifies that new concordant scores must only be identified for the high school achievement tests for which a concordant score is determined.

The PCB directs the commissioner to provide an ongoing review of the FCAT by an independent test-measurement expert who provides analysis and evaluation of the test and testing practices.

Current law requires the commissioner to obtain input from state educators, assistive technology experts, and the public for the design and implementation of the statewide assessment program.⁷² The PCB adds assessment experts to the list of professionals from whom the commissioner must obtain input on the statewide assessment program.

The PCB eliminates a requirement that the Commissioner of Education document procedures used to ensure that FCAT test versions for students retaking the grade 10 FCAT Reading or FCAT Mathematics are equally challenging and difficult as the regular grade 10 FCAT.

FCAT Testing and Reporting Schedules:

Present Situation:

Current law requires the Commissioner of Education to establish a schedule for administration of the FCAT which provides for the latest possible administration of the test and the earliest possible provision of the results to the school districts, which is feasible within “available technology and specific appropriation.”⁷³ The commissioner has established the following testing schedules for the 2007-2008 and 2008-2009 school years:

	2007-2008 Schedule	2008-2009 Schedule
FCAT Writing+ (grades 4, 8, and 10)	Feb. 12-15, 2008	Feb. 10-13, 2009
FCAT Reading FCAT Mathematics Norm-Referenced Tests (NRTs) of Reading and Mathematics (grades 3-10)	Mar. 11-24, 2008	Mar. 10-23, 2009
FCAT Science (grades 5, 8, and 11)		
<i>Retake Tests</i> (grades 11-adult): FCAT Reading (Retake) FCAT Mathematics (Retake)	Sept. 24-28 or Oct. 1-5, 2007 March 11-24, 2008	Oct. 6-10 or Oct. 13-17, 2008 Mar. 10-23, 2009
<i>Retake Tests</i> (students scheduled to graduate in May or June): FCAT Reading (Retake) FCAT Mathematics (Retake)	June 16-20 or June 23-27, 2008	June 15-19 or June 22-26, 2009

⁷¹ *Id.*

⁷² Section 1008.22(3)(c)1., F.S.

⁷³ Section 1008.22(6)(c), F.S.

For the 2007-2008 administration of FCAT, DOE estimates that test results will be reported to school districts according to the following schedule:⁷⁴

	2007-2008 Testing Schedule	Anticipated Reporting Schedule
FCAT Writing+ (grades 4, 8, and 10)	Feb. 12-15, 2008	No earlier than the week of <u>May 5</u>
<i>Retake Tests</i> (grades 11-adult): FCAT Reading (Retake) FCAT Mathematics (Retake)	Sept. 24-28 or Oct. 1-5, 2007 March 11-24, 2008	No earlier than the week of <u>May 12</u>
FCAT Reading FCAT Mathematics (grade 3 only)	Mar. 11-24, 2008	No earlier than the week of <u>May 19</u>
Norm-Referenced Tests (NRTs) of Reading and Mathematics (grades 3-10)	Mar. 11-24, 2008	No earlier than the week of <u>May 26</u>
FCAT Reading FCAT Mathematics (grades 4-10)	Mar. 11-24, 2008	No earlier than the week of <u>June 2</u>

Proposed Changes:

The PCB requires the Commissioner of Education, by August 1 of each year, to notify the school districts in writing and publish on the department's website (currently <http://www.fldoe.org>) an FCAT testing and reporting schedule for the school year following the upcoming school year. For example, on August 1, 2008, the PCB requires the commissioner to publish the FCAT testing and reporting schedule for the 2009-2010 school year.

The PCB requires that the FCAT testing and reporting schedules, beginning with the 2010-2011 school year, prohibit the administration of FCAT Writing+ earlier than the week of March 1 and prohibit the administration of other FCAT assessments (i.e., reading, mathematics, science, and social studies) before April 15. The PCB requires that student test results be reported by the week of the first Monday in June. The PCB also specifies that public schools must participate in the statewide assessment program in accordance with the testing and reporting schedules.

FCAT Norm-Referenced Tests:

Present Situation:

In addition to criterion-referenced tests (CRTs) aligned to the *Sunshine State Standards*, the FCAT also includes norm-referenced tests (NRTs).⁷⁵ An NRT compares the performance of Florida students to a sample of students (known as a "norm group") who took the test during its development. DOE has selected the *Stanford Achievement Test Series, Tenth Edition* ("Stanford 10" or "SAT 10") published by Harcourt Assessment as the NRT for the FCAT.⁷⁶ The Stanford 10 includes both reading and mathematics segments and is administered with the FCAT's CRTs in grades 3-10. The Stanford 10's norm group, against which Florida students' performance is

⁷⁴ Florida Department of Education, Memorandum from Frances Haithcock to Florida School District Superintendents 2 (Jan. 24, 2008) (the memorandum explains that the reporting of FCAT results for the 2007-2008 school year is later than normal).

⁷⁵ Section 1008.22(3)(c)2., F.S.

⁷⁶ Florida Department of Education & Harcourt Assessment, *The New FCAT NRT: Stanford Achievement Test Series, Tenth Edition* (2005), available at <http://fcats.fldoe.org/pdf/fcat-nrt-sat10.pdf> (last visited Mar. 14, 2008).

compared, took the tests in spring and fall 2002.⁷⁷ Unlike the FCAT's CRTs aligned to the *Sunshine State Standards*, which include gridded-response items, performance tasks, and writing prompts, the Stanford 10 is composed exclusively of multiple-choice items.⁷⁸ According to DOE, the FCAT's NRTs are used for the following:

- **Grade 3 Promotion.** Current law requires that a student in grade 3, to be promoted to grade 4, must score at Level 2 or higher on the grade 3 FCAT Reading (CRT) or qualify for a "good cause" exemption.⁷⁹ Among the authorized exemptions, a student scoring below Level 2 may be promoted if the student demonstrates an acceptable level of performance on an alternative standardized reading assessment approved by the State Board of Education.⁸⁰ School districts routinely use the reading comprehension segment of FCAT's grade 3 NRTs as a basis for determining whether good cause exists to promote a student who scores below Level 2 on the grade 3 FCAT Reading (CRT).
- **Corporate Tax Credit Scholarships.** Current law establishes the Corporate Income Tax Credit Scholarship Program, which provides businesses with corporate income tax credits for funding scholarships for low-income students to attend private schools.⁸¹ For a private school to be eligible to receive scholarship funds for an eligible student, the school must provide for the student to annually take one of the nationally norm-referenced tests identified by DOE.⁸² DOE must identify and select nationally norm-referenced tests that are comparable to the FCAT's NRTs, and must allow private schools to administer the FCAT's NRTs.⁸³ DOE may approve a school's use of an additional assessment if the assessment meets industry standards of quality and comparability.⁸⁴ According to DOE, in 2007-2008, 15 students in four private schools were tested using the FCAT's NRTs.⁸⁵
- **Supplemental Educational Services.** Under the federal *No Child Left Behind (NCLB) Act of 2001*, if, after one school year, a school identified for school improvement fails to make adequate yearly progress (AYP), the school district must use a portion of its Title I funds to provide "supplemental educational services" (SES) for students attending the school who are from low-income families (typically those eligible for free or reduced-price meals under the National School Lunch Program).⁸⁶ SES include tutoring, after-school services, summer school, and other supplemental academic enrichment services, offered by DOE-approved public or private service providers. The NCLB act requires DOE to "develop, implement, and publicly report on standards and techniques for monitoring the quality and effectiveness of the services offered by [SES] providers..., and for withdrawing approval from providers that fail, for 2

⁷⁷ *Id.*

⁷⁸ Florida Department of Education, *FCAT Handbook - A Resource for Educators 5* (2005), available at <http://fcats.fldoe.org/handbk/complete.pdf> (last visited Mar. 14, 2008).

⁷⁹ Section 1008.25(5)(b), F.S.

⁸⁰ Section 1008.25(6)(b)3., F.S.

⁸¹ Section 220.187, F.S.

⁸² Section 220.187(8)(c)2., F.S.

⁸³ Section 220.187(9)(i), F.S.

⁸⁴ *Id.*

⁸⁵ Florida Department of Education, *2008 Agency Bill Analysis of Act Relating to Public School Curricular Standards (House Standards bill)* 3 (Feb. 18, 2008).

⁸⁶ Section 1116(e), Pub. L. 107-110 (2002) (codified at 20 U.S.C. § 6316(e)).

consecutive years, to contribute to increasing the academic proficiency of students served.”⁸⁷ According to DOE, increased academic proficiency of students in grades 4-12 will be determined by documented increases in student test scores on the FCAT’s NRTs in reading and mathematics.⁸⁸ Increased academic proficiency of students in grades 2-3 will be calculated using increased student test scores on other norm-referenced tests approved by DOE.⁸⁹

- **English language learners.** Current law requires each district school board to identify limited English proficient (LEP) students⁹⁰ through assessment and provide requirements for identified LEP students to exit the district’s program for English for Speakers of Other Languages (ESOL).⁹¹ The State Board of Education is required to adopt rules for implementing these requirements.⁹² Existing rules adopted by the state board authorize school districts to use the reading and writing subparts of a norm-referenced test to identify LEP students who lack English proficiency.⁹³ For an LEP student to exit an ESOL program, existing state board rules require the student to demonstrate English proficiency by “reassessing the student utilizing the same or comparable assessments ... used to determine the student’s eligibility assessment.”⁹⁴ Under proposed revisions to these rules, the state board proposes to authorize school districts to use the criterion-referenced Comprehensive English Language Learning Assessment (CELLA) for identifying LEP students and assessing their English proficiency for exiting an ESOL program.⁹⁵

In a series of reports published in 1987 and 1989, John Jacob Cannell, M.D., a resident psychiatrist at the University of Mexico, questioned the use of norm-referenced tests (NRTs) by public school educators.^{96,97} In the reports, dubbed the “Lake Wobegon”⁹⁸ reports, Dr. Cannell found that 70 percent of the U.S. elementary students, 90 percent of U.S. school districts, and all 50 states were testing above the publisher’s “national norm” on commercial norm-referenced achievement tests, compared to the expected 50 percent.⁹⁹ To explain his findings, Dr. Cannell investigated the causes of this “Lake Wobegon” effect and further found that:

⁸⁷ Section 1116(e)(4)(D), Pub. L. 107-110 (2002) (codified at 20 U.S.C. § 6316(e)(4)(D)).

⁸⁸ Florida Department of Education, *2008 Agency Bill Analysis of HB 65*, 2-3 (Oct. 15, 2007).

⁸⁹ *Id.*

⁹⁰ Following a recent national trend, limited English proficient (LEP) students are frequently referred to as “English language learners (ELLs).”

⁹¹ Section 1003.56(3)(b) & (c), F.S.

⁹² Section 1003.56(5), F.S.

⁹³ Rule 6A-6.0902(2)(a)2., F.A.C.

⁹⁴ Rule 6A-6.0903(1)(a), F.A.C.

⁹⁵ Florida Department of State, *Florida Administrative Weekly*, Vol. 34, No. 4, at 456-461 (Jan. 25, 2008), available at <https://www.flrules.org/Faw/FAWDocuments/FAWVOLUMEFOLDERS2008/3404/3404doc.pdf> (last visited Mar. 14, 2008).

⁹⁶ John Jacob Cannell, *Nationally Normed Elementary Achievement Testing in America’s Public Schools: How All 50 States Are Above the National Average* (Friends for Education, 2d ed. 1987).

⁹⁷ John Jacob Cannell, *How Public Educators Cheat on Standardized Achievement Tests: The “Lake Wobegon” Report*, ERIC, ED314454 (Friends for Education, 1989), available at http://www.eric.ed.gov/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/1f/c1/6d.pdf (last visited Mar. 14, 2008).

⁹⁸ The reference to “Lake Wobegon” refers to the fictional setting of Garrison Keillor’s *A Prairie Home Companion* radio program broadcast on National Public Radio. In the program, Keillor describes Lake Wobegon as a place where “all the women are strong, all the men are good looking, and all the children are above average.” See American Public Media, *A Prairie Home Companion with Garrison Keillor*, at <http://prairiehome.publicradio.org/> (last visited Mar. 14, 2008).

⁹⁹ Cannell, *supra* note 97, at 4.

- NRTs compare the performance of examinees to a sample of students (known as a “norm group”) who take the test during its development.¹⁰⁰ Norm groups are not given prior notice of the test items or provided with test preparatory instruction before the test.¹⁰¹ Dr. Cannell contrasts “Lake Wobegon” NRTs with what he calls “legitimate standardized tests.” These include the College Board’s SAT (formerly Scholastic Aptitude Test) and Preliminary SAT/National Merit Scholarship Qualifying Test (PSAT/NMSQT), the National Assessment of Educational Progress (NAEP), and the ACT (formerly American College Testing Program).¹⁰² According to Dr. Cannell, these “legitimate” tests compare the test scores of currently tested students with all other currently tested students by computing a yearly national average.¹⁰³
- “National norms” are generally not representative of the national student population because commercial test publishers do not have access to that population. An NRT’s norm group is typically drawn from a publisher’s customers or prospective customers (schools or school districts purchasing the test).
- Test items generally do not change during the life of an NRT’s administration.¹⁰⁴ Teachers administering NRTs are accordingly given notice of the types of test items and can adjust curricula for students taking the test in future years.¹⁰⁵ The longer an NRT is administered, the number of students receiving preparation for the test increases, thereby causing increased student scores compared to the norm group who did not receive preparation.¹⁰⁶
- States and school districts selecting NRTs often select tests that are closely aligned to the curricula taught in the state’s or district’s schools. Students attending schools with curricula closely aligned to an NRT’s test items typically outperform the norm group who was not selected based on the curricula being taught to the norm group.¹⁰⁷

One of the tests that Dr. Cannell refers to as “legitimate” is the National Assessment of Educational Progress (NAEP). Commonly referred to as the “Nation’s Report Card,” NAEP is the only nationally representative and continuing assessment of student achievement in the United States.¹⁰⁸ Since 1969, NAEP assessments have been conducted periodically in reading, mathematics, science, writing, and other subjects. The U.S. Congress requires the National Center for Education Statistics (NCES) to administer the NAEP testing program. The NCLB act requires states and school districts to permit students to participate in the biennial NAEP in grades 4 and 8 for assessment in reading and mathematics.¹⁰⁹

¹⁰⁰ *Id.* at 7.

¹⁰¹ *Id.* at 7 & 25.

¹⁰² See <http://www.collegeboard.com> (last visited Mar. 14, 2008); <http://nces.ed.gov/nationsreportcard> (last visited Mar. 14, 2008); <http://www.act.org> (last visited Mar. 14, 2008).

¹⁰³ Cannell, *supra* note 97, at 7.

¹⁰⁴ *Id.* at 19 & 23; John Jacob Cannell, “‘Lake Wobegone,’ Twenty Years Later,” *Third Education Group Review*, Vol. 2, No. 1, at 2 (2006).

¹⁰⁵ Cannell, *supra* note 97, at 25.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ National Assessment Governing Board, *About NAEP*, at <http://www.nagb.org> (last visited Mar. 14, 2008).

¹⁰⁹ Sections 1111(c)(2) & 1112(b)(1)(F), Pub. L. 107-110 (2002) (codified at 20 U.S.C. §§ 6311(c)(2) & 6312(b)(1)(F)).

Proposed Changes:

The PCB limits the Commissioner of Education's authority to administer norm-referenced tests (NRTs) as part of the FCAT to grades 3, 7, and 9 and, in effect, eliminates administration of FCAT's NRTs in grades 4, 5, 6, 8, and 10.

School districts may continue to use the FCAT's grade 3 NRTs as a basis for determining whether good cause exists to promote a student who scores below Level 2 on the grade 3 FCAT Reading (CRT). The PCB effectively requires DOE to select another assessment (e.g., FCAT's CRTs) for determining whether supplemental educational services providers increase the academic proficiency of their students served. Except in grades 3, 7, and 9, the PCB effectively causes the FCAT's NRTs to be unavailable for private schools to administer in order to satisfy the NRT-testing requirements of the Corporate Income Tax Credit Scholarship Program. However, DOE may approve a private school's use of an additional assessment if the assessment meets industry standards of quality and comparability.¹¹⁰ The PCB also requires school districts, in effect, to select CELLA (if DOE's proposed rules are adopted) or an NRT, other than the FCAT's NRTs, for identifying LEP students or assessing their English proficiency for exiting an ESOL program.

Social Studies and End-of-Course Assessments:

Present Situation

Under current law, school districts are required to provide students with a complete education in language arts, mathematics, science, social studies, health, physical education, foreign languages, and the arts.¹¹¹ School districts are also required to adopt student progression plans that require a student to meet specified levels of performance in reading, writing, science, and mathematics in order to progress from one grade level to another.¹¹² Current law requires that students falling below district-specified levels of performance in these subjects (or scoring below Level 3 on FCAT Reading or FCAT Mathematics) must be provided with remedial instruction and may be retained from progressing to the next grade level until remediated.¹¹³

Current law directs the Commissioner of Education to study the cost and student achievement impact of secondary end-of-course assessments, including web-based and performance formats, and report to the Legislature before implementation.¹¹⁴

Proposed Changes:

The PCB requires the Commissioner of Education, by the 2012-2013 school year, to add social studies to the subjects tested by the FCAT. The PCB requires social studies to be tested at least once at the middle school level and directs the commissioner to establish end-of-course assessments of social studies at the high school level. The PCB permits the commissioner to establish end-of-course assessments of other subjects in addition to any comprehensive assessment required by law for the FCAT (i.e., reading, mathematics, science, and writing). End-of-course assessments must be rigorous, standardized, administered statewide, and aligned to the

¹¹⁰ Section 220.187(9)(i), F.S.

¹¹¹ Section 1001.41(3), F.S. (emphasis added).

¹¹² Section 1008.25(2), F.S.

¹¹³ Section 1008.25(4), F.S.

¹¹⁴ Section 1008.22(3)(g), F.S.

Sunshine State Standards. The PCB also requires that end-of-course assessments be administered within the last 2 weeks of the course.

The PCB requires that school districts set minimum student proficiency levels for social studies, once a statewide comprehensive or end-of-course assessment of social studies is administered. If a student does not meet the district's minimum proficiency levels in social studies, the PCB requires the student to receive remedial instruction and additional diagnostic evaluation. If, after evaluation, a student's deficiencies in social studies are not remediated, the PCB authorizes the school district to retain the student from advancing to the next grade level and requires the student to receive intensive remedial instruction. The PCB requires a school district to continue to provide remedial instruction until the student graduates, is not subject to compulsory attendance, or meets the minimum FCAT achievement level established by the Commissioner of Education for social studies. In addition, the PCB requires each school district to annually notify parents of their students' progress toward meeting state and district proficiency expectations in social studies.

State-Adopted Instructional Materials:

Present Situation:

Current law directs the Commissioner of Education to select and adopt instructional materials for each grade and subject field in the curriculum of public elementary, middle, and high schools.¹¹⁵ The commissioner, according to a 6-year rotating schedule of subjects, annually selects and adopts instructional materials, which are added to the state-adopted list for use in public schools. Before the commissioner adopts instructional materials for a subject, DOE publishes content specifications for the subject. The specifications detail the courses for which materials are sought and standards the materials must meet.

Each year, the commissioner provides each school district with an annual allocation of state funds for instructional materials.¹¹⁶ Current law requires a school district to use at least 50 percent of the annual allocation to purchase instructional materials on the state-adopted list selected by the commissioner.¹¹⁷ In addition, a school district may use all of that part of the allocation designated for kindergarten, and 75 percent of that part of the allocation designated for grade 1, to purchase instructional materials not on the commissioner's state-adopted list.¹¹⁸

The funds allowed to be used for instructional materials not on the state-adopted list (up to 50 percent of the annual allocation) must be used for instructional materials or other items having intellectual content that assists in the instruction of a subject or course.¹¹⁹ These materials may include electronic media and computer courseware or software; however, the funds may not be used to purchase electronic or computer hardware even if the hardware is bundled with software or other electronic media.¹²⁰

¹¹⁵ Section 1006.34, F.S.

¹¹⁶ Section 1006.40(1), F.S.

¹¹⁷ Section 1006.40(3)(a) and (b), F.S.

¹¹⁸ Section 1006.40(3)(c), F.S.

¹¹⁹ Section 1006.40(4), F.S.

¹²⁰ *Id.*

Proposed Changes:

The PCB requires that instructional materials selected by the Commissioner of Education to be included on the list of state-adopted instructional materials must clearly demonstrate alignment to the *Sunshine State Standards*. The PCB also requires that all instructional materials purchased by school districts using the annual instructional materials allocation must be aligned to the *Sunshine State Standards*. The PCB allows a school district to use up to 10 percent of its annual allocation for instructional materials not on the state-adopted list to purchase technology devices with digital content or online content. The publisher or manufacturer must demonstrate that the digital or online content is aligned to the *Sunshine State Standards*.

FCAT Preparation Activities:

Present Situation:

One newspaper of general circulation in the state referred to the practice of school districts suspending a regular program of curricula in order for students to prepare for the FCAT as “FCAT frenzy.”¹²¹ These FCAT-preparation activities typically include the administration of practice tests, the teaching of test-taking strategies, and the use of FCAT practice workbooks for review of curricular content anticipated to appear in FCAT test items.

The Department of Education (DOE) publishes FCAT sample test and answer key books. According to DOE, the sample test books are produced to “prepare students to take the tests ... [by] familiar[izing them] with FCAT by providing helpful hints and offering practice answering questions in different formats.”¹²² The sample answer keys are designed to be used by teachers to explain to students the answers and solutions to the questions in the sample test books and to identify which *Sunshine State Standards* benchmark is being tested by the questions. Commercial publishers also produce study guides, sample tests, flash cards, and other test-preparation materials for the FCAT.¹²³

Proposed Changes:

The PCB requires district school boards to prohibit each public school, beginning with the 2008-2009 school year, from suspending a regular program of curricula in order to administer practice tests or engage in other test-preparation activities for a statewide assessment, except as required in rules adopted by the State Board of Education which determine that practice testing or the test-preparation activities are necessary for the valid and reliable administration of the statewide assessment.

The PCB requires the Commissioner of Education’s procedures for selecting instructional materials for the state-approved list to prohibit, by July 1, 2008, any reference to “Florida Comprehensive

¹²¹ See Nirvi Shah, “FCAT frenzy: Is it subsiding?,” *Miami Herald* (Feb. 12, 2008).

¹²² Florida Department of Education, *FCAT Sample Test Books and Answer Keys (2007-08)*, at <http://fcat.fldoe.org/fcatitem.asp> (last visited Mar. 14, 2008).

¹²³ See, e.g., *FCAT Secrets Study Guide: FCAT Exam Practice & Review for the Florida’s Comprehensive Assessment Test* (Morrison Media, 2007); Research & Education Association, *The Best Test Preparation for the FCAT: Florida Comprehensive Assessment Test, Grade 10* (Jun. 2007); Mel Friedman, *Florida FCAT Reading & Writing, Grade 8: Best Test Prep* (Research & Education Association, Jan. 2006); Enrique Ortiz & Thomas R. Davenport, *CliffsTestPrep FCAT Grade 10 Reading and Math: 10 Practice Tests* (Cliffs Notes, Nov. 2005); Hollandays Publishing, *Florida FCAT Reading & Writing Flashcards* (July 2005); *Targeting the FCAT, Reading and Mathematics, Grade 3* (Steck Vaughn, Oct. 2004); Claudine A. Townley, *Barron’s How to Prepare for the FCAT: Grade 10 Florida Comprehensive Assessment Test in Reading and Writing* (Barron’s Educational Series, Sept. 2004).

Assessment Test” or “FCAT.” The PCB prohibits a school district from using legislative appropriations (including the instructional materials allocation) for:

- FCAT practice tests, sample test items, or practice workbooks;
- Materials dedicated to test-taking exercises or strategies designed exclusively for FCAT preparation; or
- Materials that include any reference to “Florida Comprehensive Assessment Test” or “FCAT.”

The PCB requires DOE to notify publishers and manufacturers of these restrictions in the content specifications for each adoption of instructional materials. If the Auditor General finds that a school district purchased materials in violation of these restrictions, DOE is required to withhold funds from the next instructional materials allocation equal to the amount of the unlawful purchases. The PCB also directs the district school board to discipline staff responsible for the unlawful purchases.

The PCB prohibits any contractor selected by DOE to develop the FCAT, or the contractor’s corporate affiliates or subsidiaries, if any, from developing or publishing FCAT practice tests, sample test items, practice workbooks, or FCAT test-taking exercises or strategies, except as authorized in writing by the commissioner or in the contract.

Reading Comprehension:

Present Situation:

Professor E. D. Hirsh, Jr., in explaining how students learn to read, writes that the “possession of relevant prior knowledge is the single most potent contributor to the comprehension of a text.”¹²⁴ The Koret Task Force agrees with Professor Hirsh, stating that “[w]ithout rich content, students will not develop the knowledge and vocabulary needed to comprehend sophisticated text.”¹²⁵ Professor Hirsh concludes that:

If we want to make sure that students have the background knowledge they need to be good readers, we must give them a good general education—that is, an education in literature, science, history, and the liberal arts. That is the only kind of education that can build good readers. Period. Wasting hours on hours of precious school time on trivial, disconnected stories and on futile how-to exercises deprives students of hours that could be spent on learning literature, science, history, and the arts.¹²⁶

Proposed Changes:

As previously discussed, the PCB directs the State Board of Education to review and replace the *Sunshine State Standards* with enhanced curricular standards, which must identify the core curricular content that students are expected to learn for reading comprehension. The PCB also requires that instructional materials used to teach reading, which are purchased using funds from each school district’s annual instructional materials allocation, to the maximum extent practicable, must incorporate content from other core subjects (e.g., science, mathematics, and social studies).

¹²⁴ E. D. Hirsh, Jr., “What Do They Know of Reading Who Only Reading Know? Brining Liberal Arts into the Wasteland of the ‘Literacy Block,’” in *Beyond the Basics: Achieving a Liberal Education for All Children* 19 (Thomas B. Fordham Institute, Chester E. Finn, Jr. & Diane Ravitch, eds., July 2007), available at http://vcwww.edexcellence.net/doc/Beyond_The_Basics_Final.pdf (last visited Mar. 14, 2008).

¹²⁵ Hoover, *supra* note 38, at 26.

¹²⁶ Hirsh, *supra* note 124, at 19-20.

School Grades and School Improvement Ratings:

Present Situation:

Current law specifies that each school having students tested and included in the school grading system shall receive a school grade, except that an alternative school may choose to receive a school improvement rating instead of a school grade.¹²⁷ In an existing rule adopted by the State Board of Education, a school grade is not assigned to a public school unless the school has at least 30 eligible students with valid FCAT Reading scores for the current and previous years and 30 eligible students with valid FCAT Mathematics scores for the current and previous years.¹²⁸

In November 2007, DOE published a proposed rule establishing procedures for assigning school improvement ratings to alternative schools.¹²⁹ The proposed rule specifies that a school improvement rating is calculated for an alternative school choosing to receive a rating, if the school has a minimum of 10 eligible students with valid FCAT Reading scores for the current and 2 previous years and a minimum of 10 eligible students with valid FCAT Mathematics scores for the current and 2 previous years.¹³⁰ In response to the proposed rule, the Joint Administrative Procedures Committee (JAPC) submitted a letter to DOE inquiring about DOE's authority to adopt the 10-student limit on school improvement ratings. The letter, which also discusses JAPC's concerns about DOE's authority for its existing rule establishing the 30-student limit on school grades, reads as follows:

I asked, "What is the State Board of Education's authority to restrict implementation of section 1008.341, Florida Statutes, to alternative schools with at least ten students who have a three-year FCAT history?"

[DOE] responded that "some minimum-group-size parameters are needed for comparing student populations' performance over time because of the magnified effects of individual results in smaller groups." In essence, once the number of students becomes so small that the performance of one student can greatly affect the school's performance rating, it is difficult to prepare a statistically relevant report on the school's performance....

With respect to the argument that the 10-student limit is necessary to maintain statistical relevance and accuracy,.... as currently written, section 1008.341 does not contain any directions to the department or the Commissioner to limit school improvement ratings to schools with a certain number of students.... Section 1008.341(2) provides, in part, "Alternative schools that provide dropout prevention and academic intervention services pursuant to s. 1003.53 shall receive a school improvement rating pursuant to this section."¹³¹ I cannot find any exceptions for small schools or any responsibility assigned to the Commissioner or Department of Education to make sure that no school receive a rating if the rating will not be

¹²⁷ Sections 1008.34(3) & 1008.341(2), F.S.

¹²⁸ Rule 6A-1.09981(4), F.A.C.

¹²⁹ Proposed rule 6A-1.099822, F.A.C.; Florida Department of State, *Florida Administrative Weekly*, Vol. 33, at 45, at 5279-81 (Nov. 9, 2007), available at <https://www.flrules.org/Faw/FAWDocuments/FAWVOLUMEFOLDERS2007/3345/3345doc.pdf> (last visited Mar. 14, 2008).

¹³⁰ *Id.* at 6A-1.099822(5)(a)1., F.A.C.

¹³¹ Emphasis in original.

statistically reliable. Furthermore, reliance on similar language in Rule 6A-1.09981 is problematic.

Section 1008.34(3) provides, in part, “Each school that has students who are tested and included in the school grading system, except an alternative school that receives a school improvement rating pursuant to s. 1008.341, shall receive a school grade.”¹³² Thus, the restriction in Rule 6A-1.09981(4) to schools with at least 30 students ... similarly appears to conflict with the statutory requirement that each school receive a school grade. In fact, it is my understanding that more than 12% of traditional public schools and 30% of the state’s charter schools were not graded last year because of the 30-student rule.¹³³

In addition to preserving the statistical reliability of school grades and school improvement ratings, DOE expresses a concern that the reporting of student assessment data for small numbers of students may allow the personal identification of an individual student’s test scores, which must be shielded from public disclosure under the federal *Family Educational Rights and Privacy Act (FERPA)*¹³⁴ and state requirements for confidentiality of student records and reports.¹³⁵

Proposed Changes:

The PCB specifies that a school does not receive a school grade (and an alternative school does not receive a school improvement rating) if the number of students for whom the required assessment data is available is less than the minimum sample necessary for statistical reliability and prevention of the unlawful release of personally identifiable student data. The PCB requires DOE to base its decision to exclude a school from receiving a school grade or school improvement rating on accepted professional practice. The PCB, in effect, addresses JAPC’s concerns by authorizing DOE to continue its 30-student minimum for school grades in existing rule and establish a 10-student minimum for school improvement ratings proposed in its pending rule proposal.

In addition, current law requires that student performance data of students assigned to an alternative school is used in calculations for the school grade of the alternative school, if the alternative school chooses to receive a school grade.¹³⁶ If the alternative school chooses to receive a school improvement rating instead of a school grade, current law requires the student performance data of students assigned to the alternative school to be used in calculations for the school grades of the students’ “home schools.”¹³⁷ Under current law, a student’s home school is the school the student was attending when assigned to an alternative school.¹³⁸ According to DOE, some students are assigned to an alternative school while attending middle school but continue enrollment in the alternative school through high school grade levels. To avoid using an alternative school student’s high school performance data in calculations of the school grade for the student’s former middle school, DOE has proposed rule provisions that, in such a situation, prevent the student’s performance data from being credited to the home school:

¹³² Emphasis in original.

¹³³ Joint Administrative Procedures Committee, Letter from Brian T. Moore to Lynn Abbott (Feb. 1, 2008).

¹³⁴ 20 U.S.C. § 1232g.

¹³⁵ Section 1002.22, F.S.

¹³⁶ Section 1008.34(3)(a)3., F.A.C.

¹³⁷ *Id.*

¹³⁸ *Id.*

(a) Limitations on Students Credited Back. Student performance data will only be credited back to the home school if:

1. The student was referred to the alternative school by the home school; and
2. The student's grade level at the alternative school is within the same grade configuration as the student's home school.¹³⁹

The PCB revises the definition of "home school" to require that, if an alternative school chooses to receive a school improvement rating instead of a school grade, the alternative school student's performance data is used in the calculation of the school grade of the school to which the student would be assigned if the student was not assigned to the alternative school. Thus, if a student was assigned to an alternative school in middle school and remained assigned to the alternative school in grades 9-12, the student's performance data would be used to calculate the school grade of the high school to which the student would be assigned if he or she returned to a regular school. In addition, the PCB requires the principal of the alternative school to annually discuss the student's appropriate school assignment with the principal of the student's home school.

Effective Date:

The PCB provides an effective date of July 1, 2008.

C. SECTION DIRECTORY:

Section 1. Amends section 1003.41, F.S., requiring the State Board of Education review and replace the *Sunshine State Standards* with enhanced curricular standards.

Section 2. Amends section 1000.21, F.S., revising the systemwide definition of "Sunshine State Standards" as used in the Florida K-20 Education Code to conform to requirements for the enhanced curricular standards.

Section 3. Amends section 1001.03, F.S., revising the specific powers and duties of the State Board of Education for the review and revision of the *Sunshine State Standards*.

Section 4. Amends section 1001.41, F.S., requiring school district policies for providing students with a complete education in the core curricular content in the *Sunshine State Standards* and conforming to requirements for the enhanced curricular standards.

Section 5. Amends section 1001.42, F.S., prohibiting the purchase of FCAT-preparation materials or materials including references to the FCAT using legislative appropriations and requiring DOE to withhold instructional materials funds if the Auditor General determines that a school district violates the purchasing restrictions.

Section 6. Amends section 1003.428, F.S., conforming high school graduation requirements for enhanced curricular standards (applies to students entering high school in the 2007-2008 school year).

Section 7. Amends section 1003.429, F.S., revising the accelerated high school graduation options to conform a cross-reference to changes made to section 1008.22, F.S.

¹³⁹ Proposed rule 6A-1.099822(7)(a), F.A.C.; Florida Department of State, *Florida Administrative Weekly*, Vol. 34, No. 9, at 1193 (Feb. 29, 2008), available at <https://www.flrules.org/Faw/FAWDocuments/FAWVOLUMEFOLDERS2008/3409/3409doc.pdf> (last visited Mar. 14, 2008).

Section 8. Amends section 1003.43, F.S., conforming high school graduation requirements for the enhanced curricular standards.

Section 9. Amends section 1003.433, F.S., conforming a cross-reference to changes made in section 1008.22, F.S.

Section 10. Amends section 1006.28, F.S., conforming school district duties concerning instructional materials for the enhanced curricular standards.

Section 11. Amends section 1006.31, F.S., conforming the duties of the state instructional material committee for the enhanced curricular standards.

Section 12. Amends section 1006.34, F.S., prohibiting instructional materials from including references to the FCAT and requiring the instructional materials to align to the *Sunshine State Standards*.

Section 13. Amends section 1006.38, F.S., conforming responsibilities of instructional materials publishers and manufacturers to the enhanced curricular standards.

Section 14. Amends section 1006.40, F.S., establishing additional requirements for the expenditure of funds from the instructional materials allocation.

Section 15. Amends section 1008.22, F.S., revising requirements of the statewide assessment program, including the addition of social studies to the FCAT; requiring high school end-of-course assessments of social studies; authorizing end-of-course assessment of other subjects; limiting the FCAT's norm-referenced tests to grades 3, 7, and 9; establishing restrictions for test publishers that develop the FCAT; revising requirements for FCAT testing and reporting schedules; prohibiting the suspension of a regular curricula for practice testing and test-preparation activities; and authorizing the discontinuation of former assessments.

Section 16. Amends section 1008.25, F.S., adding proficiency in social studies to the requirements that a school district is required to base student progression and requiring remedial instruction, or retention and intensive instruction, and additional diagnostic assessments, for students who score below the school district's minimum performance levels for social studies.

Section 17. Amends section 1008.34, F.S., specifying that a school does not receive a school grade if the number of students tested is less than the minimum sample size necessary for statistical reliability and the prevention of releasing confidential student data; revising the definition of "home school" for purposes of using an alternative school student's performance data in school grade calculations for the student's home school; and requiring collaboration between alternative school and home school principals concerning an alternative school student's school assignment.

Section 18. Amends section 1008.341, F.S., specifying that an alternative school does not receive a school improvement rating if the number of students for whom student performance data is available is less than the minimum sample size necessary for statistical reliability and the prevention of releasing confidential student data.

Section 19. Amends section 1008.345, F.S., conforming education accountability provisions to the enhanced curricular standards.

Section 20. Provides an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Commissioner of Education currently administers the FCAT norm-referenced tests (NRTs) at eight grade levels (grades 3, 4, 5, 6, 7, 8, 9, and 10). In October 2007, the Department of Education (DOE) executed a \$42,594,020 contract with a commercial test publisher for the administration of the NRTs through November 30, 2012. The PCB proposes a 62.5 percent reduction in the number of grade levels being tested under the NRTs. DOE estimates an annual savings resulting from reducing the NRT program of approximately \$5.5 million.¹⁴⁰

The PCB authorizes DOE to discontinue the use of former assessments, the passage of which were required for a standard high school diploma. As previously discussed, this provision allows DOE to discontinue administration of the high school competency test (HSCT) and would require students currently eligible to sit for the HSCT to take the FCAT. According to DOE, approximately 605 students took the HSCT in 2006 at a cost of \$373.86 per student compared to a cost of \$12.84 per student for the FCAT.¹⁴¹ Based on these figures, allowing DOE to discontinue administration of the HSCT would generate a cost savings of approximately \$218,000 per year.

The start-up activities for developing an FCAT social studies assessment in one grade level (middle school) are estimated at approximately \$1,000,000.¹⁴² The PCB also requires end-of-course assessments of social studies at the high school level. The fiscal impact of end-of-course assessments is currently unavailable.

The ongoing review of the FCAT by an independent test-measurement expert would require DOE to issue a contract of approximately \$350,000 to \$500,000 per year.¹⁴³

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The PCB would impact the current contract with a commercial test publisher that develops the FCAT's norm-referenced tests (NRTs).

¹⁴⁰ Florida Department of Education, *supra* note 85, at 4.

¹⁴¹ *Id.*

¹⁴² The Department of Education estimates that the start-up activities for development of FCAT social studies assessments in three grade levels (once at the elementary, middle, and high school levels) are estimated at approximately \$3,000,000. *See* Florida Department of Education, *supra* note 85, at 4.

¹⁴³ Florida Department of Education, *supra* note 85, at 4.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The PCB does not appear to require a county or municipality to spend funds or take an action requiring expenditures; reduce the authority that counties and municipalities had as of February 1, 1989, to raise revenues in the aggregate; or reduce the percentage of a state tax shared in the aggregate with counties and municipalities as of February 1, 1989.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The PCB authorizes the State Board of Education to adopt rules for the:

- Review and adoption of the enhanced curricular *Sunshine State Standards*;
- Determination of the extent to which practice testing and test-preparation activities are necessary for the valid and reliable administration of a statewide assessment; and
- Adoption of passing scores for revised assessments which are statistically equivalent to passing scores on discontinued assessments required for a standard high school diploma.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

None.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

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1 A bill to be entitled
2 An act relating to public school curricular standards;
3 amending s. 1003.41, F.S.; requiring the State Board of
4 Education to review the Sunshine State Standards and
5 replace them with enhanced curricular standards;
6 establishing requirements for the standards; providing
7 requirements for the adoption, review, and revision of the
8 standards; requiring evaluation of proposed standards;
9 authorizing the adoption of rules; amending s. 1000.21,
10 F.S.; revising the systemwide definition of "Sunshine
11 State Standards"; amending s. 1001.03, F.S.; requiring the
12 state board to review and revise the Sunshine State
13 Standards; conforming provisions; amending s. 1001.41,
14 F.S.; conforming provisions relating to district school
15 board adoption of standards and policies; amending s.
16 1001.42, F.S.; prohibiting school district expenditure of
17 legislative appropriations for purposes of Florida
18 Comprehensive Assessment Test (FCAT) preparation;
19 providing penalties for unlawful expenditures; amending
20 ss. 1003.428, 1003.429, 1003.43, 1003.433, 1006.28, and
21 1006.31, F.S.; conforming provisions and cross-references;
22 amending s. 1006.34, F.S.; specifying additional criteria
23 for evaluating instructional materials; conforming
24 provisions; amending s. 1006.38, F.S.; conforming
25 provisions; amending s. 1006.40, F.S.; requiring
26 instructional materials to align to the Sunshine State
27 Standards; prohibiting school district expenditure of the
28 instructional materials allocation for purposes of FCAT

29 preparation; requiring notification to manufacturers and
30 publishers; providing a penalty; authorizing purchases of
31 certain technology devices; amending s. 1008.22, F.S.;
32 revising requirements and conforming provisions relating
33 to the statewide assessment program; revising powers and
34 duties of the Commissioner of Education; requiring the
35 FCAT to assess students in social studies by a certain
36 time; providing for end-of-course assessments; requiring
37 the content knowledge and skills assessed by the FCAT and
38 end-of-course assessments to align to the Sunshine State
39 Standards; deleting provisions relating to documentation
40 of certain testing procedures; providing restrictions on
41 the development or publication of test-preparation
42 materials; revising requirements for norm-referenced
43 tests; establishing requirements for FCAT testing and
44 reporting schedules; prohibiting certain practice testing
45 and FCAT-preparation activities; requiring public schools
46 to comply with statewide assessment and reporting
47 schedules; establishing requirements for calculating
48 student scores on revised statewide assessments; providing
49 for the discontinued administration of former assessments;
50 requiring the state board to adopt rules establishing
51 passing scores on revised assessments required for a
52 standard high school diploma; clarifying determination of
53 concordant scores for the FCAT; amending s. 1008.25, F.S.;
54 requiring each district school board's student progression
55 program to include performance in social studies;
56 requiring assessment, remediation, and reporting related

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57 thereto; amending s. 1008.34, F.S.; exempting certain
 58 schools from receiving school grades; revising the
 59 definition of "home school" for purposes of calculating
 60 school grades for alternative schools; requiring annual
 61 collaboration among school principals concerning the
 62 school assignment of students attending an alternative
 63 school; amending s. 1008.341, F.S.; exempting certain
 64 alternative schools from receiving school improvement
 65 ratings; amending s. 1008.345, F.S.; conforming
 66 provisions; providing an effective date.

67
 68 Be It Enacted by the Legislature of the State of Florida:

69
 70 Section 1. Section 1003.41, Florida Statutes, is amended
 71 to read:

72 1003.41 Sunshine State Standards.--

73 (1) Public K-12 educational instruction in Florida shall
 74 be ~~is~~ based on the "Sunshine State Standards." The State Board
 75 of Education shall review the Sunshine State Standards and
 76 replace them with enhanced curricular standards that establish
 77 the core content of the curricula to be taught in this state and
 78 that specify the core content knowledge and skills that K-12
 79 public school students are expected to acquire. The enhanced
 80 curricular standards must, at a minimum:

81 (a) Establish the core curricular content for language
 82 arts, science, mathematics, and social studies, as follows:

83 1. Language arts standards must establish specific
 84 curricular content for, at a minimum, reading, grammar,

85 literature, and writing. The standards must include distinct
 86 grade-level expectations for the core content knowledge and
 87 skills that a student is expected to have acquired by each
 88 individual grade level from kindergarten through grade 12. The
 89 language arts standards must also identify a specific list of
 90 authors, important literary works, and literary traditions that
 91 a student is expected to have read by each individual grade
 92 level. The State Board of Education shall, in accordance with
 93 the expedited schedule established under subsection (2), review
 94 and replace the reading and language arts standards adopted by
 95 the state board in 2007 with enhanced curricular standards that
 96 comply with this subparagraph.

97 2. Science standards must establish specific curricular
 98 content for, at a minimum, the nature of science, earth and
 99 space science, physical science, and life science. The standards
 100 must include distinct grade-level expectations for the core
 101 content knowledge and skills that a student is expected to have
 102 acquired by each individual grade level from kindergarten
 103 through grade 8. The science standards for grades 9 through 12
 104 may be organized by grade clusters of more than one grade level.

105 3. Mathematics standards must establish specific
 106 curricular content for, at a minimum, algebra, geometry,
 107 probability, statistics, calculus, discrete mathematics,
 108 financial literacy, and trigonometry. The standards must include
 109 distinct grade-level expectations for the core content knowledge
 110 and skills that a student is expected to have acquired by each
 111 individual grade level from kindergarten through grade 8. The
 112 mathematics standards for grades 9 through 12 may be organized

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113 by grade clusters of more than one grade level.

114 4. Social studies standards must establish specific
115 curricular content for, at a minimum, geography, history,
116 government, civics, economics, United States patriotism, and
117 national sovereignty. The standards must include distinct grade-
118 level expectations for the core content knowledge and skills
119 that a student is expected to have acquired by each individual
120 grade level from kindergarten through grade 8. The social
121 studies standards for grades 9 through 12 may be organized by
122 grade clusters of more than one grade level

123 (b) Establish the core curricular content for visual and
124 performing arts, physical education, health, and foreign
125 languages. Standards for these subjects must establish specific
126 curricular content and include distinct grade-level expectations
127 for the core content knowledge and skills that a student is
128 expected to have acquired by each individual grade level from
129 kindergarten through grade 5. The standards for grades 6 through
130 12 may be organized by grade clusters of more than one grade
131 level.

132 (c) Identify the core curricular content that a student is
133 expected to learn, for each subject at each individual grade
134 level, in order to acquire the broad background knowledge needed
135 for reading comprehension.

136 (d) Be rigorous and relevant and provide for the logical,
137 sequential progression of core curricular content that
138 incrementally increases a student's core content knowledge and
139 skills over time.

140 (e) Integrate critical-thinking and problem-solving

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141 skills; communication, reading, and writing skills; mathematics
142 skills; collaboration skills; contextual and applied-learning
143 skills; technology-literacy skills; information and media-
144 literacy skills; and civic-engagement skills.

145 (f) Be organized according to a uniform structure and
146 format that is consistent for each subject. The enhanced
147 curricular standards shall, for each subject and grade level,
148 use the same alphanumeric coding system.

149 (g) Be aligned to expectations for success in
150 postsecondary education and high-skill, high-wage employment.

151 (2) By December 31, 2008, the State Board of Education
152 shall establish an expedited schedule for adoption of the
153 enhanced curricular Sunshine State Standards and shall establish
154 by rule a schedule for the periodic review and revision of the
155 standards. The state board must adopt the enhanced curricular
156 standards for each subject by December 31, 2011.

157 (3) (a) The Commissioner of Education shall develop and
158 submit to the State Board of Education proposed enhanced
159 curricular Sunshine State Standards, and periodically submit
160 proposed revisions to the standards, for adoption by the state
161 board according to the schedules established under subsection
162 (2). The commissioner, in developing the proposed standards,
163 shall consult with renowned experts on K-12 curricular standards
164 and content in each subject listed in paragraphs (1) (a) and
165 (1) (b) and shall consider standards that are implemented by
166 other states or nations and regarded as exceptionally rigorous
167 by the curricular and content experts. The commissioner may also
168 consult with curricular and content experts in other subjects.

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169 (b) The commissioner shall submit the proposed standards
 170 for review and comment by Florida educators, school
 171 administrators, representatives of community colleges and state
 172 universities who have expertise in the content knowledge and
 173 skills necessary to prepare a student for postsecondary
 174 education, and leaders in business and industry. The
 175 commissioner, after considering any comments and making any
 176 revisions to the proposed standards, shall submit the standards
 177 for written evaluation by renowned experts on K-12 curricular
 178 standards and content.

179 (c) The commissioner, upon finalizing the proposed
 180 standards, shall submit the standards and evaluations by the
 181 curricular and content experts to the Governor, the President of
 182 the Senate, and the Speaker of the House of Representatives at
 183 least 21 days before the State Board of Education considers
 184 adoption of the proposed standards.

185 (4) The State Board of Education may adopt rules under ss.
 186 120.536(1) and 120.54 to implement this section. ~~These standards~~
 187 ~~have been adopted by the State Board of Education and delineate~~
 188 ~~the academic achievement of students, for which the state will~~
 189 ~~hold schools accountable, in grades K-2, 3-5, 6-8, and 9-12 in~~
 190 ~~the subjects of language arts, mathematics, science, social~~
 191 ~~studies, the arts, health and physical education, and foreign~~
 192 ~~languages. They include standards in reading, writing, history,~~
 193 ~~government, geography, economics, and computer literacy.~~

194 Section 2. Subsection (7) of section 1000.21, Florida
 195 Statutes, is amended to read:

196 1000.21 Systemwide definitions.--As used in the Florida K-

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197 20 Education Code:

198 (7) "Sunshine State Standards" means the state's public K-
 199 12 curricular are standards adopted under s. 1003.41 that
 200 establish the core content of the curricula to be taught in this
 201 state and that specify the core content knowledge and skills
 202 that K-12 public school students are expected to acquire. The
 203 term includes the current Sunshine State Standards for a subject
 204 until the standards are replaced under s. 1003.41 by enhanced
 205 curricular standards. ~~that identify what public school students~~
 206 ~~should know and be able to do. These standards delineate the~~
 207 ~~academic achievement of students for which the state will hold~~
 208 ~~its public schools accountable in grades K-2, 3-5, 6-8, and 9-~~
 209 ~~12, in the subjects of language arts, mathematics, science,~~
 210 ~~social studies, the arts, health and physical education, foreign~~
 211 ~~languages, reading, writing, history, government, geography,~~
 212 ~~economics, and computer literacy.~~

213 Section 3. Subsection (1) of section 1001.03, Florida
 214 Statutes, is amended to read:

215 1001.03 Specific powers of State Board of Education.--

216 (1) PUBLIC K-12 CURRICULAR ~~STUDENT PERFORMANCE~~
 217 ~~STANDARDS.~~--The State Board of Education shall adopt and
 218 periodically review and revise ~~approve the student performance~~
 219 ~~standards known as the Sunshine State Standards in accordance~~
 220 with s. 1003.41. ~~key academic subject areas and grade levels.~~
 221 ~~The state board shall establish a schedule to facilitate the~~
 222 ~~periodic review of the standards to ensure adequate rigor,~~
 223 ~~relevance, logical student progression, and integration of~~
 224 ~~reading, writing, and mathematics across all subject areas. The~~

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225 ~~standards review by subject area must include participation of~~
 226 ~~curriculum leaders in other content areas, including the arts,~~
 227 ~~to ensure valid content area integration and to address the~~
 228 ~~instructional requirements of different learning styles. The~~
 229 ~~process for review and proposed revisions must include~~
 230 ~~leadership and input from the state's classroom teachers, school~~
 231 ~~administrators, and community colleges and universities, and~~
 232 ~~from representatives from business and industry who are~~
 233 ~~identified by local education foundations. A report including~~
 234 ~~proposed revisions must be submitted to the Governor, the~~
 235 ~~President of the Senate, and the Speaker of the House of~~
 236 ~~Representatives annually to coincide with the established review~~
 237 ~~schedule. The review schedule and an annual status report must~~
 238 ~~be submitted to the Governor, the President of the Senate, and~~
 239 ~~the Speaker of the House of Representatives annually not later~~
 240 ~~than January 1.~~

241 Section 4. Subsection (3) of section 1001.41, Florida
 242 Statutes, is amended to read:

243 1001.41 General powers of district school board.--The
 244 district school board, after considering recommendations
 245 submitted by the district school superintendent, shall exercise
 246 the following general powers:

247 (3) ~~Prescribe and Adopt standards and policies that to~~
 248 ~~provide each student the opportunity to receive a complete~~
 249 ~~education program, including instruction in the core curricular~~
 250 ~~content established in language arts, mathematics, science,~~
 251 ~~social studies, health, physical education, foreign languages,~~
 252 ~~and the arts, as defined by the Sunshine State Standards. The~~

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253 ~~standards and policies must emphasize integration and~~
 254 ~~reinforcement of reading, writing, and mathematics skills across~~
 255 ~~all subjects, including career awareness, career exploration,~~
 256 ~~and Career and technical education~~ standards and policies must
 257 integrate with and reinforce the Sunshine State Standards.

258 Section 5. Subsection (7) of section 1001.42, Florida
 259 Statutes, is amended to read:

260 1001.42 Powers and duties of district school board.--The
 261 district school board, acting as a board, shall exercise all
 262 powers and perform all duties listed below:

263 (7) COURSES OF STUDY AND OTHER INSTRUCTIONAL
 264 MATERIALS.--Provide adequate instructional materials for all
 265 students in accordance with the requirements of chapter 1006. A
 266 school district may not expend any legislative appropriation,
 267 including, but not limited to, the instructional materials
 268 allocation, for Florida Comprehensive Assessment Test (FCAT)
 269 practice tests, sample test items, or practice workbooks or for
 270 any other materials dedicated to test-taking exercises or
 271 strategies designed exclusively for FCAT preparation or that
 272 include any reference to the "Florida Comprehensive Assessment
 273 Test" or "FCAT." If the Auditor General determines that a school
 274 district has violated this subsection, the department shall
 275 withhold from the next distribution of funds from the
 276 instructional materials allocation under s. 1011.67 an amount
 277 equal to the legislative appropriations expended in violation of
 278 this subsection. The district school board shall appropriately
 279 discipline the malfeasant staff responsible for the unlawful
 280 expenditure.

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281 Section 6. Paragraph (b) of subsection (4) and paragraph
 282 (a) of subsection (8) of section 1003.428, Florida Statutes, are
 283 amended to read:

284 1003.428 General requirements for high school graduation;
 285 revised.--

286 (4) Each district school board shall establish standards
 287 for graduation from its schools, which must include:

288 (b) Earning passing scores on the FCAT, as defined in s.
 289 1008.22 (3) (c), or scores on a standardized test that are
 290 concordant with passing scores on the FCAT as defined in s.
 291 1008.22 (10) ~~(9)~~.

292
 293 Each district school board shall adopt policies designed to
 294 assist students in meeting the requirements of this subsection.
 295 These policies may include, but are not limited to: forgiveness
 296 policies, summer school or before or after school attendance,
 297 special counseling, volunteers or peer tutors, school-sponsored
 298 help sessions, homework hotlines, and study skills classes.
 299 Forgiveness policies for required courses shall be limited to
 300 replacing a grade of "D" or "F," or the equivalent of a grade of
 301 "D" or "F," with a grade of "C" or higher, or the equivalent of
 302 a grade of "C" or higher, earned subsequently in the same or
 303 comparable course. Forgiveness policies for elective courses
 304 shall be limited to replacing a grade of "D" or "F," or the
 305 equivalent of a grade of "D" or "F," with a grade of "C" or
 306 higher, or the equivalent of a grade of "C" or higher, earned
 307 subsequently in another course. The only exception to these
 308 forgiveness policies shall be made for a student in the middle

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309 grades who takes any high school course for high school credit
 310 and earns a grade of "C," "D," or "F" or the equivalent of a
 311 grade of "C," "D," or "F." In such case, the district
 312 forgiveness policy must allow the replacement of the grade with
 313 a grade of "C" or higher, or the equivalent of a grade of "C" or
 314 higher, earned subsequently in the same or comparable course. In
 315 all cases of grade forgiveness, only the new grade shall be used
 316 in the calculation of the student's grade point average. Any
 317 course grade not replaced according to a district school board
 318 forgiveness policy shall be included in the calculation of the
 319 cumulative grade point average required for graduation.

320 (8) (a) Each district school board must provide instruction
 321 to prepare students with disabilities to demonstrate proficiency
 322 in the core content knowledge and skills and ~~competencies~~
 323 necessary for successful grade-to-grade progression and high
 324 school graduation.

325 Section 7. Paragraph (a) of subsection (6) of section
 326 1003.429, Florida Statutes, is amended to read:

327 1003.429 Accelerated high school graduation options.--

328 (6) Students pursuing accelerated 3-year high school
 329 graduation options pursuant to paragraph (1) (b) or paragraph
 330 (1) (c) are required to:

331 (a) Earn passing scores on the FCAT as defined in s.
 332 1008.22 (3) (c) or scores on a standardized test that are
 333 concordant with passing scores on the FCAT as defined in s.
 334 1008.22 (10) ~~(9)~~.

335
 336 Weighted grades referred to in paragraphs (b), (c), and (d)

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337 shall be applied to those courses specifically listed or
 338 identified by the department as rigorous pursuant to s.
 339 1009.531(3) or weighted by the district school board for class
 340 ranking purposes.

341 Section 8. Paragraph (a) of subsection (5) and paragraph
 342 (a) of subsection (11) of section 1003.43, Florida Statutes, are
 343 amended to read:

344 1003.43 General requirements for high school graduation.--

345 (5) Each district school board shall establish standards
 346 for graduation from its schools, and these standards must
 347 include:

348 (a) Earning passing scores on the FCAT, as defined in s.
 349 1008.22(3)(c), or scores on a standardized test that are
 350 concordant with passing scores on the FCAT as defined in s.
 351 1008.22 (10) ~~(9)~~.

352
 353 The standards required in this subsection, and any subsequent
 354 modifications, shall be reprinted in the Florida Administrative
 355 Code even though not defined as "rules."

356 (11)(a) Each district school board must provide
 357 instruction to prepare students with disabilities to demonstrate
 358 proficiency in the core content knowledge and skills and
 359 ~~competencies~~ necessary for successful grade-to-grade progression
 360 and high school graduation.

361 Section 9. Subsection (1) of section 1003.433, Florida
 362 Statutes, is amended to read:

363 1003.433 Learning opportunities for out-of-state and out-
 364 of-country transfer students and students needing additional

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365 instruction to meet high school graduation requirements.--

366 (1) Students who enter a Florida public school at the
 367 eleventh or twelfth grade from out of state or from a foreign
 368 country shall not be required to spend additional time in a
 369 Florida public school in order to meet the high school course
 370 requirements if the student has met all requirements of the
 371 school district, state, or country from which he or she is
 372 transferring. Such students who are not proficient in English
 373 should receive immediate and intensive instruction in English
 374 language acquisition. However, to receive a standard high school
 375 diploma, a transfer student must earn a 2.0 grade point average
 376 and pass the grade 10 FCAT required in s. 1008.22(3) or an
 377 alternate assessment as described in s. 1008.22(10)~~(9)~~.

378 Section 10. Paragraph (b) of subsection (1) of section
 379 1006.28, Florida Statutes, is amended to read:

380 1006.28 Duties of district school board, district school
 381 superintendent; and school principal regarding K-12
 382 instructional materials.--

383 (1) DISTRICT SCHOOL BOARD.--The district school board has
 384 the duty to provide adequate instructional materials for all
 385 students in accordance with the requirements of this part. The
 386 term "adequate instructional materials" means a sufficient
 387 number of textbooks or sets of materials serving as the basis
 388 for instruction for each student in the core courses of
 389 mathematics, language arts, social studies, science, reading,
 390 and literature, except for instruction for which the school
 391 advisory council approves the use of a program that does not
 392 include a textbook as a major tool of instruction. The district

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393 school board has the following specific duties:

394 (b) Textbooks.--Provide for proper requisitioning,
 395 distribution, accounting, storage, care, and use of all
 396 instructional materials furnished by the state and furnish such
 397 other instructional materials as may be needed. The district
 398 school board shall assure that instructional materials used in
 399 the district are consistent with the district goals and
 400 objectives and the curriculum frameworks adopted by rule of the
 401 State Board of Education, as well as with the state and district
 402 curricular ~~performance~~ standards provided for in s. 1001.03(1).

403 Section 11. Subsection (4) of section 1006.31, Florida
 404 Statutes, is amended to read:

405 1006.31 Duties of each state instructional materials
 406 committee.--The duties of each state instructional materials
 407 committee are:

408 (4) EVALUATION OF INSTRUCTIONAL MATERIALS.--To evaluate
 409 carefully all instructional materials submitted, to ascertain
 410 which instructional materials, if any, submitted for
 411 consideration best implement the selection criteria developed by
 412 the commissioner and those curricular objectives included within
 413 applicable curricular ~~performance~~ standards provided for in s.
 414 1001.03(1).

415 (a) When recommending instructional materials for use in
 416 the schools, each committee shall include only instructional
 417 materials that accurately portray the ethnic, socioeconomic,
 418 cultural, and racial diversity of our society, including men and
 419 women in professional, career, and executive roles, and the role
 420 and contributions of the entrepreneur and labor in the total

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421 development of this state and the United States.

422 (b) When recommending instructional materials for use in
423 the schools, each committee shall include only materials which
424 accurately portray, whenever appropriate, humankind's place in
425 ecological systems, including the necessity for the protection
426 of our environment and conservation of our natural resources and
427 the effects on the human system of the use of tobacco, alcohol,
428 controlled substances, and other dangerous substances.

429 (c) When recommending instructional materials for use in
430 the schools, each committee shall require such materials as it
431 deems necessary and proper to encourage thrift, fire prevention,
432 and humane treatment of people and animals.

433 (d) When recommending instructional materials for use in
434 the schools, each committee shall require, when appropriate to
435 the comprehension of students, that materials for social
436 science, history, or civics classes contain the Declaration of
437 Independence and the Constitution of the United States. No
438 instructional materials shall be recommended by any committee
439 for use in the schools which contain any matter reflecting
440 unfairly upon persons because of their race, color, creed,
441 national origin, ancestry, gender, or occupation.

442 (e) All instructional materials recommended by each
443 committee for use in the schools shall be, to the satisfaction
444 of each committee, accurate, objective, and current and suited
445 to the needs and comprehension of students at their respective
446 grade levels. Instructional materials committees shall consider
447 for adoption materials developed for academically talented
448 students such as those enrolled in advanced placement courses.

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The findings of the committees, including the evaluation of instructional materials, shall be in sessions open to the public. All decisions leading to determinations of the committees shall be by roll call vote, and at no time will a secret ballot be permitted.

Section 12. Subsection (1) and paragraph (b) of subsection (2) of section 1006.34, Florida Statutes, are amended to read:

1006.34 Powers and duties of the commissioner and the department in selecting and adopting instructional materials.--

(1) PROCEDURES FOR EVALUATING INSTRUCTIONAL MATERIALS.--The commissioner shall prescribe the procedures by which the department shall evaluate instructional materials submitted by publishers and manufacturers in each adoption. Included in these procedures shall be provisions that ~~which~~ afford each publisher or manufacturer or his or her representative an opportunity to present to members of the state instructional materials committees the merits of each instructional material submitted in each adoption. Beginning July 1, 2008, the procedures must prohibit the adoption of instructional materials that include any reference to the "Florida Comprehensive Assessment Test" or "FCAT" and must require any instructional materials submitted to clearly demonstrate alignment to the Sunshine State Standards.

(2) SELECTION AND ADOPTION OF INSTRUCTIONAL MATERIALS.--

(b) In the selection of instructional materials, library books, and other reading material used in the public school

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476 system, the standards used to determine the propriety of the
477 material shall include:

478 1. The age of the students who normally could be expected
479 to have access to the material.

480 2. The educational purpose to be served by the material.
481 In considering instructional materials for classroom use,
482 priority shall be given to the selection of materials which
483 encompass the state and district school board curricular
484 ~~performance~~ standards provided for in s. 1001.03(1) and which
485 include the instructional objectives contained within the
486 curriculum frameworks approved by rule of the State Board of
487 Education.

488 3. The degree to which the material would be supplemented
489 and explained by mature classroom instruction as part of a
490 normal classroom instructional program.

491 4. The consideration of the broad racial, ethnic,
492 socioeconomic, and cultural diversity of the students of this
493 state.

494
495 No book or other material containing hard-core pornography or
496 otherwise prohibited by s. 847.012 shall be used or available
497 within any public school district.

498 Section 13. Paragraph (b) of subsection (3) of section
499 1006.38, Florida Statutes, is amended to read:

500 1006.38 Duties, responsibilities, and requirements of
501 instructional materials publishers and
502 manufacturers.--Publishers and manufacturers of instructional
503 materials, or their representatives, shall:

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504 (3) Submit, at a time designated in s. 1006.33, the
505 following information:

506 (b) Written proof that the publisher has provided written
507 correlations to appropriate curricular objectives included
508 within applicable curricular ~~performance~~ standards provided for
509 in s. 1001.03(1).

510 Section 14. Subsection (1) and paragraph (b) of subsection
511 (3) of section 1006.40, Florida Statutes, are amended to read:

512 1006.40 Use of instructional materials allocation;
513 instructional materials, library books, and reference books;
514 repair of books.--

515 (1) (a) On or before July 1 each year, the commissioner
516 shall certify to each district school superintendent the
517 estimated allocation of state funds for instructional materials,
518 computed under ~~pursuant to the provisions of~~ s. 1011.67 for the
519 ensuing fiscal year. All instructional materials used must align
520 to the Sunshine State Standards. Instructional materials used to
521 teach reading shall, to the maximum extent practicable,
522 incorporate nonfictional content from other core subjects.

523 (b) A school district may not expend funds from the
524 instructional materials allocation for Florida Comprehensive
525 Assessment Test (FCAT) practice tests, sample test items, or
526 practice workbooks or for any other materials dedicated to test-
527 taking exercises or strategies designed exclusively for FCAT
528 preparation or that include any reference to the "Florida
529 Comprehensive Assessment Test" or "FCAT." The department shall
530 notify publishers and manufacturers of this prohibition by
531 including notice of this paragraph in the instructional

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532 materials specifications for each adoption. A school district's
 533 violation of this paragraph is subject to the withholding of
 534 funds from the instructional materials allocation under s.
 535 1001.42 (7) .

536 (3)

537 (b) Up to 50 percent of the annual allocation may be used
 538 for the purchase of instructional materials, including library
 539 and reference books and nonprint materials, not included on the
 540 state-adopted list and for the repair and renovation of
 541 textbooks and library books. Notwithstanding subsection (4), up
 542 to 10 percent of the funds used for the purchase of
 543 instructional materials not on the state-adopted list may be
 544 used to purchase technology devices with digital content or
 545 online content if the publisher or manufacturer clearly
 546 demonstrates that the content is aligned to the Sunshine State
 547 Standards.

548 Section 15. Section 1008.22, Florida Statutes, is amended
 549 to read:

550 1008.22 Student assessment program for public schools.--

551 (1) PURPOSE.--The primary purposes of the student
 552 assessment program are to provide information needed to improve
 553 the public schools by enhancing the learning gains of all
 554 students and to inform parents of the educational progress of
 555 their public school children. The program must be designed to:

556 (a) Assess the annual learning gains of each student
 557 toward achieving the Sunshine State Standards appropriate for
 558 the student's grade level.

559 (b) Provide data for making decisions regarding school

560 accountability and recognition.

561 (c) Identify the educational strengths and needs of
 562 students and the readiness of students to be promoted to the
 563 next grade level or to graduate from high school with a standard
 564 or special high school diploma.

565 (d) Assess how well educational goals and curricular
 566 ~~performanee~~ standards are met at the school, district, and state
 567 levels.

568 (e) Provide information to aid in the evaluation and
 569 development of educational programs and policies.

570 (f) Provide information on the performance of Florida
 571 students compared with that of other students across the United
 572 States.

573 (2) NATIONAL EDUCATION COMPARISONS.--It is Florida's
 574 intent to participate in the measurement of national educational
 575 goals. The Commissioner of Education shall direct Florida school
 576 districts to participate in the administration of the National
 577 Assessment of Educational Progress, or a similar national
 578 assessment program, both for the national sample and for any
 579 state-by-state comparison programs which may be initiated. The
 580 ~~Such~~ assessments must be conducted using the data collection
 581 procedures, the student surveys, the educator surveys, and other
 582 instruments included in the National Assessment of Educational
 583 Progress or similar program being administered in Florida. The
 584 results of these assessments shall be included in the annual
 585 report of the Commissioner of Education specified in this
 586 section. The administration of the National Assessment of
 587 Educational Progress or similar program shall be in addition to

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588 and separate from the administration of the statewide assessment
589 program.

590 (3) STATEWIDE ASSESSMENT PROGRAM.--The commissioner shall
591 design and implement a statewide program of educational
592 assessment that provides information for the improvement of the
593 operation and management of the public schools, including
594 schools operating for the purpose of providing educational
595 services to youth in Department of Juvenile Justice programs.
596 The commissioner may enter into contracts for the continued
597 administration of the assessment, testing, and evaluation
598 programs authorized and funded by the Legislature. Contracts may
599 be initiated in 1 fiscal year and continue into the next and may
600 be paid from the appropriations of either or both fiscal years.
601 The commissioner is authorized to negotiate for the sale or
602 lease of tests, scoring protocols, test scoring services, and
603 related materials developed pursuant to law. Pursuant to the
604 statewide assessment program, the commissioner shall:

605 (a) Submit proposed enhanced curricular Sunshine State
606 Standards to the State Board of Education for adoption and
607 periodic review and revision under s. 1003.41. ~~a list that~~
608 ~~specifies student skills and competencies to which the goals for~~
609 ~~education specified in the state plan apply, including, but not~~
610 ~~limited to, reading, writing, science, and mathematics. The~~
611 ~~skills and competencies must include problem solving and higher-~~
612 ~~order skills as appropriate and shall be known as the Sunshine~~
613 ~~State Standards as defined in s. 1000.21. The commissioner shall~~
614 ~~select such skills and competencies after receiving~~
615 ~~recommendations from educators, citizens, and members of the~~

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616 ~~business community. The commissioner shall submit to the State~~
617 ~~Board of Education revisions to the list of student skills and~~
618 ~~competencies in order to maintain continuous progress toward~~
619 ~~improvements in student proficiency.~~

620 (b) Develop and implement a uniform system of indicators
621 to describe the performance of public school students and the
622 characteristics of the public school districts and the public
623 schools. These indicators must include, without limitation,
624 information gathered by the comprehensive management information
625 system created pursuant to s. 1008.385 and student achievement
626 information obtained pursuant to this section.

627 (c) Develop and implement a student achievement testing
628 program known as the Florida Comprehensive Assessment Test
629 (FCAT) as part of the statewide assessment program to measure a
630 student's content knowledge and skills in reading, writing,
631 science, and mathematics, and, by the 2012-2013 school year,
632 social studies. Other content areas may be included as directed
633 by the commissioner. Comprehensive assessments ~~The assessment of~~
634 reading and mathematics shall be administered annually in grades
635 3 through 10. Comprehensive assessments ~~The assessment of~~
636 writing and science shall be administered at least once at the
637 elementary, middle, and high school levels. Comprehensive
638 assessments of social studies shall be administered at least
639 once at the middle school level. End-of-course assessments of
640 social studies shall be administered at the high school level.
641 End-of-course assessments of any other subject may be
642 administered in addition to the comprehensive assessments
643 required under this paragraph. An end-of-course assessment must

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644 be rigorous, standardized, and administered statewide. The
645 content knowledge and skills assessed by comprehensive and end-
646 of-course assessments must be aligned to the core curricular
647 content established in the Sunshine State Standards. The
648 ~~commissioner must document the procedures used to ensure that~~
649 ~~the versions of the FCAT which are taken by students retaking~~
650 ~~the grade 10 FCAT are equally as challenging and difficult as~~
651 ~~the tests taken by students in grade 10 which contain~~
652 ~~performance tasks.~~ The testing program must be designed as
653 follows so that:

654 1. ~~The tests measure student skills and competencies~~
655 ~~adopted by the State Board of Education as specified in~~
656 ~~paragraph (a).~~ The tests must measure and report student
657 proficiency levels of all students assessed in reading, writing,
658 mathematics, and science, and social studies. The commissioner
659 shall provide for the tests to be developed or obtained, as
660 appropriate, through contracts and project agreements with
661 private vendors, public vendors, public agencies, postsecondary
662 educational institutions, or school districts. An entity awarded
663 a contract or entering into a project agreement, or a corporate
664 affiliate or subsidiary of the entity, may not participate in
665 the development or publication of practice tests, sample test
666 items, or practice workbooks or of any other materials dedicated
667 to test-taking exercises or strategies for the tests developed
668 or obtained through the contract or project agreement, except as
669 authorized in the contract or project agreement or otherwise
670 authorized in writing by the commissioner. The commissioner
671 shall obtain input with respect to the design and implementation

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672 of the testing program from assessment experts, state educators,
673 assistive technology experts, and the public. In addition, the
674 commissioner shall provide for ongoing review of the FCAT by an
675 independent test-measurement expert who provides analysis and
676 evaluation of the test and testing practices.

677 2. The testing program shall ~~will~~ include a combination of
678 ~~norm-referenced and criterion-referenced tests and norm-~~
679 referenced tests. The criterion-referenced tests shall include,
680 to the extent determined by the commissioner, test items
681 ~~questions~~ that require the student to produce information or
682 perform tasks in such a way that the core content knowledge and
683 skills and competencies he or she uses can be measured. The
684 norm-referenced tests included in the statewide testing program
685 may only be administered in grades 3, 7, and 9.

686 3. ~~Each testing program, whether at the elementary,~~
687 ~~middle, or high school level, includes a test of Writing~~
688 assessments shall require in which students are required to
689 produce a writing sample ~~writings~~ that is ~~are then~~ scored using
690 by appropriate and timely methods.

691 4. For each test, a score shall be ~~is~~ designated ~~for each~~
692 ~~subject area tested,~~ below which ~~score~~ a student's performance
693 shall be ~~is~~ deemed inadequate. A The school district ~~districts~~
694 shall provide appropriate remedial instruction to students whose
695 performance is ~~who score~~ below grade level ~~these levels.~~

696 5. Except as provided in s. 1003.428(8)(b) or s.
697 1003.43(11)(b), students must earn a passing score on the grade
698 10 assessment test described in this paragraph or attain
699 concordant scores as described in subsection (10) ~~(9)~~ in

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700 reading, writing, and mathematics to qualify for a standard high
701 school diploma. The State Board of Education shall designate a
702 passing score for each part of the grade 10 assessment test. In
703 establishing passing scores, the state board shall consider any
704 possible negative impact of the test on minority students. The
705 State Board of Education shall adopt rules that ~~which~~ specify
706 the passing scores for the grade 10 FCAT. Any such rules that~~7~~
707 ~~which~~ have the effect of raising the required passing scores~~7~~
708 shall only apply to students taking the grade 10 FCAT for the
709 first time after such rules are adopted by the State Board of
710 Education.

711 6. Participation in the testing program shall be ~~is~~
712 mandatory for all students attending public school, including
713 students served in Department of Juvenile Justice programs,
714 except as otherwise prescribed by the commissioner. If a student
715 does not participate in the statewide assessment, the district
716 must notify the student's parent and provide the parent with
717 information regarding the implications of such nonparticipation.
718 A parent must provide signed consent for a student to receive
719 classroom instructional accommodations that would not be
720 available or permitted on the statewide assessments and must
721 acknowledge in writing that he or she understands the
722 implications of such instructional accommodations. The State
723 Board of Education shall adopt rules, based upon recommendations
724 of the commissioner, for the provision of test accommodations
725 for students in exceptional education programs and for students
726 who have limited English proficiency. Accommodations that negate
727 the validity of a statewide assessment are not allowable in the

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728 administration of the FCAT. However, instructional
729 accommodations are allowable in the classroom if included in a
730 student's individual education plan. Students using
731 instructional accommodations in the classroom that are not
732 allowable as accommodations on the FCAT may have the FCAT
733 requirement waived under ~~pursuant to the requirements of~~ s.
734 1003.428(8)(b) or s. 1003.43(11)(b).

735 7. A student seeking an adult high school diploma must
736 meet the same testing requirements that a regular high school
737 student must meet.

738 8. District school boards must provide instruction to
739 prepare students to demonstrate proficiency in the core
740 curricular content established in the Sunshine State Standards
741 adopted under s. 1003.41, including the core content knowledge
742 and skills and ~~competencies~~ necessary for successful grade-to-
743 grade progression and high school graduation. If a student is
744 provided with instructional accommodations in the classroom that
745 are not allowable as accommodations in the statewide assessment
746 program, as described in the test manuals, the district must
747 inform the parent in writing and must provide the parent with
748 information regarding the impact on the student's ability to
749 meet expected proficiency levels in reading, writing, science,
750 mathematics, and social studies ~~math~~. The commissioner shall
751 conduct studies as necessary to verify that the required core
752 curricular content is ~~skills and competencies~~ are part of the
753 district instructional programs.

754 9. District school boards must provide opportunities for
755 students to demonstrate an acceptable level of performance on an

756 alternative standardized assessment approved by the State Board
 757 of Education following enrollment in summer academies.

758 10. The Department of Education must develop, or select,
 759 and implement a common battery of assessment tools that are ~~will~~
 760 be used in all juvenile justice programs in the state. These
 761 tools must accurately measure the core curricular content skills
 762 ~~and competencies~~ established in the Sunshine State Standards.

763 11. For students seeking a special diploma under ~~pursuant~~
 764 ~~to~~ s. 1003.438, the Department of Education must develop, or
 765 select, and implement an alternate assessment tool that
 766 accurately measures the core curricular content skills ~~and~~
 767 ~~competencies~~ established in the Sunshine State Standards for
 768 students with disabilities under s. 1003.438.

769 12. The Commissioner of Education shall establish
 770 schedules for the administration of statewide assessments and
 771 the reporting of student test results. The commissioner shall,
 772 by August 1 of each year, notify each school district in writing
 773 and publish on the department's Internet website the testing and
 774 reporting schedules for, at a minimum, the school year following
 775 the upcoming school year. The testing and reporting schedules
 776 shall require that:

777 a. There be the latest possible administration of
 778 statewide assessments and the earliest possible reporting to the
 779 school districts of student test results that are feasible
 780 within available technology and specific appropriations.

781 b. Beginning with the 2010-2011 school year, a
 782 comprehensive statewide assessment of writing not be
 783 administered earlier than the week of March 1 and a

784 comprehensive statewide assessment of any other subject not be
 785 administered earlier than the week of April 15.

786 c. A statewide end-of-course assessment be administered
 787 within the last 2 weeks of the course.

788 d. Student test results of statewide assessments be
 789 reported by the week of the first Monday in June following
 790 administration of the assessments.

791
 792 The commissioner may, based on collaboration and input from
 793 school districts, design and implement student testing programs,
 794 for any grade level and subject area, necessary to effectively
 795 monitor educational achievement in the state, including the
 796 measurement of educational achievement of the Sunshine State
 797 Standards for students with disabilities. Development and
 798 refinement of assessments shall include universal design
 799 principles and accessibility standards that will prevent any
 800 unintended obstacles for students with disabilities while
 801 ensuring the validity and reliability of the test. These
 802 principles should be applicable to all technology platforms and
 803 assistive devices available for the assessments. The field
 804 testing process and psychometric analyses for the statewide
 805 assessment program must include an appropriate percentage of
 806 students with disabilities and an evaluation or determination of
 807 the effect of test items on such students.

808 (d) Conduct ongoing research to develop improved methods
 809 of assessing student performance, including, without limitation,
 810 the use of technology to administer tests, score, or report the
 811 results of, the use of electronic transfer of data, the

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812 development of work-product assessments, and the development of
813 process assessments.

814 (e) Conduct ongoing research and analysis of student
815 achievement data, including, without limitation, monitoring
816 trends in student achievement by grade level and overall student
817 achievement, identifying school programs that are successful,
818 and analyzing correlates of school achievement.

819 (f) Provide technical assistance to school districts in
820 the implementation of state and district testing programs and
821 the use of the data produced pursuant to such programs.

822 (g) Study the cost and student achievement impact of
823 secondary end-of-course assessments, including web-based and
824 performance formats, and report to the Legislature prior to
825 implementation.

826 (4) STATEWIDE ASSESSMENT PREPARATION; PROHIBITED
827 ACTIVITIES.--Beginning with the 2008-2009 school year, a
828 district school board shall prohibit each public school from
829 suspending a regular program of curricula for purposes of
830 administering practice tests or engaging in other test-
831 preparation activities for a statewide assessment except as
832 otherwise determined necessary for the valid and reliable
833 administration of the statewide assessment as set forth in rules
834 adopted by the State Board of Education with specific reference
835 to this subsection.

836 (5)-(4) DISTRICT TESTING PROGRAMS.--Each district school
837 board shall periodically assess student performance and
838 achievement within each school of the district. The assessment
839 programs must be based on the core curricular content

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840 established in the Sunshine State Standards and any ~~upon~~ local
841 goals and objectives that are compatible with the state plan for
842 education and that supplement the core content knowledge and
843 skills necessary for successful grade-to-grade progression and
844 high school graduation and ~~competencies adopted by the State~~
845 ~~Board of Education~~. All school districts must participate in the
846 statewide assessment program designed to measure annual student
847 learning and school performance. All district school boards
848 shall report assessment results as required by the state
849 management information system.

850 (6) ~~(5)~~ SCHOOL TESTING PROGRAMS.--Each public school shall
851 participate in the statewide assessment program in accordance
852 with the testing and reporting schedules published by the
853 Commissioner of Education under subparagraph (3) (c) 12.7 unless
854 specifically exempted by state board rule based on serving a
855 specialized population for which standardized testing is not
856 appropriate. Student performance data shall be analyzed and
857 reported to parents, the community, and the state. Student
858 performance data shall be used in developing objectives of the
859 school improvement plan, evaluation of instructional personnel,
860 evaluation of administrative personnel, assignment of staff,
861 allocation of resources, acquisition of instructional materials
862 and technology, performance-based budgeting, and promotion and
863 assignment of students into educational programs. The analysis
864 of student performance data also must identify strengths and
865 needs in the educational program and trends over time. The
866 analysis must be used in conjunction with the budgetary planning
867 processes developed pursuant to s. 1008.385 and the development

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868 of the programs of remediation.

869 (7)~~(6)~~ REQUIRED ANALYSES.--The commissioner shall provide,
 870 at a minimum, for the following analyses of data produced by the
 871 student achievement testing program:

872 (a) The statistical system for the annual assessments
 873 shall use measures of student learning, such as the FCAT, to
 874 determine teacher, school, and school district statistical
 875 distributions, which shall be determined using available data
 876 from the FCAT, and other data collection as deemed appropriate
 877 by the Department of Education, to measure the differences in
 878 student prior year achievement compared to the current year
 879 achievement for the purposes of accountability and recognition.

880 (b) The statistical system shall provide the best
 881 estimates of teacher, school, and school district effects on
 882 student progress. The approach used by the department shall be
 883 approved by the commissioner before implementation.

884 (c) The annual testing program shall be administered to
 885 provide for valid statewide comparisons of learning gains to be
 886 made for purposes of accountability and recognition. The
 887 ~~commissioner shall establish a schedule for the administration~~
 888 ~~of the statewide assessments. In establishing such schedule, the~~
 889 ~~commissioner is charged with the duty to accomplish the latest~~
 890 ~~possible administration of the statewide assessments and the~~
 891 ~~earliest possible provision of the results to the school~~
 892 ~~districts feasible within available technology and specific~~
 893 ~~appropriation.~~ District school boards shall not establish school
 894 calendars that jeopardize or limit the valid testing and
 895 comparison of student learning gains.

896 (8)~~(7)~~ LOCAL ASSESSMENTS.--Measurement of the learning
 897 gains of students in all subjects and grade levels other than
 898 subjects and grade levels required for the state student
 899 achievement testing program is the responsibility of the school
 900 districts.

901 (9)~~(8)~~ APPLICABILITY OF TESTING STANDARDS.--

902 (a) If the Commissioner of Education revises a statewide
 903 assessment and the revisions require the State Board of
 904 Education to modify the assessment's proficiency levels or
 905 modify the passing scores required for a standard high school
 906 diploma, until the state board adopts the modifications by rule,
 907 the commissioner shall use calculations for scoring the
 908 assessment that adjust student scores on the revised assessment
 909 for statistical equivalence to student scores on the former
 910 assessment.

911 (b) A student must attain meet the passing scores on a
 912 statewide assessment required testing requirements for a
 913 standard high school diploma graduation that were in effect at
 914 the time the student entered 9th grade 9 if, provided the
 915 student's enrollment was continuous.

916 (c) If the commissioner revises a statewide assessment and
 917 the revisions require the state board to modify the passing
 918 scores required for a standard high school diploma, the
 919 commissioner shall discontinue administration of the former
 920 assessment upon the graduation, based on normal student
 921 progression, of students entering grade 9 in the school year
 922 following administration of the revised assessment. The state
 923 board shall adopt by rule passing scores for the revised

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924 assessment that are statistically equivalent to passing scores
925 on the discontinued assessment for a student required under
926 paragraph (b) to attain passing scores on the discontinued
927 assessment.

928 (10)~~(9)~~ CONCORDANT SCORES FOR THE FCAT.--

929 (a) The State Board of Education shall analyze the content
930 and concordant data sets for widely used high school achievement
931 tests, including, but not limited to, the PSAT, PLAN, SAT, ACT,
932 and College Placement Test, to assess if concordant scores for
933 FCAT scores can be determined for high school graduation,
934 college placement, and scholarship awards. In cases where
935 content alignment and concordant scores can be determined, the
936 Commissioner of Education shall adopt those scores as meeting
937 the graduation requirement in lieu of achieving the FCAT passing
938 score and may adopt those scores as being sufficient to achieve
939 additional purposes as determined by rule. Each time ~~that~~ test
940 content or scoring procedures change ~~are changed~~ for the FCAT or
941 for a high school achievement test for which a concordant score
942 is determined ~~one of the identified tests~~, new concordant scores
943 must be determined.

944 (b) In order to use a concordant subject area score
945 pursuant to this subsection to satisfy the assessment
946 requirement for a standard high school diploma as provided in s.
947 1003.429(6)(a), s. 1003.43(5)(a), or s. 1003.428, a student must
948 take each subject area of the grade 10 FCAT a total of three
949 times without earning a passing score. The requirements of this
950 paragraph shall not apply to a new student who enters the
951 Florida public school system in grade 12, who may either achieve

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952 a passing score on the FCAT or use an approved subject area
953 concordant score to fulfill the graduation requirement.

954 (c) The State Board of Education may define by rule the
955 allowable uses, other than to satisfy the high school graduation
956 requirement, for concordant scores as described in this
957 subsection. Such uses may include, but need not be limited to,
958 achieving appropriate standardized test scores required for the
959 awarding of Florida Bright Futures Scholarships and college
960 placement.

961 (11)~~(10)~~ REPORTS.--The Department of Education shall
962 annually provide a report to the Governor, the President of the
963 Senate, and the Speaker of the House of Representatives on the
964 following:

965 (a) Longitudinal performance of students in mathematics
966 and reading.

967 (b) Longitudinal performance of students by grade level in
968 mathematics and reading.

969 (c) Longitudinal performance regarding efforts to close
970 the achievement gap.

971 (d) Longitudinal performance of students on the norm-
972 referenced component of the FCAT.

973 (e) Other student performance data based on national norm-
974 referenced and criterion-referenced tests, when available, and
975 numbers of students who after 8th grade enroll in adult
976 education rather than other secondary education.

977 (12)~~(11)~~ RULES.--The State Board of Education shall adopt
978 rules under ~~pursuant to~~ ss. 120.536(1) and 120.54 to implement
979 ~~the provisions of~~ this section.

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980 Section 16. Subsection (1), paragraph (b) of subsection
981 (2), subsection (4), and paragraph (a) of subsection (8) of
982 section 1008.25, Florida Statutes, are amended to read:

983 1008.25 Public school student progression; remedial
984 instruction; reporting requirements.--

985 (1) INTENT.--It is the intent of the Legislature that each
986 student's progression from one grade to another be determined,
987 in part, upon proficiency in reading, writing, science, ~~and~~
988 mathematics, and, upon assessment under s. 1008.22, social
989 studies; that district school board policies facilitate such
990 proficiency; and that each student and his or her parent be
991 informed of that student's academic progress.

992 (2) COMPREHENSIVE PROGRAM.--Each district school board
993 shall establish a comprehensive program for student progression
994 which must include:

995 (b) Specific levels of performance in reading, writing,
996 science, ~~and~~ mathematics, and, upon assessment under s. 1008.22,
997 social studies for each grade level, including the levels of
998 performance on statewide assessments as defined by the
999 commissioner, below which a student must receive remediation, or
1000 be retained within an intensive program that is different from
1001 the previous year's program and that takes into account the
1002 student's learning style.

1003 (4) ASSESSMENT AND REMEDIATION.--

1004 (a) Each student must participate in the statewide
1005 assessment tests required by s. 1008.22. Each student who does
1006 not meet specific levels of performance as determined by the
1007 district school board in reading, writing, science, ~~and~~

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1008 | mathematics, and, upon assessment under s. 1008.22, social
1009 | studies for each grade level, or who scores below Level 3 in
1010 | reading or mathematics ~~math~~, must be provided with additional
1011 | diagnostic assessments to determine the nature of the student's
1012 | difficulty, the areas of academic need, and strategies for
1013 | appropriate intervention and instruction as described in
1014 | paragraph (b).

1015 | (b) The school in which the student is enrolled must
1016 | develop, in consultation with the student's parent, and must
1017 | implement a progress monitoring plan. A progress monitoring plan
1018 | is intended to provide the school district and the school
1019 | flexibility in meeting the academic needs of the student and to
1020 | reduce paperwork. A student who is not meeting the school
1021 | district or state requirements for proficiency in reading and
1022 | mathematics ~~math~~ shall be covered by one of the following plans
1023 | to target instruction and identify ways to improve his or her
1024 | academic achievement:

1025 | 1. A federally required student plan such as an individual
1026 | education plan;

1027 | 2. A schoolwide system of progress monitoring for all
1028 | students; or

1029 | 3. An individualized progress monitoring plan.

1030 |
1031 | The plan chosen must be designed to assist the student or the
1032 | school in meeting state and district expectations for
1033 | proficiency. If the student has been identified as having a
1034 | deficiency in reading, the K-12 comprehensive reading plan
1035 | required by s. 1011.62(8) shall include instructional and

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1036 support services to be provided to meet the desired levels of
 1037 performance. District school boards may require low-performing
 1038 students to attend remediation programs held before or after
 1039 regular school hours or during the summer if transportation is
 1040 provided.

1041 (c) Upon subsequent evaluation, if the documented
 1042 deficiency has not been remediated, the student may be retained.
 1043 Each student who does not meet the minimum performance
 1044 expectations defined by the Commissioner of Education for the
 1045 statewide assessment tests in reading, writing, science, ~~and~~
 1046 mathematics, and, upon assessment under s. 1008.22, social
 1047 studies must continue to be provided with remedial or
 1048 supplemental instruction until the expectations are met or the
 1049 student graduates from high school or is not subject to
 1050 compulsory school attendance.

1051 (8) ANNUAL REPORT.--

1052 (a) In addition to the requirements in paragraph (5)(b),
 1053 each district school board must annually report to the parent of
 1054 each student the progress of the student toward achieving state
 1055 and district expectations for proficiency in reading, writing,
 1056 ~~science, and mathematics, and, upon assessment under s. 1008.22,~~
 1057 social studies. The district school board must report to the
 1058 parent the student's results on each statewide assessment test.
 1059 The evaluation of each student's progress must be based upon the
 1060 student's classroom work, observations, tests, district and
 1061 state assessments, and other relevant information. Progress
 1062 reporting must be provided to the parent in writing in a format
 1063 adopted by the district school board.

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1064 Section 17. Subsection (3) of section 1008.34, Florida
 1065 Statutes, is amended to read:

1066 1008.34 School grading system; school report cards;
 1067 district grade.--

1068 (3) DESIGNATION OF SCHOOL GRADES.--

1069 (a) Schools receiving a school grade.--Each school that
 1070 has students who are tested and included in the school grading
 1071 system, ~~except an alternative school that receives a school~~
 1072 ~~improvement rating pursuant to s. 1008.341,~~ shall receive a
 1073 school grade, except as follows:

1074 1. A school shall not receive a school grade if the number
 1075 of its students tested and included in the school grading system
 1076 is less than the minimum sample size necessary, based on
 1077 accepted professional practice, for statistical reliability and
 1078 prevention of the unlawful release of personally identifiable
 1079 student data under s. 1002.22 or 20 U.S.C. s. 1232g., however,

1080 2. An alternative school may choose to receive a school
 1081 grade under this section or in lieu of a school improvement
 1082 rating under s. 1008.341.

1083 3. ~~Additionally,~~ A school that serves any combination of
 1084 students in kindergarten through grade 3 that ~~which~~ does not
 1085 receive a school grade because its students are not tested and
 1086 included in the school grading system shall receive the school
 1087 grade designation of a K-3 feeder pattern school identified by
 1088 the Department of Education and verified by the school district.
 1089 A school feeder pattern exists if at least 60 percent of the
 1090 students in the school serving a combination of students in
 1091 kindergarten through grade 3 are scheduled to be assigned to the

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1092 | graded school. ~~School grades itemized in subsection (2) shall be~~
 1093 | ~~based on the following:~~

1094 | **(b)** ~~(a)~~ Criteria.--A school's grade shall be based on a
 1095 | combination of:

1096 | 1. Student achievement scores, including achievement
 1097 | scores for students seeking a special diploma.

1098 | 2. Student learning gains as measured by annual FCAT
 1099 | assessments in grades 3 through 10; learning gains for students
 1100 | seeking a special diploma, as measured by an alternate
 1101 | assessment tool, shall be included not later than the 2009-2010
 1102 | school year.

1103 | 3. Improvement of the lowest 25th percentile of students
 1104 | in the school in reading, mathematics ~~math~~, or writing on the
 1105 | FCAT, unless these students are exhibiting satisfactory
 1106 | performance.

1107 | **(c)** ~~(b)~~ Student assessment data.--Student assessment data
 1108 | used in determining school grades shall include:

1109 | 1. The aggregate scores of all eligible students enrolled
 1110 | in the school who have been assessed on the FCAT.

1111 | 2. The aggregate scores of all eligible students enrolled
 1112 | in the school who have been assessed on the FCAT, including
 1113 | Florida Writes, and who have scored at or in the lowest 25th
 1114 | percentile of students in the school in reading, mathematics
 1115 | ~~math~~, or writing, unless these students are exhibiting
 1116 | satisfactory performance.

1117 | 3. Effective with the 2005-2006 school year, the
 1118 | achievement scores and learning gains of eligible students
 1119 | attending alternative schools that provide dropout prevention

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1120 and academic intervention services pursuant to s. 1003.53. The
1121 term "eligible students" in this subparagraph does not include
1122 students attending an alternative school who are subject to
1123 district school board policies for expulsion for repeated or
1124 serious offenses, who are in dropout retrieval programs serving
1125 students who have officially been designated as dropouts, or who
1126 are in programs operated or contracted by the Department of
1127 Juvenile Justice. The student performance data for eligible
1128 students identified in this subparagraph shall be included in
1129 the calculation of the home school's grade. As used in ~~For~~
1130 ~~purposes of~~ this section and s. 1008.341, the term "home school"
1131 means the school to which the student would be assigned if the
1132 student were not ~~was attending when~~ assigned to an alternative
1133 school. If an alternative school chooses to be graded under
1134 ~~pursuant to~~ this section, student performance data for eligible
1135 students identified in this subparagraph shall not be included
1136 in the home school's grade but shall be included only in the
1137 calculation of the alternative school's grade. School districts
1138 shall ~~must~~ require collaboration between the home school and the
1139 alternative school in order to promote student success. This
1140 collaboration must include an annual discussion between the
1141 principal of the alternative school and the principal of each
1142 student's home school concerning the most appropriate school
1143 assignment for the student.

1144
1145 The State Board of Education shall adopt appropriate criteria
1146 for each school grade. The criteria must also give added weight
1147 to student achievement in reading. Schools designated with a

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1148 grade of "C," making satisfactory progress, shall be required to
1149 demonstrate that adequate progress has been made by students in
1150 the school who are in the lowest 25th percentile in reading,
1151 mathematics ~~math~~, or writing on the FCAT, including Florida
1152 Writes, unless these students are exhibiting satisfactory
1153 performance.

1154 Section 18. Subsection (2) of section 1008.341, Florida
1155 Statutes, is amended to read:

1156 1008.341 School improvement rating for alternative
1157 schools.--

1158 (2) SCHOOL IMPROVEMENT RATING.--An alternative school
1159 ~~schools~~ that provides ~~provide~~ dropout prevention and academic
1160 intervention services under ~~pursuant to~~ s. 1003.53 shall receive
1161 a school improvement rating under ~~pursuant to~~ this section.
1162 However, an alternative school shall not receive a school
1163 improvement rating if the number of its students for whom
1164 student performance data is available for the current year and
1165 previous year is less than the minimum sample size necessary,
1166 based on accepted professional practice, for statistical
1167 reliability and prevention of the unlawful release of personally
1168 identifiable student data under s. 1002.22 or 20 U.S.C. s.
1169 1232g. The school improvement rating shall identify an
1170 alternative school ~~schools~~ as having one of the following
1171 ratings defined according to rules of the State Board of
1172 Education:

1173 (a) "Improving" means a school ~~schools~~ with students
1174 making more academic progress than when the students were served
1175 in their home schools.

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1176 (b) "Maintaining" means a school ~~schools~~ with students
 1177 making progress equivalent to the progress made when the
 1178 students were served in their home schools.

1179 (c) "Declining" means a school ~~schools~~ with students
 1180 making less academic progress than when the students were served
 1181 in their home schools.

1182
 1183 The school improvement rating shall be based on a comparison of
 1184 student performance data for the current year and previous year.
 1185 Schools that improve at least one level or maintain an
 1186 "improving" rating under ~~pursuant to~~ this section are eligible
 1187 for school recognition awards under ~~pursuant to~~ s. 1008.36.

1188 Section 19. Paragraph (a) of subsection (8) of section
 1189 1008.345, Florida Statutes, is amended to read:

1190 1008.345 Implementation of state system of school
 1191 improvement and education accountability.--

1192 (8) As a part of the system of educational accountability,
 1193 the Department of Education shall:

1194 (a) Develop minimum ~~performance~~ standards for various
 1195 grades and subject areas, as required in ss. 1001.03, 1008.22,
 1196 and 1008.34.

1197 Section 20. This act shall take effect July 1, 2008.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. PCB SLC 08-01

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

1 Council/Committee hearing bill: Schools & Learning

2 Representative(s) Flores offered the following:

3

4 **Amendment**

5 Remove line(s) 917-922 and insert:

6

7 the revisions require the State Board of Education to modify the
8 passing scores required for a standard high school diploma, the
9 commissioner may, with approval of the state board, discontinue
10 administration of the former assessment upon the graduation,
11 based on normal student progression, of students participating
12 in the final regular administration of the former assessment.

13 The state

PCB SLC 08-08
Class Size Reduction
Implementation Flexibility

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB SLC 08-08 Class Size Reduction Implementation Flexibility

SPONSOR(S): Schools & Learning Council

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Schools & Learning Council	-	Eggers	Cobb <i>lcc</i>
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The proposed council bill (PCB) amends s. 1003.03, F.S., to provide a detailed, yet flexible mechanism for the implementation of the constitutional Class Size Reduction Amendment, while preserving the constitutional integrity and purpose of the amendment. The PCB:

- Sets forth methodology for districts to meet the constitutional class size requirements in the 2010-2011 school year by revising the statutory implementation schedule.
- Requires districts to use 100% of their class size allocation for reducing class sizes if any classroom in the district is over the constitutional maximums by four students in 2008-2009 and by two students in 2009-2010, until the constitutional maximums are met.
- Requires the DOE to annually calculate the number of students in each individual classroom based on the October student membership survey and annually report, by each grade grouping, those districts that are in excess of four students over the maximums in 2008-2009 and in excess of two students over the maximums in 2009-2010, to the Legislature.
- Provides that beginning with the October 2010 student membership survey and each year thereafter, each individual classroom must be in compliance with the maximums unless a flexibility exception determination is made by the district school board based on unexpected student enrollment growth.
- Places conditions on a flexibility exception determination.
- Revises the accountability provision so that the DOE must reduce the district's class size reduction operating categorical funds after the 2010-2011 school year, if the district is found to be noncompliant and a flexibility exception determination has not been made.
- Provides the State Board of Education with enforcement authority and rulemaking authority.
- Removes provisions requiring districts to meet certain requirements relating to class size reduction in order to administer the school-year VPK program.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government- The Proposed Council Bill provides school districts with a detailed, yet flexible mechanism for the implementation of the Class Size Reduction Amendment.

B. EFFECT OF PROPOSED CHANGES:

Background

Constitutional requirements

In November 2002, voters approved the constitutional Class Size Reduction Amendment.¹ The amendment requires the Legislature to provide for: (1) a sufficient number of classrooms by the beginning of the 2010 school year so that no more than a specified maximum number of students will be assigned to each teacher; and (2) the reduction of the average number of students in each classroom by at least two until the maximum number of students is achieved.

The maximum number of students specified in the amendment is:

- 18 students in grades prekindergarten through grade 3;
- 22 students in grades 4 through 8; and
- 25 students in grades 9 through 12.

Implementation

Section 1003.03(2), F.S., provides for implementation of the class size amendment by establishing the following measures for compliance:

- Establishes a baseline for data from the February 2003, student membership survey;
- Establishes a method of measuring compliance and a schedule for implementation; and
- Establishes requirements for districts found to be noncompliant.

The implementation schedule for the amendment provides that class size, for purposes of determining district compliance with the reduction goals, shall be measured at the:

- District level for each of the three grade groupings during Fiscal Years (FY) 2003-2004, 2004-2005, and 2005-2006.
- School level for each of the three grade groupings in FYs 2006-2007 and 2007-2008.
- Individual classroom level for each of the three grade groupings in FY 2008-2009 and thereafter.

Under current law, school districts must consider, but are not limited to, implementing the following options to meet the constitutional class size maximums and the required two student per year reduction:²

¹ Section 1, Article IX of the Florida Constitution.

² Section 1003.03(3), F.S.

- Encourage dual enrollment courses.
- Encourage courses from the Florida Virtual School.
- Require no more than 24 credits to graduate from high school.
- Allow students to graduate from high school as soon as they pass the grade 10 FCAT and complete the courses required for high school graduation.
- Use methods to maximize use of instructional staff.
- Use innovative methods to reduce the cost of school construction costs.
- Use joint-use facilities.
- Adopt alternative methods of class scheduling, such as block scheduling.
- Redraw school attendance zones.
- Operate schools beyond the normal operating hours.
- Use year-round schools and other non-traditional calendars.
- Review and consider amending any collective bargaining contracts that hinder the implementation of class size reduction.
- Use any other approach not prohibited by law.

Funding

Section 1011.685, F.S., creates an operating categorical fund for class size reduction. Districts are authorized to use such funding for: (a) reduction of class size in any lawful manner if the district has not met reduction goals; or (b) any lawful expenditure if reduction goals have been met with priority to be given to increasing teacher salaries and implementing differentiated-pay provisions.

For FYs 2003-2008, the Legislature appropriated a total of \$7.7 billion in class size reduction operating funds with \$2.6 billion of that amount most recently appropriated for FY 2007-2008.³

The Classrooms for Kids Program⁴ authorizes fixed capital outlay funds appropriated to the program to be distributed to districts based on a specified formula. In order to increase capacity to reduce class size, districts are required to spend these funds only on the construction, renovation, remodeling, or repair of educational facilities, or the purchase or lease-purchase of relocatables, that are in excess of projects or relocatables identified in the district's five-year work program adopted before March 15, 2003.

For FYs 2003-2008, the Legislature appropriated a total of \$2.5 billion in class size reduction fixed capital outlay funds with \$650 million of that amount most recently appropriated for FY 2007-2008.⁵

According to the current implementation schedule, the eight-year projected total operating and capital costs to implement the class size reduction amendment is \$22,420,015,017.⁶

Compliance

Since FY 2003-2004, the Department of Education (DOE) has reviewed district compliance with class size reduction requirements. When the DOE determines that a district has not complied with the

³ 2007-2008 Florida Education Finance Program, Revised 3rd Calculation, dated March 9, 2008.

⁴ Section 1013.735, F.S.

⁵ 2007-2008 General Appropriations Act, Specific Appropriation 36

⁶ Florida Department of Education. PowerPoint Presentation to the Committee on 21st Century Competitiveness, *Update on Class Size Amendment*. February 5, 2008.

statutory requirements for that year, at the time of the third FEFP calculation, the department is required to calculate an amount from the district's class size reduction operating categorical which is proportionate to the amount of class size reduction not accomplished.⁷

That amount is transferred by the Executive Office of the Governor from the district's class size reduction operating categorical to the district's fixed capital outlay appropriation to be used to meet the class size reduction requirements. However, the Legislative Budget Commission may approve an alternate amount of funds to be transferred if the Commissioner of Education and the State Board of Education (SBE) determine that a district has been unable to meet class size reduction requirements despite appropriate efforts to do so.

Beginning in the 2005-2006 school year and each year thereafter, each district identified by the DOE as having not met the class size reduction requirements must be reported to the Legislature and must implement one of the following policies in the subsequent school year:⁸

- Year-round schools;
- Double sessions;
- Rezoning; or
- Changing instructional staff loads and scheduling, deploying certified district employees to classrooms, or operating beyond normal school days and hours.

Beginning in the 2006-2007 school year, the DOE, in addition to using the enforcement authority in s. 1008.32, F.S., must develop a constitutional compliance plan for each noncompliant district, which must include rezoning for maximum use of space while minimizing additional transportation costs.⁹

Transfers from Operating to Fixed Capital Outlay

During the four FYs between 2003 and 2008, the DOE, as required by statute, has transferred almost \$8.8 million in district class size reduction operating categorical to district class size reduction fixed capital outlay. The bulk of this transfer, \$5,318,921, occurred in FY 2006-2007.

A school district that is found by the DOE to be out of compliance with statutory implementation requirements for class size reduction is allowed to appeal the department's finding of noncompliance and the amount of the district's class size reduction operating categorical to be transferred to fixed capital outlay. The Commissioner of Education may subsequently recommend an adjustment to the transfer calculations if the district demonstrates that one of the following affected their ability to reach compliance:

- District reporting errors;
- An inability to hire teachers; or
- An unexpected student enrollment growth.

In 2007-2008, prior to appeals, there were 31 school districts that had at least one school out of compliance. Moreover, there were 69 traditional public schools (2.25%) and 19 (5.38%) charter schools that were determined to be out of compliance with the class size reduction requirements. The

⁷ Section 1003.03(4)(a), F.S.

⁸ Section 1003.03(4)(b), F.S.

⁹ Section 1003.03(4)(c), F.S.

estimated transfer of funds from the class size reduction operating categorical to fixed capital outlay was \$6,132,926.¹⁰

Following appeals, there were 16 school districts that had at least one school out of compliance. Moreover, there were 23 traditional public schools (0.75%) and eight (2.27%) charter schools that were determined to be out of compliance. Subsequently, the transfer of funds from the class size reduction operating categorical to fixed capital outlay was \$475,324.¹¹

2007-2008 Compliance with Constitutional Class Size Maximums¹²

For the 2007-2008 school year, the percentages of traditional schools over the constitutional class size maximums are:

- 3.35% in prekindergarten through grade 3;
- 0.71% in grades 4 through 8; and
- 1.54% in grades 9 through 12.

For the 2007-2008 school year, the percentages of charter schools over the constitutional class size maximums are:

- 16.26% in prekindergarten through grade 3;
- 4.72% in grades 4 through 8; and
- 1.12% in grades 9 through 12.

For the 2007-2008 school year, the percentages of individual classrooms in traditional schools over the constitutional class size maximums are:

- 28.84% in prekindergarten through grade 3;
- 26.50% in grades 4 through 8; and
- 33.06% in grades 9 through 12.

For the 2007-2008 school year, the percentages of individual classrooms in charter schools over the constitutional class size maximums are:

- 36.15% in prekindergarten through grade 3;
- 30.72% in grades 4 through 8; and
- 16.86% in grades 9 through 12.

Currently, there are 33,036 classrooms over the constitutional class size maximums in prekindergarten through grade 3, 20,174 classrooms over the constitutional class size maximums in grades 4 through 8, and 10,081 classrooms over the constitutional class size maximums in grades 9 through 12.¹³

DOE conducts annual surveys of all Florida school districts to analyze the use of the class size reduction operating categorical funds. The DOE's 2007-2008 findings are as follows:¹⁴

¹⁰ Florida Department of Education. PowerPoint Presentation to the Committee on 21st Century Competitiveness, *Update on Class Size Amendment*. February 5, 2008.

¹¹ Id. The appeals process resulted in a difference of \$5,657,602 being transferred from the class size reduction operating categorical to fixed capital outlay.

¹² Id.

¹³ Florida Department of Education. Information presented to the Committee on 21st Century Competitiveness on March 4, 2008.

¹⁴ Florida Department of Education. Information presented to the Committee on 21st Century Competitiveness. January 2008.

- \$303,803,012 on New Positions- Core Teachers (salaries and benefits for teachers added in 2007-2008)
- \$1,634,882,004 on Existing Positions – Core Teachers (salaries and benefits for teachers added in 2003-04 through 2006-07)
- \$9,831,137 on New Positions – Non-Core Teachers (added in 2007-08)
- \$102,935,418 on Charter School Payments
- \$526,682,024 on Salary and Benefit Increases for Existing Teachers and Other Uses
- \$85,138,717 on Dollars Held in Reserve to Ensure Future Compliance.

Voluntary Prekindergarten Education Program (VPK)

Under current law, each school district is authorized, if eligible, to administer the VPK program at the district level for students enrolled in a school-year prekindergarten program delivered by a public school.¹⁵ However, in order to be eligible to deliver the VPK program during the school year, each school district must meet both of the following requirements:¹⁶

- The district school board must certify to the SBE that it has reduced the average number of students in each classroom by at least two and has sufficient facilities and capital outlay funds to continue to reduce the average number of students in each classroom by at least two until the maximum number of students is achieved; and
- The Commissioner of Education must certify to the SBE that the DOE has reviewed the school district's facilities, capital outlay funds, and projected student enrollment and concurs with the district's certification.

Effect of Proposed Changes

The proposed council bill (PCB) amends s. 1003.03, F.S., to provide a detailed, yet flexible mechanism for the implementation of the constitutional Class Size Reduction Amendment,¹⁷ while preserving the constitutional integrity and purpose of the amendment. The whereas clauses state the Florida Supreme Court's holding that, rather than restricting the Legislature, the class size amendment in Art IX, section 1, of the Florida Constitution gives the Legislature latitude in designing ways to reach the class size goal articulated in the amendment¹⁸, and that disruptions in learning in the middle of the school year are educationally unsound and distressing to educators, parents, and students.

Implementation and Compliance Calculation

The PCB revises the school district's implementation schedule and amends the methodology by which class size compliance is calculated for FYs 2008 through 2011. Continuing through the FY 2007-2008, school districts not in compliance with the constitutional class size maximums are required to reduce, by at least two students, the average number of students per classroom in prekindergarten through grade 3, grade 4 through grade 8, and grade 9 through grade 12.

¹⁵ Section 1002.63, F.S.

¹⁶ Section 1002.63(4), F.S.

¹⁷ Section 1, Article IX of the Florida Constitution.

¹⁸ *Advisory Opinion to the Attorney General re Florida's Amendment to Reduce Class Size*, 816 So.2d 580 at 584, 585 (Fla., 2002).

The PCB sets forth methodology for districts to meet the constitutional class size requirements in the 2010-2011 school year by providing the following changes to the statutory implementation schedule:

- FY 2008-2009, each individual classroom should have no more than four students over the constitutional class size maximums based on the October student membership survey.
- FY 2009-2010, each individual classroom should have no more than two students over the constitutional class size maximums based on the October student membership survey.
- Calculation for compliance remains at the school level for FYs 2008-2009 and 2009-2010.
- Requires districts to use 100% of their class size allocation for reducing class sizes if any classroom in the district is over the constitutional maximums by four students in 2008-2009 and by two students in 2009-2010, until the constitutional maximums are met.
- Requires the DOE to annually calculate the number of students in each individual classroom based on the October student membership survey and annually report, by each grade grouping, those districts that are in excess of four students over the maximums in 2008-2009 and in excess of two students over the maximums in 2009-2010, to the Legislature.

Furthermore, the SBE may exercise its enforcement authority under s. 1008.32, F.S.,¹⁹ to ensure that districts comply with the statutory implementation schedule.

Districts are required to use class size reduction operating categorical funds to reduce class sizes in any lawful manner, including but not limited to, encouraging qualified students to take dual enrollment or Florida Virtual School (FLVS) courses, adopting alternative class schedules, using joint facilities or innovative methods to reduce the cost of school construction, or team teaching strategies.

Beginning with the October student membership survey of the 2010-2011 school year and at the October student membership survey each year thereafter, each individual classroom must be in compliance with the constitutional class size maximums unless a flexibility exception determination has been made by a district school board. Each school district is required to make assignments, at the October student membership survey, so that the maximum number of students assigned to each teacher who is teaching core-curricula²⁰ courses in public school classrooms for:

- Prekindergarten through grade 3 may not exceed 18 students.
- Grades 4 through 8 may not exceed 22 students.
- Grades 9 through 12 may not exceed 25 students.

¹⁹ Section 1008.32, F.S., provides for the State Board of Education oversight enforcement authority to oversee the performance of district school boards in enforcement of all laws and rules. If the SBE determines that a district school board is unwilling or unable to comply with law or state board rule within the specified time frame, the state board has the authority to initiate any of the following actions: (a) Report to the Legislature the determination and recommend action to be taken by the Legislature. (b) Reduce the discretionary lottery appropriation until the school district complies with the law or state board rule. (c) Withhold the transfer of state funds, discretionary grant funds, or any other funds specified as eligible for this purpose by the Legislature until the school district complies with the law or state board rule. (d) Declare the school district ineligible for competitive grants. (e) Require monthly or periodic reporting on the situation relating to noncompliance until it is remedied.

²⁰ Section 1, Article IX of the Florida Constitution specifies that the class size requirements do not apply to "extracurricular classes." Section 1003.03(1), F.S., specifies that the maximum class sizes apply to "core-curricula courses," which section 1003.01(14), F.S., defines as "courses defined by the Department of Education as mathematics, language arts/reading, science, social studies, foreign language, English for Speakers of Other Languages, exceptional student education, and courses taught in traditional self-contained elementary school classrooms."

The DOE is required to annually calculate the number of students in each individual classroom based on the October student membership survey and annually report to the Legislature those districts not in compliance.

Flexibility Exception

It is possible that a school or school district will experience unexpected student enrollment growth after the student to teacher assignments have been made and the school or school district has been determined to be in compliance with the constitutional class size maximums. For example, a new student will need to be added to a class because his or her family moved to Florida, another county, or to another attendance zone within the county or a natural disaster, such as a hurricane or tornado, may cause the displacement of students from one school in the district to others schools in the district or schools in neighboring counties.

For purposes of the flexibility exception, the PCB provides that unexpected student enrollment growth:

- At the district level is student enrollment in excess of the district's projections used by the Legislature in establishing the General Appropriations Act.
- At the kindergarten through grade 8 level is student enrollment in excess of the school's official staffing plan and capacity.
- At the grades 9 through 12 level is student enrollment in excess of the school's official staffing plan and capacity or in excess of the official staffing plan and capacity for a restricted course offering such as a magnet program or a career academy.

In the event of unexpected student enrollment growth, the PCB requires school districts to first consider and implement, as deemed practical, alternative methods, including but not limited to, encouraging qualified students to take dual enrollment or FLVS courses, adopting alternative class schedules, using joint facilities or innovative methods to reduce the cost of school construction, or team teaching strategies in order to meet the constitutional class size maximums.

However, in some instances, these alternative methods may be either impractical or educationally unsound and disruptive to students. Therefore, the PCB authorizes the district school board to determine that there is a need for a flexibility exception to the constitutional class size maximums. If a district school board determines that there is the need for a flexibility exception the following conditions apply:

- A teacher in prekindergarten through grade 3 will not be assigned more than three students over the constitutional class size maximum of 18 students.
- A teacher in grades 4 through 8 will not be assigned more than five students over the constitutional class size maximum of 22 students.
- A teacher in grades 9 through 12 will not be assigned more than five students over the constitutional class size maximum of 25 students.
- A school district is required to add classrooms, add teachers, or take other action to comply with the constitutional class size maximums if the unexpected student enrollment growth results in more than three students or five students above the constitutional class size requirements.
- A school is not allowed to exceed the class average for each of the three grade groupings that is averaged at the school level for the school year. This ensures that the average at the school

level does not exceed the constitutional class size maximums for each of the three grade groupings.

Also, the flexibility exception expires at the end of the school year and the district school board is required to develop a plan that ensures each school within the district will be in compliance with the constitutional class size maximums by the next October student membership survey.

The district school board's flexibility exception determination must be made at a noticed, public meeting and is not subject to challenge under the Administrative Procedure Act.²¹ A school district is considered to be in compliance with the constitutional class size maximums when utilizing a flexibility exception.

Accountability Provision

The PCB revises the accountability provision for noncompliance with class size reduction so that beginning with the October student membership survey of the 2010-2011 school year and at the October student membership survey each year thereafter, if the DOE determines that any individual classroom exceeds the constitutional class size maximums and a flexibility exception determination has not been made by a district school board, the department is required to reduce the school district's class size reduction operating categorical funds.

The DOE is required to use the following calculation in determining the amount to reduce:

- Identify for each of the three grade groupings, the number of classrooms with a student enrollment that exceeds the class size constitutional maximums, the number of students over the maximum for each classroom, and the total number of students over the maximum for all classrooms in each school and each district.
- Determine the number of full-time equivalent (FTE) students that are over the maximums in each of the three grade groupings.
- Multiply the number of FTE students that are over the maximums for each of the three grade groupings by the class size reduction allocation factor for that grade grouping as set in the General Appropriations Act Conference Report of the Florida Education Finance Program (FEFP) for that year.
- Reduce the district's class size reduction operating categorical as calculated in the third FEFP calculation by an amount equal to the lesser of the remaining undisbursed balance of the allocation or the sum of this calculation.

The PCB removes the transfer penalty provision for noncompliance with class size reduction; therefore, the requirement that the Executive Office of the Governor transfer the district's class size reduction operating categorical to an approved fixed capital outlay appropriation for class size reduction is removed.

Voluntary Prekindergarten Education Program

The PCB removes the eligibility provisions requiring school districts to meet certain requirements relating to class size reduction in order to administer the school-year VPK program. Thus, every school

²¹ Chapter 120, Administrative Procedure Act

district is now authorized to administer the school-year VPK program at public schools, as determined by the district school board of each county.

C. SECTION DIRECTORY:

Section 1. Amends s. 1003.03, F.S., revising the implementation schedule for class size reduction; providing compliance calculations; requiring the Department of Education to determine which school districts do not meet the class size requirements and report such districts to the Legislature; providing the State Board of Education with enforcement authority to ensure district compliance; revising accountability provisions; providing for the reduction of class size operating categorical funds for noncompliance; deleting accountability provisions relating to the transfer of funds and the requirement that noncompliant districts implement certain policies and develop compliance plans; creating a flexibility exception to the constitutional class size maximums for school districts; requiring school districts to make assignments by the October student membership survey; defining unexpected student enrollment growth; requiring districts with unexpected student enrollment growth to consider alternatives to comply with class size requirements; authorizing a district school board to make a flexibility exception determination; requiring a public hearing with notice; providing conditions for a flexibility exception; and requiring rulemaking.

Section 2. Amends s. 1011.685, F.S., revising requirements for the use of class size reduction operating categorical funds.

Section 3. Amends s. 216.292(2)(d), F.S., deleting provisions authorizing the transfer of appropriations from the class size operating category to a fixed capital outlay category.

Section 4. Amends s. 1002.63(a)(b), F.S., deleting provisions relating to school district eligibility to deliver School-year prekindergarten program based on class size.

Section 5. Amends s. 1002.53, F.S., conforming provisions and correcting cross-references.

Section 6. Amends s. 1002.61, F.S., conforming provisions and correcting cross-references.

Section 7. Amends s. 1002.73, F.S., conforming provisions and correcting cross-references.

Section 8. Provides for an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See FISCAL COMMENTS section.

2. Expenditures:

See FISCAL COMMENTS section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See FISCAL COMMENTS section.

2. Expenditures:

See FISCAL COMMENTS section.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

There is not an anticipated impact on state revenues or expenditures from the requirements of the PCB.

Currently, school districts must reduce class sizes by two students each year measured at the school level until the constitutional requirements are met. Any excess funds may be used at the discretion of the school district with priority given to increasing teacher salaries. The current class size reduction operating categorical is \$2.64 billion. In FY 2007-2008 school districts used approximately \$526.4 million, or 20% of the total 2007-2008 class size reduction operating categorical, for purposes other than reducing class sizes. The PCB requires districts to use 100% of their class size allocation for reducing class sizes if any classroom in the district is over the constitutional cap by four students in 2008-2009 and by two students in 2009-2010, until the constitutional maximums are met. Consequently, a significantly larger portion of the total class size operating categorical will be used for reducing class sizes.

Currently, school districts that are determined to be out of compliance with the class size maximums have a portion of their class size operating categorical transferred to fixed capital outlay in proportion to the amount of class size reduction not accomplished. Transfer amounts for FYs 2003-2004 through 2007-2008 were:

Fiscal Year	Statewide Transfer Amount
2003-2004	\$(1,479,948)
2004-2005	\$(1,076,719)
2005-2006	\$(496,059)
2006-2007	\$(5,318,921)
2007-2008	\$(475,324)

The PCB eliminates this transfer and establishes a methodology beginning in 2010-2011 to reduce a district's class size reduction allocation for each student over the constitutional requirement. Unless a flexibility exception determination has been made by the district school board, the district's allocation will be reduced by the amount of funding earned for each student over the constitutional requirement.

The 2007-2008 class size reduction per student funding amounts are \$967.23 for prekindergarten through third grade, \$923.50 for grades four through eight, and \$925.73 for grades nine through twelve.

Using the current funding methodology, it is estimated these per student funding amounts will be \$1,547.59, \$1,477.60 and \$1,481.17, respectively, for 2010-2011. Unless a flexibility exception determination has been made by a district school board, a district's allocations would be reduced for each student in each grade grouping by the per student amount for that grade grouping.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require a county or municipality to spend funds or take an action requiring expenditures; reduce the authority that counties and municipalities had as of February 1, 1989, to raise revenues in the aggregate; or reduce the percentage of a state tax shared in the aggregate with counties and municipalities as of February 1, 1989.

2. Other:

In the Supreme Court of Florida's *Advisory Opinion to the Attorney General re Florida's Amendment to Reduce Class Size*, the court held that, rather than restricting the Legislature, the class size amendment in Art IX, section 1, of the Florida Constitution gives the Legislature latitude in designing ways to reach the class size goal articulated in the amendment, and places the obligation to ensure compliance on the Legislature, not the local school boards.²² Furthermore, the court found that although the Legislature may choose to fund the building of new schools to achieve the maximum classroom size set as a goal of the amendment, it is not the only method of ensuring the maximum number of students meets the requirements set forth in the amendment.²³

B. RULE-MAKING AUTHORITY:

The PCB provides specific rule-making authority pursuant to ss. 120.536(1) and 120.54 to the SBE for governing compliance calculations, the timeliness and required documentation for district school board flexibility exception determinations, and district school board appeals of penalties under s. 1003.03.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

²² *Advisory Opinion to the Attorney General re Florida's Amendment to Reduce Class Size*, 816 So.2d 580 at 584, 585 (Fla., 2002). "Proposed amendment does not substantially alter or perform the functions of the local school board. Although as a result of the amendment, the Legislature may choose to fund the building of new schools to achieve the maximum classroom size set as a goal of the proposed amendment, this is not the only method of ensuring that the number of students meets the numbers set forth in the amendment. Rather than restricting the Legislature, the proposed amendment gives the Legislature latitude in designing ways to reach the class size goal articulated in the ballot initiative, and places the obligation to ensure compliance on the Legislature, not the local school boards."

²³ *Id.*

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to maximum class size; amending s.
 3 1003.03, F.S.; revising the implementation schedule by
 4 providing compliance calculations for fiscal years 2008-
 5 2009 through 2010-2011; requiring the Department of
 6 Education to determine which school districts do not meet
 7 the class size requirements and report such districts to
 8 the Legislature; providing State Board of Education
 9 enforcement authority to ensure district compliance with
 10 class size requirements; revising accountability
 11 provisions to require the department to reduce the class
 12 size reduction operating categorical funds for
 13 noncompliance; deleting accountability provisions relating
 14 to the transfer of funds, the requirement that
 15 noncompliant districts implement certain policies, and the
 16 development of compliance plans; creating a flexibility
 17 exception to class size requirements for school districts;
 18 requiring school districts to make assignments no later
 19 than the October student membership survey; requiring
 20 school districts with unexpected student enrollment growth
 21 to consider alternatives to comply with class size
 22 requirements; defining unexpected student enrollment
 23 growth; authorizing a district school board to determine
 24 the need for a flexibility exception; requiring a public
 25 hearing with notice; providing conditions for a
 26 flexibility exception; requiring rulemaking; amending s.
 27 1011.685, F.S.; revising requirements for use of class
 28 size reduction operating categorical funds; amending s.

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29 | 216.292, F.S.; deleting provisions authorizing the
 30 | transfer of appropriations for public school operations to
 31 | a fixed capital outlay appropriation for class size
 32 | reduction; amending s. 1002.63, F.S.; deleting provisions
 33 | relating to school district eligibility to deliver the
 34 | Voluntary Prekindergarten Education Program based on class
 35 | size; amending ss. 1002.53, 1002.61, and 1002.73, F.S.;
 36 | conforming provisions and cross-references; providing an
 37 | effective date.
 38 |

39 | WHEREAS, the Florida Supreme Court held in its Advisory
 40 | Opinion to the Attorney General regarding Florida's Amendment to
 41 | Reduce Class Size that, rather than restricting the Legislature,
 42 | the class size amendment in Article IX, Section 1 of the Florida
 43 | Constitution gives the Legislature latitude in designing ways to
 44 | reach the class size goal articulated in the amendment and
 45 | places the obligation to ensure compliance on the Legislature,
 46 | not the local school boards, and

47 | WHEREAS, disruptions in learning in the middle of the
 48 | school year, such as the breakup of a classroom, being
 49 | reassigned to a new teacher, or being transferred to another
 50 | class or school, are educationally unsound and distressing to
 51 | educators, parents, and students, NOW, THEREFORE,
 52 |

53 | Be It Enacted by the Legislature of the State of Florida:
 54 |

55 | Section 1. Section 1003.03, Florida Statutes, as amended
 56 | by chapter 2007-328, Laws of Florida, is amended to read:

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57 | 1003.03 Maximum class size.--

58 | (1) CONSTITUTIONAL CLASS SIZE MAXIMUMS.--Pursuant to s. 1,
59 | Art. IX of the State Constitution, beginning in the 2010-2011
60 | school year:

61 | (a) The maximum number of students assigned to each
62 | teacher who is teaching core-curricula courses in public school
63 | classrooms for prekindergarten through grade 3 may not exceed 18
64 | students.

65 | (b) The maximum number of students assigned to each
66 | teacher who is teaching core-curricula courses in public school
67 | classrooms for grades 4 through 8 may not exceed 22 students.

68 | (c) The maximum number of students assigned to each
69 | teacher who is teaching core-curricula courses in public school
70 | classrooms for grades 9 through 12 may not exceed 25 students.

71 | (2) IMPLEMENTATION.--

72 | (a)1. Beginning with the 2003-2004 fiscal year through the
73 | 2007-2008 fiscal year, each school district that is not in
74 | compliance with the maximums in subsection (1) shall reduce the
75 | average number of students per classroom in each of the
76 | following grade groupings: prekindergarten through grade 3,
77 | grade 4 through grade 8, and grade 9 through grade 12, by at
78 | least two students each year.

79 | 2. In the 2008-2009 fiscal year, each school district that
80 | has individual classrooms exceeding the constitutional class
81 | size maximums in subsection (1) by more than four students shall
82 | use its class size reduction operating categorical allocation in
83 | accordance with s. 1011.685(2) until the constitutional class
84 | size maximums are met.

85 3. In the 2009-2010 fiscal year, each school district that
 86 has individual classrooms exceeding the constitutional class
 87 size maximums in subsection (1) by more than two students shall
 88 use its class size reduction operating categorical allocation in
 89 accordance with s. 1011.685(2) until the constitutional class
 90 size maximums are met.

91 4. Beginning with the October student membership survey of
 92 the 2010-2011 school year and at the October student membership
 93 survey of each school year thereafter, each individual classroom
 94 shall be in compliance with the constitutional class size
 95 maximums in subsection (1) except as otherwise authorized under
 96 subsection (6).

97 (b) Determination of the number of students per classroom
 98 in paragraph (a) shall be calculated as follows:

99 1. For fiscal years 2003-2004 through 2005-2006, the
 100 calculation for compliance for each of the 3 grade groupings
 101 shall be the average at the district level.

102 2. For fiscal years 2006-2007 through 2007-2008, the
 103 calculation for compliance for each of the 3 grade groupings
 104 shall be the average at the school level.

105 3. For fiscal ~~year~~ years 2008-2009, ~~2009-2010, and~~
 106 ~~thereafter,~~ the calculation for compliance shall be the average
 107 at the school level. However, each district should strive in
 108 every practical way to achieve the goal that the constitutional
 109 class size maximums in subsection (1) be exceeded by no more
 110 than four students at the individual classroom level.

111 4. For fiscal year 2009-2010, the calculation for
 112 compliance shall be the average at the school level. However,

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113 each district should strive in every practical way to achieve
114 the goal that the constitutional class size maximums in
115 subsection (1) be exceeded by no more than two students at the
116 individual classroom level.

117 5. Beginning with the October student membership survey of
118 the 2010-2011 school year and at the October student membership
119 survey of each school year thereafter, compliance shall be
120 calculated at the individual classroom level based on the
121 constitutional class size maximums in subsection (1).

122 ~~6.4.~~ For fiscal years 2006-2007 through 2009-2010 and
123 thereafter, each teacher assigned to any classroom shall be
124 included in the calculation for compliance.

125 (c) The Department of Education shall annually calculate
126 ~~each of the three average~~ class size measures defined in
127 paragraphs (a) and (b) based upon the October student membership
128 survey and annually report to the Legislature by February 1
129 those districts that are not in compliance. For fiscal year
130 2008-2009, the department shall also report, by each grade
131 grouping, those districts with individual classrooms exceeding
132 the constitutional class size maximums in subsection (1) by more
133 than four students. For fiscal year 2009-2010, the department
134 shall also report, by each grade grouping, those districts with
135 individual classrooms exceeding the constitutional class size
136 maximums in subsection (1) by more than two students. For
137 ~~purposes of determining the baseline from which each district's~~
138 ~~average class size must be reduced for the 2003-2004 school~~
139 ~~year, the department shall use data from the February 2003~~

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140 ~~student membership survey updated to include classroom~~
 141 ~~identification numbers as required by the department.~~

142 (d) The State Board of Education may use the enforcement
 143 authority provided in s. 1008.32 to ensure that school districts
 144 comply with the provisions of this subsection. ~~Prior to the~~
 145 ~~adoption of the district school budget for 2004-2005, each~~
 146 ~~district school board shall hold public hearings to review~~
 147 ~~school attendance zones in order to ensure maximum use of~~
 148 ~~facilities while minimizing the additional use of transportation~~
 149 ~~in order to comply with the two-student-per-year reduction~~
 150 ~~required in paragraph (a). School districts that meet the~~
 151 ~~constitutional class size maximums described in subsection (1)~~
 152 ~~are exempt from this requirement.~~

153 (3) IMPLEMENTATION OPTIONS.--District school boards must
 154 consider, but are not limited to, implementing the following
 155 items in order to meet the constitutional class size maximums
 156 described in subsections ~~subsection~~ (1) and ~~the two-student-per-~~
 157 ~~year reduction required in subsection~~ (2):

158 (a) Adopt policies to encourage qualified students to take
 159 dual enrollment courses.

160 (b) Adopt policies to encourage students to take courses
 161 from the Florida Virtual School.

162 (c)1. Repeal district school board policies that require
 163 students to have more than 24 credits to graduate from high
 164 school.

165 2. Adopt policies to allow students to graduate from high
 166 school as soon as they pass the grade 10 FCAT and complete the
 167 courses required for high school graduation.

168 (d) Use methods to maximize use of instructional staff,
 169 such as changing required teaching loads and scheduling of
 170 planning periods, deploying district employees that have
 171 professional certification to the classroom, using adjunct
 172 educators, or any other method not prohibited by law.

173 (e) Use innovative methods to reduce the cost of school
 174 construction by using prototype school designs, using SMART
 175 Schools designs, participating in the School Infrastructure
 176 Thrift Program, or any other method not prohibited by law.

177 (f) Use joint-use facilities through partnerships with
 178 community colleges, state universities, and private colleges and
 179 universities. Joint-use facilities available for use as K-12
 180 classrooms that do not meet the K-12 State Regulations for
 181 Educational Facilities in the Florida Building Code may be used
 182 at the discretion of the district school board provided that
 183 such facilities meet all other health, life, safety, and fire
 184 codes.

185 (g) Adopt alternative methods of class scheduling, such as
 186 block scheduling.

187 (h) Redraw school attendance zones to maximize use of
 188 facilities while minimizing the additional use of
 189 transportation.

190 (i) Operate schools beyond the normal operating hours to
 191 provide classes in the evening or operate more than one session
 192 of school during the day.

193 (j) Use year-round schools and other nontraditional
 194 calendars that do not adversely impact annual assessment of
 195 student achievement.

196 (k) Review and consider amending any collective bargaining
 197 contracts that hinder the implementation of class size
 198 reduction.

199 (l) Use any other approach not prohibited by law.

200 (4) ACCOUNTABILITY.--Beginning with the October student
 201 membership survey of the 2010-2011 school year and at the
 202 October student membership survey of each school year
 203 thereafter, if the department determines that any individual
 204 classroom exceeds the constitutional class size maximums in
 205 subsection (1) and a flexibility exception in subsection (6) has
 206 not been timely granted by the district school board, the
 207 department shall:

208 (a) Identify, for each of the 3 grade groupings, the
 209 number of classrooms with a student enrollment that exceeds the
 210 constitutional class size maximums in subsection (1), the number
 211 of students over the maximum for each classroom, and the total
 212 number of students over the maximum for all classrooms in each
 213 school and each school district.

214 (b) Determine the number of full-time equivalent (FTE)
 215 students that are over the constitutional class size maximums in
 216 subsection (1) for each of the 3 grade groupings.

217 (c) Multiply the total number of FTE students that are
 218 over the constitutional class size maximums in subsection (1)
 219 for each of the 3 grade groupings by the class size reduction
 220 allocation factor for that grade grouping as set in the General
 221 Appropriations Act Conference Report of the Florida Education
 222 Finance Program (FEFP).

223 (d) Reduce the district's class size reduction operating
 224 categorical as calculated in the third FEFP calculation by an
 225 amount equal to the lesser of the remaining undisbursed balance
 226 of the allocation or the sum of the calculation in paragraph
 227 (c).

228 ~~(a)1. Beginning in the 2003-2004 fiscal year, if the~~
 229 ~~department determines for any year that a school district has~~
 230 ~~not reduced average class size as required in subsection (2) at~~
 231 ~~the time of the third FEFP calculation, the department shall~~
 232 ~~calculate an amount from the class size reduction operating~~
 233 ~~categorical which is proportionate to the amount of class size~~
 234 ~~reduction not accomplished. Upon verification of the~~
 235 ~~department's calculation by the Florida Education Finance~~
 236 ~~Program Appropriation Allocation Conference and not later than~~
 237 ~~March 1 of each year, the Executive Office of the Governor shall~~
 238 ~~transfer undistributed funds equivalent to the calculated amount~~
 239 ~~from the district's class size reduction operating categorical~~
 240 ~~to an approved fixed capital outlay appropriation for class size~~
 241 ~~reduction in the affected district pursuant to s. 216.292(2)(d).~~
 242 ~~The amount of funds transferred shall be the lesser of the~~
 243 ~~amount verified by the Florida Education Finance Program~~
 244 ~~Appropriation Allocation Conference or the undistributed balance~~
 245 ~~of the district's class size reduction operating categorical.~~

246 ~~2. In lieu of the transfer required by subparagraph 1.,~~
 247 ~~the Commissioner of Education may recommend a budget amendment,~~
 248 ~~subject to approval by the Legislative Budget Commission, to~~
 249 ~~transfer an alternative amount of funds from the district's~~
 250 ~~class size reduction operating categorical to its approved fixed~~

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251 ~~capital outlay account for class size reduction if the~~
 252 ~~commissioner finds that the State Board of Education has~~
 253 ~~reviewed evidence indicating that a district has been unable to~~
 254 ~~meet class size reduction requirements despite appropriate~~
 255 ~~effort to do so. The commissioner's budget amendment must be~~
 256 ~~submitted to the Legislative Budget Commission by February 15 of~~
 257 ~~each year.~~

258 ~~3. For the 2007-2008 fiscal year and thereafter, if in any~~
 259 ~~fiscal year funds from a district's class size operating~~
 260 ~~categorical are required to be transferred to its fixed capital~~
 261 ~~outlay fund and the district's class size operating categorical~~
 262 ~~allocation in the General Appropriations Act for that fiscal~~
 263 ~~year has been reduced by a subsequent appropriation, the~~
 264 ~~Commissioner of Education may recommend a 10 percent reduction~~
 265 ~~in the amount of the transfer.~~

266 ~~(b) Beginning in the 2005-2006 school year, the department~~
 267 ~~shall determine by January 15 of each year which districts have~~
 268 ~~not met the two student per year reduction required in~~
 269 ~~subsection (2) based upon a comparison of the district's October~~
 270 ~~student membership survey for the current school year and the~~
 271 ~~February 2003 baseline student membership survey. The department~~
 272 ~~shall report such districts to the Legislature. Each district~~
 273 ~~that has not met the two student per year reduction shall be~~
 274 ~~required to implement one of the following policies in the~~
 275 ~~subsequent school year unless the department finds that the~~
 276 ~~district comes into compliance based upon the February student~~
 277 ~~membership survey:~~

278 ~~1. Year-round schools;~~

279 ~~2. Double sessions;~~
 280 ~~3. Rezoning; or~~
 281 ~~4. Maximizing use of instructional staff by changing~~
 282 ~~required teacher loads and scheduling of planning periods,~~
 283 ~~deploying school district employees who have professional~~
 284 ~~certification to the classroom, using adjunct educators,~~
 285 ~~operating schools beyond the normal operating hours to provide~~
 286 ~~classes in the evening, or operating more than one session~~
 287 ~~during the day.~~

288
 289 ~~A school district that is required to implement one of the~~
 290 ~~policies outlined in subparagraphs 1.-4. shall correct in the~~
 291 ~~year of implementation any past deficiencies and bring the~~
 292 ~~district into compliance with the two student per year reduction~~
 293 ~~goals established for the district by the department pursuant to~~
 294 ~~subsection (2). A school district may choose to implement more~~
 295 ~~than one of these policies. The district school superintendent~~
 296 ~~shall report to the Commissioner of Education the extent to~~
 297 ~~which the district implemented any of the policies outlined in~~
 298 ~~subparagraphs 1.-4. in a format to be specified by the~~
 299 ~~Commissioner of Education. The Department of Education shall use~~
 300 ~~the enforcement authority provided in s. 1008.32 to ensure that~~
 301 ~~districts comply with the provisions of this paragraph.~~

302 ~~(c) Beginning in the 2006-2007 school year, the department~~
 303 ~~shall annually determine which districts do not meet the~~
 304 ~~requirements described in subsection (2). In addition to~~
 305 ~~enforcement authority provided in s. 1008.32, the Department of~~
 306 ~~Education shall develop a constitutional compliance plan for~~

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307 ~~each such district which includes, but is not limited to,~~
 308 ~~redrawing school attendance zones to maximize use of facilities~~
 309 ~~while minimizing the additional use of transportation unless the~~
 310 ~~department finds that the district comes into compliance based~~
 311 ~~upon the February student membership survey and the other~~
 312 ~~accountability policies listed in paragraph (b). Each district~~
 313 ~~school board shall implement the constitutional compliance plan~~
 314 ~~developed by the state board until the district complies with~~
 315 ~~the constitutional class size maximums.~~

316 (5) TEAM-TEACHING STRATEGIES.--

317 (a) School districts may use teaching strategies that
 318 include the assignment of more than one teacher to a classroom
 319 of students and that were implemented before July 1, 2005.
 320 Effective July 1, 2005, school districts may implement
 321 additional teaching strategies that include the assignment of
 322 more than one teacher to a classroom of students for the
 323 following purposes only:

- 324 1. Pairing teachers for the purpose of staff development.
- 325 2. Pairing new teachers with veteran teachers.
- 326 3. Reducing turnover among new teachers.
- 327 4. Pairing teachers who are teaching out-of-field with
- 328 teachers who are in-field.
- 329 5. Providing for more flexibility and innovation in the
- 330 classroom.
- 331 6. Improving learning opportunities for students,
- 332 including students who have disabilities.

333 (b) Teaching strategies, including team teaching, co-
 334 teaching, or inclusion teaching, implemented on or after July 1,

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335 | 2005, pursuant to paragraph (a) may be implemented subject to
 336 | the following restrictions:

337 | 1. Reasonable limits shall be placed on the number of
 338 | students in a classroom so that classrooms are not overcrowded.
 339 | Teacher-to-student ratios within a curriculum area or grade
 340 | level must not exceed constitutional limits.

341 | 2. At least one member of the team must have at least 3
 342 | years of teaching experience.

343 | 3. At least one member of the team must be teaching in-
 344 | field.

345 | 4. The teachers must be trained in team-teaching methods
 346 | within 1 year after assignment.

347 | (c) As used in this subsection, the term:

348 | 1. "Team teaching" or "co-teaching" means two or more
 349 | teachers are assigned to a group of students and each teacher is
 350 | responsible for all of the students during the entire class
 351 | period. In order to be considered team teaching or co-teaching,
 352 | each teacher is responsible for planning, delivering, and
 353 | evaluating instruction for all students in the class or subject
 354 | for the entire class period.

355 | 2. "Inclusion teaching" means two or more teachers are
 356 | assigned to a group of students, but one of the teachers is
 357 | responsible for only one student or a small group of students in
 358 | the classroom.

359 |
 360 | The use of strategies implemented as outlined in this subsection
 361 | meets the letter and intent of the Florida Constitution and the
 362 | Florida Statutes which relate to implementing class size

363 reduction, and this subsection applies retroactively. A school
 364 district may not be penalized financially or otherwise as a
 365 result of the use of any legal strategy, including, but not
 366 limited to, those set forth in subsection (3) and this
 367 subsection.

368 (6) FLEXIBILITY EXCEPTION.--

369 (a) Beginning with the October student membership survey
 370 of the 2010-2011 school year and at the October student
 371 membership survey of each school year thereafter, each school
 372 district shall make assignments to meet the constitutional class
 373 size maximums in subsection (1).

374 (b) In the event of unexpected student enrollment growth
 375 after the October student membership survey, which will require
 376 a school district to take further action to meet the
 377 constitutional class size maximums in subsection (1), the
 378 alternatives in subsections (3) and (5) shall be considered and
 379 implemented as deemed practical by the school district. For
 380 purposes of this subsection, unexpected student enrollment
 381 growth at the:

382 1. District level is student enrollment in excess of the
 383 projections used by the Legislature in establishing the General
 384 Appropriations Act.

385 2. Kindergarten through grade 8 school level is student
 386 enrollment in excess of the school's official staffing plan and
 387 capacity.

388 3. Grade 9 through grade 12 school level is student
 389 enrollment in excess of the school's official staffing plan and
 390 capacity or in excess of the official staffing plan and capacity

391 for a restricted course offering such as a magnet program or a
 392 career academy.

393 (c)1. Upon a finding that taking further action to attain
 394 compliance is either impractical or educationally unsound and
 395 disruptive to students, a district school board may determine
 396 the need for a flexibility exception at a public meeting that
 397 has been noticed pursuant to s. 120.525; however, a school
 398 board's determination under this subparagraph is not subject to
 399 challenge under chapter 120. The district school board shall
 400 file the record of its public meeting, together with
 401 documentation of its flexibility exception determination, with
 402 the department.

403 2. If a flexibility exception determination is made by a
 404 district school board, the following conditions shall apply:

405 a. The flexibility exception shall expire at the end of
 406 the school year.

407 b. A teacher in prekindergarten through grade 3 shall be
 408 assigned no more than three students above the constitutional
 409 class size maximum in paragraph (1)(a) and a teacher in grades 4
 410 through 8 or in grades 9 through 12 shall be assigned no more
 411 than five students above the constitutional class size maximum
 412 in paragraph (1)(b) or paragraph (1)(c), respectively.

413 c. If the unexpected student enrollment growth results in
 414 more than three students or five students above the
 415 constitutional class size maximums as provided in sub-
 416 subparagraph b., the school district shall add classrooms and
 417 teachers or take such other action as necessary to comply with
 418 the constitutional class size maximums in subsection (1).

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419 d. The school shall not exceed the class size average for
 420 each of the 3 grade groupings that is averaged at the school
 421 level for the school year.

422 e. The district school board shall develop a plan to
 423 provide that each school will be in full compliance with the
 424 constitutional class size maximums in subsection (1) by the next
 425 October student membership survey.

426
 427 A school district shall be considered to be in compliance with
 428 the constitutional class size maximums in subsection (1) when
 429 utilizing the flexibility exception established in this
 430 subsection.

431 (7) RULES.--The State Board of Education shall adopt
 432 rules, pursuant to ss. 120.536(1) and 120.54, governing
 433 compliance calculations under this section, the timeliness and
 434 required documentation for district school board flexibility
 435 exception determinations, and district school board appeals of
 436 penalties under this section.

437 Section 2. Section 1011.685, Florida Statutes, is amended
 438 to read:

439 1011.685 Class size reduction; operating categorical
 440 fund.--

441 (1) There is created an operating categorical fund for
 442 implementing the class size reduction provisions of s. 1, Art.
 443 IX of the State Constitution. These funds shall be allocated to
 444 each school district in the amount prescribed by the Legislature
 445 in the General Appropriations Act.

446 (2) (a) Except as provided in paragraph (b), 100 percent of
 447 class size reduction operating categorical funds shall be used
 448 by school districts for purposes of achieving compliance with
 449 the constitutional class size maximums in s. 1003.03(1) in any
 450 lawful manner, including, but not limited to, the alternatives
 451 in s. 1003.03(3) and (5). ~~the following:~~

452 ~~(a) To reduce class size in any lawful manner, if the~~
 453 ~~district has not met the constitutional maximums identified in~~
 454 ~~s. 1003.03(1) or the reduction of two students per year required~~
 455 ~~by s. 1003.03(2).~~

456 (b) Once a school district is determined to be in
 457 compliance with the constitutional class size maximums in s.
 458 1003.03(1), the district may use class size reduction operating
 459 categorical funds for any lawful operating expenditure, ~~if the~~
 460 ~~district has met the constitutional maximums identified in s.~~
 461 ~~1003.03(1) or the reduction of two students per year required by~~
 462 ~~s. 1003.03(2);~~ however, priority shall be given to increase
 463 salaries of classroom teachers as defined in s. 1012.01(2) (a)
 464 and to implement the differentiated-pay provisions detailed in
 465 s. 1012.22.

466 Section 3. Paragraph (d) of subsection (2) of section
 467 216.292, Florida Statutes, is amended to read:

468 216.292 Appropriations nontransferable; exceptions.--

469 (2) The following transfers are authorized to be made by
 470 the head of each department or the Chief Justice of the Supreme
 471 Court whenever it is deemed necessary by reason of changed
 472 conditions:

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473 ~~(d) The transfer of funds by the Executive Office of the~~
474 ~~Governor from appropriations for public school operations to a~~
475 ~~fixed capital outlay appropriation for class size reduction~~
476 ~~based on recommendations of the Florida Education Finance~~
477 ~~Program Appropriation Allocation Conference or the Legislative~~
478 ~~Budget Commission pursuant to s. 1003.03(4)(a). Actions by the~~
479 ~~Governor under this subsection are subject to the notice and~~
480 ~~review provisions of s. 216.177.~~

481 Section 4. Paragraph (c) of subsection (3) of section
482 1002.53, Florida Statutes, is amended to read:

483 1002.53 Voluntary Prekindergarten Education Program;
484 eligibility and enrollment.--

485 (3) The parent of each child eligible under subsection (2)
486 may enroll the child in one of the following programs:

487 (c) A school-year prekindergarten program delivered by a
488 public school, if offered by a school district ~~that is eligible~~
489 under s. 1002.63.

490

491 Except as provided in s. 1002.71(4), a child may not enroll in
492 more than one of these programs.

493 Section 5. Subsections (4) and (6) of section 1002.61,
494 Florida Statutes, are amended to read:

495 1002.61 Summer prekindergarten program delivered by public
496 schools and private prekindergarten providers.--

497 (4) Notwithstanding ss. 1002.55(3)(c)1. and 1002.63(4)~~(5)~~,
498 each public school and private prekindergarten provider must
499 have, for each prekindergarten class, at least one
500 prekindergarten instructor who:

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- 501 (a) Is a certified teacher; or
- 502 (b) Holds one of the educational credentials specified in
- 503 s. 1002.55(4)(a) or (b).

504

505 As used in this subsection, the term "certified teacher" means a

506 teacher holding a valid Florida educator certificate under s.

507 1012.56 who has the qualifications required by the district

508 school board to instruct students in the summer prekindergarten

509 program. In selecting instructional staff for the summer

510 prekindergarten program, each school district shall give

511 priority to teachers who have experience or coursework in early

512 childhood education.

513 (6) Notwithstanding ss. 1002.55(3)(e) and 1002.63(6)~~(7)~~,

514 each prekindergarten class in the summer prekindergarten

515 program, regardless of whether the class is a public school's or

516 private prekindergarten provider's class, must be composed of at

517 least 4 students but may not exceed 10 students. In order to

518 protect the health and safety of students, each public school or

519 private prekindergarten provider must also provide appropriate

520 adult supervision for students at all times. This subsection

521 does not supersede any requirement imposed on a provider under

522 ss. 402.301-402.319.

523 Section 6. Section 1002.63, Florida Statutes, is amended

524 to read:

525 1002.63 School-year prekindergarten program delivered by

526 public schools.--

527 (1) Each school district ~~eligible under subsection (4)~~ may

528 administer the Voluntary Prekindergarten Education Program at

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529 the district level for students enrolled under s. 1002.53(3)(c)
530 in a school-year prekindergarten program delivered by a public
531 school.

532 (2) Each school-year prekindergarten program delivered by
533 a public school must comprise at least 540 instructional hours.

534 (3) The district school board of each school district
535 ~~eligible under subsection (4)~~ shall determine which public
536 schools in the district shall ~~are eligible to~~ deliver the
537 prekindergarten program during the school year.

538 ~~(4) To be eligible to deliver the prekindergarten program~~
539 ~~during the school year, each school district must meet both of~~
540 ~~the following requirements:~~

541 ~~(a) The district school board must certify to the State~~
542 ~~Board of Education that the school district:~~

543 1. ~~Has reduced the average class size in each classroom in~~
544 ~~accordance with s. 1003.03 and the schedule in s. 1(a), Art. IX~~
545 ~~of the State Constitution; and~~

546 2. ~~Has sufficient satisfactory educational facilities and~~
547 ~~capital outlay funds to continue reducing the average class size~~
548 ~~in each classroom in the district's elementary schools for each~~
549 ~~year in accordance with the schedule for class size reduction~~
550 ~~and to achieve full compliance with the maximum class sizes in~~
551 ~~s. 1(a), Art. IX of the State Constitution by the beginning of~~
552 ~~the 2010-2011 school year.~~

553 ~~(b) The Commissioner of Education must certify to the~~
554 ~~State Board of Education that the department has reviewed the~~
555 ~~school district's educational facilities, capital outlay funds,~~

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556 and projected student enrollment and concurs with the district
 557 school board's certification under paragraph (a).

558 (4)~~(5)~~ Each public school must have, for each
 559 prekindergarten class, at least one prekindergarten instructor
 560 who meets each requirement in s. 1002.55(3)(c) for a
 561 prekindergarten instructor of a private prekindergarten
 562 provider.

563 (5)~~(6)~~ Each prekindergarten instructor employed by a
 564 public school delivering the school-year prekindergarten program
 565 must be of good moral character, must be screened using the
 566 level 2 screening standards in s. 435.04 before employment and
 567 rescreened at least once every 5 years, must be denied
 568 employment or terminated if required under s. 435.06, and must
 569 not be ineligible to teach in a public school because his or her
 570 educator certificate is suspended or revoked. This subsection
 571 does not supersede employment requirements for instructional
 572 personnel in public schools which are more stringent than the
 573 requirements of this subsection.

574 (6)~~(7)~~ Each prekindergarten class in a public school
 575 delivering the school-year prekindergarten program must be
 576 composed of at least 4 students but may not exceed 18 students.
 577 In order to protect the health and safety of students, each
 578 school must also provide appropriate adult supervision for
 579 students at all times and, for each prekindergarten class
 580 composed of 11 or more students, must have, in addition to a
 581 prekindergarten instructor who meets the requirements of s.
 582 1002.55(3)(c), at least one adult prekindergarten instructor who

583 is not required to meet those requirements but who must meet
 584 each requirement of subsection (5)~~(6)~~.

585 ~~(7)~~~~(8)~~ Each public school delivering the school-year
 586 prekindergarten program must:

587 (a) Register with the early learning coalition on forms
 588 prescribed by the Agency for Workforce Innovation; and

589 (b) Deliver the Voluntary Prekindergarten Education
 590 Program in accordance with this part.

591 Section 7. Subsection (2) of section 1002.73, Florida
 592 Statutes, is amended to read:

593 1002.73 Department of Education; powers and duties;
 594 accountability requirements.--

595 (2) The department shall adopt procedures for the
 596 department's:

597 (a) Approval of prekindergarten director credentials under
 598 ss. 1002.55 and 1002.57.

599 (b) Approval of emergent literacy training courses under
 600 ss. 1002.55 and 1002.59.

601 ~~(c) Certification of school districts that are eligible to~~
 602 ~~deliver the school-year prekindergarten program under s.~~
 603 ~~1002.63.~~

604 (c)~~(d)~~ Administration of the statewide kindergarten
 605 screening and calculation of kindergarten readiness rates under
 606 s. 1002.69.

607 Section 8. This act shall take effect July 1, 2008.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB SLC 08-07 Teacher Lead Program Revision

SPONSOR(S): Schools & Learning Council

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Schools & Learning Council		Ahearn <i>WA</i>	Cobb <i>CC</i>
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

“The Florida Teachers Lead Program Stipend (Teachers Lead),” created in 1997, provides funds to classroom teachers for the purchase of materials and supplies for their students. Funding for this program is determined by the Legislature in the General Appropriations Act. In order for classroom teachers to receive the funds, they must sign a statement, the required contents of which are set forth in law, acknowledging receipt of the funds and agreeing to use the funds for the purchase of classroom materials and supplies only. The law further requires that, if a classroom teacher does not expend the funds before the end of the “regular school year,” the teacher must return the unused funds to the school board. The law does not authorize teachers to purchase materials after the regular school year ends and then reimburse themselves from the next school year’s Teacher Lead funds.

This bill changes the name of the program from “The Florida Teachers Lead Program Stipend” to “The Florida Teachers Lead Program,” thereby eliminating superfluous language; expressly prohibits expenditure of Teachers Lead funds on equipment; requires the Commissioner of Education to disburse the Teachers Lead funds to the school districts by July 15; specifies that a district school board or charter school board may distribute the Teachers Lead funds to the classroom teachers by way of, for example, debit card, direct deposit, check, or purchasing card; limits to 4 years (currently, no limit) the amount of time that a classroom teacher must keep receipts for classroom materials and supplies purchased with Teachers Lead funds; clarifies that Teachers Lead funds do not affect a classroom teacher’s wages, hours, or terms and conditions of employment and are therefore not subject to collective bargaining; and clarifies that a classroom teacher may decline receipt of or return the funds without explanation or cause.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the principles.

B. EFFECT OF PROPOSED CHANGES:

Current Law

“The Florida Teachers Lead Program Stipend (Teachers Lead),” created in 1997, provides funds to classroom teachers¹ for the purchase of materials and supplies² for their students.

Funding for this program is determined by the Legislature in the General Appropriations Act. Once an appropriation is made, the Commissioner of Education calculates a prorated amount to be distributed to each school district based upon each district’s proportionate share of the total state preK-12 unweighted full-time equivalent student enrollment.³ School districts, in turn, determine the amount each classroom teacher receives by dividing the district’s total allocation by the number of classroom teachers. School districts must distribute the funds to the classroom teachers no later than September 30.⁴

In order for classroom teachers to receive the funds, they must sign a statement, the required contents of which are set forth in law, acknowledging receipt of the funds and agreeing to use the funds for the purchase of classroom materials and supplies only.⁵ The law further requires that, if a classroom teacher does not expend the funds before the end of the “regular school year,” the teacher must return the funds to the school board.⁶ The law does not authorize teachers to purchase materials after the regular school year ends and then reimburse themselves from the next school year’s Teacher Lead funds. To allow reimbursement from a subsequent year’s funds anticipates an appropriation in advance of legislative action. In addition, use of the funds for reimbursement of purchases made outside the “purchase window”⁷ is unlawful. More particularly, the statement signed by the classroom teacher provides, in pertinent part:

¹ A “classroom teacher” means “[a] certified teacher[] employed by a public school district or a public charter school, on or before September 1 of each year, whose full-time or job-share responsibility is the classroom instruction of students in prekindergarten through grade 12, including full time media specialists and guidance counselors who serve students in prekindergarten through grade 12, who are funded from the Florida Education Finance Program.” s. 1012.71(6), F.S. A job-share classroom teacher is defined as two teachers whose combined full-time equivalent employment for the same teaching assignment equals one full-time classroom teacher. *Id.*

² “Materials and supplies” is defined in the Financial and Program Cost Accounting and Reporting for Florida Schools (2001 Red Book) to mean “[a]mounts paid for items of an expendable nature that are consumed, worn out, or deteriorated in use, or items that lose their identity through fabrication or incorporation into different or more complex units or substances.” In a November 6, 2006, memorandum from the Commissioner of Education to the district school superintendents, the Commissioner advised that “all purchases of classroom equipment from these funds would be considered materials and supplies.” Whether such a determination was within the power and authority of the Commissioner is subject to debate.

³ Section 1012.71(1), F.S.

⁴ Section 1012.71(2), F.S.

⁵ Section 1012.71(3), F.S.

⁶ *Id.*

⁷ The “purchase window” is that time period between the distribution of the funds to the classroom teachers, which must occur “no later than September 30,” and the end of the regular school year when unspent funds must be returned to the school district.

In accepting custody of *these funds*, I agree to keep receipts for all expenditures. I understand that if I do not keep receipts showing *these funds were spent* to purchase classroom materials and supplies for use with my students, it will be my personal responsibility to pay any federal taxes due on these funds. *I also agree to return any unused funds to the district school board at the end of the regular school year* (Emphasis added)

"[T]he Legislature is conclusively presumed to have a working knowledge of the English language"⁸ and therefore capable of using the term "reimbursement" if a reimbursement program were intended. Also, courts must adhere to the plain meaning of words or phrases should legislative intent become an issue and, courts may not interpret a statute in a manner that would betray its express terms.⁹

Teachers must keep receipts for all expenditures made with Teachers Lead funds. The law does not state how long a teacher must keep the receipts. However, it is the teacher's "personal responsibility [if audited by the Internal Revenue Service and unable to produce the expenditure receipts] to pay any federal taxes due on these funds."¹⁰

Teachers Lead funds must be provided to each classroom teacher in addition to any other funds appropriated for public school operations. In other words, "These funds should not be used to supplant any other operational funds used to purchase classroom materials and supplies."¹¹ This does not, however, in any way change the requirement that only "materials or supplies" are purchased.

Purchases made with the funds are not subject to state or local competitive bidding requirements.

Proposed Changes

This bill:

- Changes the name of the program from "The Florida Teachers Lead Program Stipend" to "The Florida Teachers Lead Program," (Teachers Lead), thereby eliminating superfluous language.
- Expressly prohibits expenditure of Teachers Lead funds on equipment. Current law does not contemplate expenditure of "materials and supplies" money for equipment, despite a Technical Assistance Paper (TAP) issued by the Department of Education to the contrary.¹² The express prohibition is included in this bill in response to the TAP.
- Requires the Commissioner of Education to disburse the Teachers Lead funds to the school districts by July 15. According to Department of Education staff, the disbursements now occur in August. By disbursing the funds earlier to the school districts, school districts can in turn disburse the funds earlier to the classroom teachers.
- Specifies that a district school board or charter school board may distribute the Teachers Lead funds to the classroom teachers by way of, for example, debit card, direct deposit, check, or purchasing card. Currently the Teachers Lead law is silent with regard to the method of distribution. Most school districts distribute the funds by check. This bill clarifies the board's

⁸ *State Racing Commission v. McLaughlin*, 102 So.2d 574, 575 (Fla. 1958); *State v. Bradford*, 787 So.2d 811 (Fla. 2001).

⁹ *Silva v. Southwest Florida Blood Bank, Inc.*, 601 So.2d 1184, 1186 (Fla. 1992); *McLaughlin v. State*, 721 So.2d 1170, 1172 (Fla. 1998).

¹⁰ Section 1012.71(3), F.S.

¹¹ Memorandum dated November 6, 2006, from the Commissioner of Education to the district school superintendents.

¹² *Id.* In the memorandum (also known as a Technical Assistance Paper) the Commissioner advised that "all purchases of classroom equipment from these funds would be considered materials and supplies." Whether such a determination was within the power and authority of the Commissioner is subject to debate.

existing authority to exercise control and discretion over its organization, operation, and administration of the Teachers Lead funds.¹³

- Limits to 4 years the amount of time that a classroom teacher must keep receipts for classroom materials and supplies purchased with Teachers Lead funds.¹⁴ Current law does not limit how long a teacher must retain receipts. Income Tax Regulations require that the Internal Revenue Service (IRS) assess a tax within 3 years after the tax return is filed with the IRS.¹⁵ By keeping the receipts for 4 years a classroom teacher will have the necessary proof, if audited by the IRS, to show that the funds were spent appropriately and were not spent for personal use.
- Clarifies that Teachers Lead funds do not affect a classroom teacher's wages, hours, or terms and conditions of employment and are therefore not subject to collective bargaining. Distribution of funds is a managerial function that falls within a "[b]oard's responsibility to efficiently conduct its operations, including budgetary and revenue areas."¹⁶
- Clarifies that a classroom teacher may decline receipt of or return the funds without explanation or cause.

C. SECTION DIRECTORY:

Section 1. Substantially rewords s. 1012.71, F.S., establishing the Florida Teachers Lead Program which, contingent upon funding by the Legislature, provides funds to classroom teachers for the purchase of materials and supplies for their students.

Section 2. Provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

None

¹³ Provides a retroactive effective date for this provision as of July 1, 2007, which comports with the date the law was last amended to, among other things, include job-share teachers.

¹⁴ Under section 6501(a) of the Internal Revenue Code (Tax Code) [Title 26, Subtitle F, Chapter 66, Subchapter A] and section 301.6501(a)-1(a) of the Income Tax Regulations (Tax Regulations), the IRS is required to assess tax within 3 years after the tax return was filed with the IRS. Similarly, under 301.6501(a)-1(b) of the Tax Regulations no proceeding in court by the IRS without assessment for the collection of any tax can begin after the expiration of 3 years.

www.webtax.com/audits/statute_of_limitations.htm

[www.law.cornell.edu/uscode/search/display.html?terms=6501\(a\)&url=/uscode/html/uscode26/usc_sec_26_00006501----000-.html](http://www.law.cornell.edu/uscode/search/display.html?terms=6501(a)&url=/uscode/html/uscode26/usc_sec_26_00006501----000-.html)

¹⁵ *Id.*

¹⁶ *In Re State Employment Relations Bd. v. Cleveland Heights-Univ. Heights Bd. of Ed.*, 14 Ohio Pub. Employee Rep. ¶1265 (OSERB 1997); see also, *Hillsborough Classroom Teachers Ass'n. v. Sch. Bd. of Hillsborough County*, 423 So.2d 969 (1st DCA 1982); *Fraternal Order of Police, Miami Lodge 20 v. City of Miami*, 609 So.2d 31, 33 (Fla. 1992).

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 require a county or municipality to spend funds or take an action requiring expenditures; reduce the authority that counties and municipalities had as of February 1, 1989, to raise revenues in the aggregate; or reduce the percentage of a state tax shared in the aggregate with counties and municipalities as of February 1, 1989.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

D. STATEMENT OF THE SPONSOR

Not applicable

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

Not applicable

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A bill to be entitled
An act relating to the Florida Teachers Lead Program;
amending s. 1012.71, F.S.; revising requirements for use
of program funds by classroom teachers; providing for
disbursement of funds to school districts; specifying
means for providing a classroom teacher with his or her
proportionate share of program funds and providing that
funds received are not subject to collective bargaining;
providing for retroactive effect; providing requirements
for accounting of expenditures; providing an effective
date.

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

Section 1. Section 1012.71, Florida Statutes, is amended
to read:

(Substantial rewording of section. See
s. 1012.71, F.S., for present text.)

1012.71 The Florida Teachers Lead Program.--

(1) For purposes of the Florida Teachers Lead Program, the
term "classroom teacher" means a certified teacher employed by a
public school district or a public charter school in that
district on or before September 1 of each year whose full-time
or job-share responsibility is the classroom instruction of
students in prekindergarten through grade 12, including full-
time media specialists and guidance counselors serving students
in prekindergarten through grade 12, who are funded through the
Florida Education Finance Program. A "job-share" classroom

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29 teacher is one of two teachers whose combined full-time
30 equivalent employment for the same teaching assignment equals
31 one full-time classroom teacher.

32 (2) The Legislature, in the General Appropriations Act,
33 shall determine funding for the Florida Teachers Lead Program.
34 The funds appropriated are for classroom teachers to purchase,
35 on behalf of the school district or charter school, classroom
36 materials and supplies for the public school students assigned
37 to them and may not be used to purchase equipment. The funds
38 appropriated shall be used to supplement the materials and
39 supplies otherwise available to classroom teachers. From the
40 funds appropriated for the Florida Teachers Lead Program, the
41 Commissioner of Education shall calculate an amount for each
42 school district based upon each school district's proportionate
43 share of the state's total unweighted FTE student enrollment and
44 shall disburse the funds to the school districts by July 15.

45 (3) From the funds allocated to each school district for
46 the Florida Teachers Lead Program, the district school board
47 shall calculate an identical amount for each classroom teacher,
48 which is that teacher's proportionate share of the total amount
49 allocated to the district. A job-share classroom teacher may
50 receive a prorated share of the amount provided to a full-time
51 classroom teacher. The district school board and each charter
52 school board shall provide each classroom teacher with his or
53 her total proportionate share by September 30 of each year by
54 any means determined appropriate by the district school board or
55 charter school board, including, but not limited to, direct
56 deposit, check, debit card, or purchasing card, notwithstanding

57 any law to the contrary. Expenditures under the program are not
 58 subject to state or local competitive bidding requirements.
 59 Funds received by a classroom teacher do not affect wages,
 60 hours, or terms and conditions of employment and, therefore, are
 61 not subject to collective bargaining. Any classroom teacher may
 62 decline receipt of or return the funds without explanation or
 63 cause. This subsection shall apply retroactively to July 1,
 64 2007.

65 (4) Each classroom teacher must sign a statement
 66 acknowledging receipt of the funds, keep receipts for no less
 67 than 4 years to show that funds expended meet the requirements
 68 of this section, and return any unused funds to the district
 69 school board at the end of the regular school year. Any unused
 70 funds that are returned to the district school board shall be
 71 deposited into the school advisory council account of the school
 72 at which the classroom teacher returning the funds was employed
 73 when that teacher received the funds or deposited into the
 74 Florida Teachers Lead Program account of the school district in
 75 which a charter school is sponsored, as applicable.

76 (5) The statement must be signed and dated by each
 77 classroom teacher before receipt of the Florida Teachers Lead
 78 Program funds and shall include the wording: "I, (name of
 79 teacher) , am employed by the County District School
 80 Board or by the Charter School as a full-time classroom
 81 teacher. I acknowledge that Florida Teachers Lead Program funds
 82 are appropriated by the Legislature for the sole purpose of
 83 purchasing classroom materials and supplies to be used in the
 84 instruction of students assigned to me. In accepting custody of

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2008

85 these funds, I agree to keep the receipts for all expenditures
86 for no less than 4 years. I understand that if I do not keep the
87 receipts, it will be my personal responsibility to pay any
88 federal taxes due on these funds. I also agree to return any
89 unexpended funds to the district school board at the end of the
90 regular school year for deposit into the school advisory council
91 account of the school where I was employed at the time I
92 received the funds or for deposit into the Florida Teachers Lead
93 Program account of the school district in which the charter
94 school is sponsored, as applicable."

95 Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 337 Management of Historic Pensacola Properties

SPONSOR(S): Ford

TIED BILLS: IDEN./SIM. BILLS: SB 1014

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Schools & Learning Council		Thomas <i>MT</i>	Cobb <i>CC</i>
2) Policy & Budget Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

Under current law, the Department of State must contract with the University of West Florida for the management of various state-owned properties managed by the Historic Pensacola Preservation Board of Trustees prior to July 1, 2001. The contract requires the university to use all proceeds derived from the management of the properties for the purpose of advancing historic preservation.

HB 337 provides for the University of West Florida to directly contract with the Board of Trustees of the Internal Improvement Trust Fund for management of various state-owned historic properties in Pensacola. HB 337 provides that, upon agreement by all parties to the existing management contracts, the contracts will be rescinded upon execution of a contract between the Board of Trustees of the Internal Improvement Trust Fund and the University of West Florida for the management of those properties.

HB 337 transfers the authority of the Department of State to transfer ownership and responsibility of any artifacts, documents, equipment, and other forms of tangible personal property to the University of West Florida to the Board of Trustees of the Internal Improvement Trust Fund.

Currently, the University of West Florida may exchange, sell, or otherwise transfer any artifact, document, equipment, and other form of tangible personal property if its direct-support organization recommends such exchange, sale, or transfer and if it is determined that the object is no longer appropriate for the purpose of advancing historic preservation. HB 337 limits this authority by requiring prior authorization from the Department of State before disposal of any tangible personal property that has intrinsic historical or archaeological value relating to the history, government, or culture of the state.

The fiscal impact of the bill appears to be insignificant. (See Fiscal Comments)

The effective date of this act is July 1, 2008.

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

Historic Preservation in West Florida

The State of Florida through the Trustees of the Internal Improvement Trust Funds owns 24 parcels of property in downtown Pensacola including 17 historic buildings dating from 1805 to 1950. The properties were managed by the state-funded Historic Pensacola Preservation Board under the Department of State until 2001 when the Board was dissolved by the Legislature.¹

Under current law, the Department of State must contract with the University of West Florida for the management of the various state-owned properties managed by the Historic Pensacola Preservation Board of Trustees prior to July 1, 2001.² The contract requires the university to use all proceeds derived from the management of the properties for the purpose of advancing historic preservation. The Department of State may transfer ownership and responsibility to any artifact, documents, equipment, and other forms of tangible personal property to the University of West Florida to assist the university in the transition of the management of the state-owned properties.

The University of West Florida is the governing body for the management and the maintenance of these state-owned properties. The University of West Florida may contract with the direct support organization authorized by s. 267.1732, F.S., to assist the university in carrying out its historic preservation and historic preservation education responsibilities. Current law³ requires the University of West Florida to authorize a direct-support organization to assist the university in carrying out its dual historic preservation and historic preservation education purposes and responsibilities for the City of Pensacola, Escambia County and West Florida. The sole purpose for the direct-support organization is to support the historic preservation efforts and the historic preservation education programs and initiatives of the university.

The University of West Florida may exchange, sell or otherwise transfer any artifact document, equipment and other form of tangible personal property if its direct-support organization recommends such exchange, sale, or transfer and if it is determined that the object is no longer appropriate for the purpose of advancing historic preservation.⁴

¹ Department of State Analysis of House Bill 337

² s. 267.173, F.S.

³ s. 267.1732, F.S.

⁴ Id.

The University of West Florida and its direct support organization are permitted to participate in the University Major Gifts Program.

University Major Gifts Program

The University Major Gifts Program provides the opportunity for each state university to receive and match private donations for the establishment of permanent endowments. The donations and the state matching funds are then invested, with the proceeds to be used to enhance university libraries and instruction and research programs. The donations, state matching funds, and proceeds from the University Major Gifts Program may not be used for the construction, renovation or maintenance of facilities or to support intercollegiate athletics.⁵

Alec P. Courtelis University Facility Enhancement Challenge Grant Program

The purpose of the Alec P. Courtelis University Facility Enhancement Challenge Grant Program is to assist universities in building high priority instructional and research-related capital facilities, including common areas connecting such facilities.⁶ The foundations that serve the universities solicit gifts from private sources to provide matching funds for capital facilities. Private sources of funds may not include any federal, state, or local government funds that a university may receive. The Board of Governors must establish a method for validating the receipt and the deposit of private matching funds for participating universities. The Legislature may appropriate the state's matching funds in one or more fiscal years for the planning, construction, and equipping of an eligible facility.

Effect of Proposed Changes

HB 337 provides that, upon agreement by all parties to the existing management contracts, the contracts will be rescinded upon execution of a contract between the Board of Trustees of the Internal Improvement Trust Fund and the University of West Florida for the management of those properties. The University of West Florida is authorized to contract with the direct support organization authorized by s.267.1732 for such management. Any such contract must provide that proceeds derived from the management of the properties must be used for purposes of advancing historic preservation, research, and education.

HB 337 transfers the authority of the Department of State to transfer ownership and responsibility of any artifacts, documents, equipment, and other forms of tangible personal property to the University of West Florida to the Board of Trustees of the Internal Improvement Trust Fund.

Currently, the University of West Florida may exchange, sell, or otherwise transfer any artifact, document, equipment, and other form of tangible personal property if its direct-support organization recommends such exchange, sale, or transfer and if it is determined that the object is no longer appropriate for the purpose of advancing historic preservation.⁷ HB 337 limits this authority by requiring prior authorization from the Department of State before disposal of any tangible personal property that has intrinsic historical or archaeological value relating to the history, government, or culture of the state.

HB 337 provides that the university and its direct-support organization are eligible to match state funds in the Alec P. Courtelis University Facility Enhancement Challenge Grant Program.⁸ The historic

⁵ s. 1011.94, F.S.

⁶ s. 1013.79, F.S.

⁷ s. 267.173, F.S.

⁸ Id.

Pensacola properties appear to be currently eligible for the Alec P. Courtelis Grant Program, so adding the reference appears to be only clarifying in nature.

C. SECTION DIRECTORY:

Section 1. Amends s. 267.173, F.S.; providing for the University of West Florida to directly contract for management of certain state-owned properties in Pensacola; requiring agreement of all parties to existing contracts and execution of contract with the Board of Trustees of the Internal Improvement Trust Fund; deleting a requirement to contract with the Department of State for certain historic properties in Pensacola; deleting language related to the transfer of properties and contract requirements with the Department of State; permitting the University of West Florida to contract with its direct-support organization for management of historic properties; providing eligibility for certain grants.

Section 2. Provides an effective date of July 1, 2008

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:

These historic properties currently receive approximately \$189,000 in Plant Operation and Maintenance funding through the university budget. Also, the historic Pensacola properties are already eligible for the Alec P. Courtelis University Facility Enhancement Challenge Grant Program, so adding the reference appears to be only clarifying in nature.

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.

The 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:

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

On line 51, the bill provides that proceeds derived from the management of these state-owned properties must be used for the purpose of advancing historic preservation, research, and education. Currently, these funds may be used only for the purpose of advancing historic preservation. As the university is a research and educational institution, the addition of "research and education" to the purposes for which funds derived from the historic properties may be used could be construed to permit a much broader use of those funds. In contrast, on lines 80-81, the university and the direct-support organization are granted contracting authority to perform acts that assist the university in carrying out its historic preservation and "historic preservation education" responsibilities. Further clarification of legislative intent regarding the use of proceeds derived from management of the historic properties may be needed to provide consistency.

D. STATEMENT OF THE SPONSOR

Waived by the sponsor due to time constraints.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

HB 337

2008

1 A bill to be entitled
 2 An act relating to management of Historic Pensacola
 3 properties; amending s. 267.173, F.S.; providing for the
 4 University of West Florida to directly contract for
 5 management of certain state-owned properties in Pensacola;
 6 requiring agreement of all parties to existing contracts
 7 and execution of contract with the Board of Trustees of
 8 the Internal Improvement Trust Fund; deleting a
 9 requirement to contract with the Department of State for
 10 certain historic properties in Pensacola; deleting
 11 language related to transfer of properties and contract
 12 requirements with the Department of State; permitting the
 13 University of West Florida to contract with its direct-
 14 support organization for management of historic
 15 properties; providing eligibility for certain grants;
 16 providing an effective date.

17
 18 Be It Enacted by the Legislature of the State of Florida:

19
 20 Section 1. Section 267.173, Florida Statutes, is amended
 21 to read:

22 267.173 Historic preservation in West Florida; goals;
 23 contracts for historic preservation; powers and duties.--

24 (1) It is the goal of the state to continue ~~for~~
 25 ~~contracting with the University of West Florida is to ensure~~
 26 long-term preservation and interpretation of state-owned
 27 historic properties ~~under the jurisdiction of the Historic~~
 28 ~~Pensacola Preservation Board of Trustees~~ while facilitating an

29 educational program at the University of West Florida that will
 30 be responsive to the state's needs for professionals in historic
 31 preservation, archaeology, cultural resource management, and
 32 museum administration and will help meet needs of West Florida
 33 communities through educational internships and practicums.

34 (2) Upon agreement by all parties to the contracts
 35 ~~Department of State shall contract with the University of West~~
 36 ~~Florida~~ for the management of the various state-owned properties
 37 managed by the Historic Pensacola Preservation Board of Trustees
 38 prior to July 1, 2001, all existing management contracts shall
 39 be rescinded upon execution of a contract between the Board of
 40 Trustees of the Internal Improvement Trust Fund and the
 41 University of West Florida for the management of those
 42 properties. The University of West Florida ~~contract~~ shall
 43 provide for that the University of West Florida shall use all
 44 proceeds derived from the management of these state-owned
 45 properties and may contract for such management with its direct-
 46 support organization as described in s. 267.1732. Any contract
 47 for the management of the properties shall provide that the
 48 University of West Florida or its direct-support organization
 49 shall use all proceeds derived from the management of the state-
 50 owned properties for the purposes ~~purpose~~ of advancing historic
 51 preservation, research, and education.

52 (3) The Board of Trustees of the Internal Improvement
 53 Trust Fund ~~Department of State~~ may transfer ownership and
 54 responsibility to any artifacts, documents, equipment, and other
 55 forms of tangible personal property to the University of West
 56 Florida to assist the university in the transition of the

57 management of the state-owned properties. ~~All records,~~
 58 ~~personnel, property, other than real property held under lease~~
 59 ~~by the department from the Board of Trustees of the Internal~~
 60 ~~Improvement Trust Fund, and unexpended balances of~~
 61 ~~appropriations, allocations, or other funds of the Historic~~
 62 ~~Pensacola Board of Trustees shall be transferred to the~~
 63 ~~University of West Florida to be used for its historic~~
 64 ~~preservation activities and responsibilities as set forth in the~~
 65 ~~contract with the Department of State. The transfer of~~
 66 ~~segregated funds must be made in such a manner that the relation~~
 67 ~~between program and revenue source as provided by law is~~
 68 ~~retained.~~

69 (4) (a) The University of West Florida is the governing
 70 body for the management and maintenance of state-owned
 71 properties contracted by this section and shall exercise those
 72 powers provided through the contract with the Board of Trustees
 73 of the Internal Improvement Trust Fund ~~delegated to it by~~
 74 ~~contract~~ as well as performing all lawful acts necessary, and
 75 convenient, and incident to the effectuating of the contract,
 76 its management and function, and the purposes ~~purpose~~ under this
 77 section and s. 267.1732. The University of West Florida may
 78 contract with its direct-support organization described in s.
 79 267.1732 to perform all acts that are lawful and permitted for
 80 not-for-profit corporations under chapter 617 in assisting the
 81 university in carrying out its historic preservation and
 82 historic preservation research and education responsibilities.

83 (b) The university or its direct-support organization, if
 84 permitted in its contract with the university, shall have the

85 power to engage in any lawful business or activity to establish,
 86 maintain, and operate the state-owned facilities and properties
 87 governed by this section ~~under contract with the Department of~~
 88 ~~State~~, including, but not limited to:

89 1. The renting or leasing for revenue of any land,
 90 improved or restored real estate, or personal property directly
 91 related to carrying out the purposes for historic preservation
 92 under terms and conditions of the contract with the Board of
 93 Trustees of the Internal Improvement Trust Fund ~~Department of~~
 94 ~~State~~ and deemed by the university to be in the best interest of
 95 the state.

96 2. The selling of craft products created through the
 97 operation and demonstration of historical museums, craft shops,
 98 and other facilities.

99 3. The limited selling of merchandise relating to Florida
 100 history and archaeology ~~the historical and antiquarian period of~~
 101 ~~Pensacola and its surrounding territory and the historical~~
 102 ~~period of West Florida from the Apalachicola River to the~~
 103 ~~western boundaries of the state.~~

104 (c) The university or its direct-support organization, if
 105 permitted in the ~~its~~ contract with the university, shall have
 106 the authority to:

107 1. Enter into agreements to accept credit card payments as
 108 compensation, and establish accounts in credit card banks for
 109 the deposit of credit card sales invoices.

110 2. Fix and collect charges for admission to any of the
 111 state-owned facilities governed by this section ~~under contract~~
 112 ~~with the Department of State.~~

113 3. Permit the acceptance of tour vouchers issued by tour
114 organizations or travel agents for payment of admissions.

115 4. Adopt and enforce reasonable rules, regulations, or
116 policies to govern the conduct of the visiting public.

117 (5) The Division of Historical Resources in the Department
118 of State may contract with the University of West Florida to
119 serve as the regional office for the West Florida region of the
120 state from the Apalachicola River to the western boundaries of
121 the state. In lieu of the establishment of a citizen advisory
122 board as required by s. 267.031(5)(m), the University of West
123 Florida may use an existing direct-support organization of the
124 university provided that the membership of the direct-support
125 organization is representative of the area of the state to be
126 served and provides the needed expertise in the area of historic
127 preservation.

128 (6) Notwithstanding the provisions of s. 287.057, the
129 University of West Florida or its direct-support organization
130 may enter into contracts or agreements with or without
131 competitive bidding, in its discretion, for the protection or
132 preservation of historic properties.

133 (7) Notwithstanding s. 273.055, the University of West
134 Florida may exchange, sell, or otherwise transfer any artifact,
135 document, equipment and other form of tangible personal property
136 if its direct-support organization recommends such exchange,
137 sale, or transfer to the president of the university and if it
138 is determined that the object is no longer appropriate for the
139 purpose of advancing historic preservation. However, any
140 artifact, document, or other form of tangible personal property

141 that has intrinsic historical or archaeological value relating
 142 to the history, government, or culture of the state may not be
 143 exchanged, sold, or otherwise transferred without prior
 144 authorization from the Department of State.

145 (8) Notwithstanding any other provision of law, the
 146 University of West Florida and its direct-support organization
 147 are eligible to match state funds in the University Major Gifts
 148 Program established pursuant to s. 1011.94 and in the Alec P.
 149 Courtelis University Facility Enhancement Challenge Grant
 150 Program established pursuant to s. 1013.79.

151 Section 2. This act shall take effect July 1, 2008.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **HB 337**

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
 ADOPTED AS AMENDED _____ (Y/N)
 ADOPTED W/O OBJECTION _____ (Y/N)
 FAILED TO ADOPT _____ (Y/N)
 WITHDRAWN _____ (Y/N)
 OTHER _____

The amendment:

- clarifies that UWF or its DSO must use proceeds from management of state-owned historic properties for the advancing of historic preservation, historic preservation research, and historic preservation education.
- expands the contract authority delegated to UWF and its DSO to permit contracts to enhance the historic properties under their management.

1 Council/Committee hearing bill: Schools & Learning Council
 2 Representative(s) Ford offered the following:

Amendment

Remove line(s) 51-132 and insert:

preservation, historic preservation research, and historic preservation education.

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9 (3) The Board of Trustees of the Internal Improvement
 10 Trust Fund ~~Department of State~~ may transfer ownership and
 11 responsibility to any artifacts, documents, equipment, and other
 12 forms of tangible personal property to the University of West
 13 Florida to assist the university in the transition of the
 14 management of the state-owned properties. ~~All records,~~
 15 ~~personnel, property, other than real property held under lease~~
 16 ~~by the department from the Board of Trustees of the Internal~~
 17 ~~Improvement Trust Fund, and unexpended balances of~~
 18 ~~appropriations, allocations, or other funds of the Historic~~
 19 ~~Pensacola Board of Trustees shall be transferred to the~~
 20 ~~University of West Florida to be used for its historic~~
 21 ~~preservation activities and responsibilities as set forth in the~~

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

22 ~~contract with the Department of State. The transfer of~~
23 ~~segregated funds must be made in such a manner that the relation~~
24 ~~between program and revenue source as provided by law is~~
25 ~~retained.~~

26 (4) (a) The University of West Florida is the governing
27 body for the management and maintenance of state-owned
28 properties contracted by this section and shall exercise those
29 powers provided through the contract with the Board of Trustees
30 of the Internal Improvement Trust Fund delegated to it by
31 ~~contract~~ as well as performing all lawful acts necessary, and
32 convenient, and incident to the effectuating of the contract,
33 its management and function, and the purposes ~~purpose~~ under this
34 section and s. 267.1732. The University of West Florida may
35 contract with its direct-support organization described in s.
36 267.1732 to perform all acts that are lawful and permitted for
37 not-for-profit corporations under chapter 617 in assisting the
38 university in carrying out its responsibilities for historic
39 preservation, and historic preservation research, and historic
40 preservation education responsibilities.

41 (b) The university or its direct-support organization, if
42 permitted in its contract with the university, shall have the
43 power to engage in any lawful business or activity to establish,
44 maintain, and operate the state-owned facilities and properties
45 governed by this section ~~under contract with the Department of~~
46 ~~State, including, but not limited to:~~

47 1. The renting or leasing for revenue of any land,
48 improved or restored real estate, or personal property directly
49 related to carrying out the purposes for historic preservation,
50 historic preservation research, and historic preservation
51 education under terms and conditions of the contract with the

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

52 Board of Trustees of the Internal Improvement Trust Fund
53 ~~Department of State~~ and deemed by the university to be in the
54 best interest of the state.

55 2. The selling of craft products created through the
56 operation and demonstration of historical museums, craft shops,
57 and other facilities.

58 3. The limited selling of merchandise relating to Florida
59 history and archaeology ~~the historical and antiquarian period of~~
60 ~~Pensacola and its surrounding territory and the historical~~
61 ~~period of West Florida from the Apalachicola River to the~~
62 ~~western boundaries of the state.~~

63 (c) The university or its direct-support organization, if
64 permitted in the ~~its~~ contract with the university, shall have
65 the authority to:

66 1. Enter into agreements to accept credit card payments as
67 compensation, and establish accounts in credit card banks for
68 the deposit of credit card sales invoices.

69 2. Fix and collect charges for admission to any of the
70 state-owned facilities governed by this section ~~under contract~~
71 ~~with the Department of State.~~

72 3. Permit the acceptance of tour vouchers issued by tour
73 organizations or travel agents for payment of admissions.

74 4. Adopt and enforce reasonable rules, regulations, or
75 policies to govern the conduct of the visiting public.

76 (5) The Division of Historical Resources in the Department
77 of State may contract with the University of West Florida to
78 serve as the regional office for the West Florida region of the
79 state from the Apalachicola River to the western boundaries of
80 the state. In lieu of the establishment of a citizen advisory
81 board as required by s. 267.031(5)(m), the University of West

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

82 Florida may use an existing direct-support organization of the
83 university provided that the membership of the direct-support
84 organization is representative of the area of the state to be
85 served and provides the needed expertise in the area of historic
86 preservation.

87 (6) Notwithstanding the provisions of s. 287.057, the
88 University of West Florida or its direct-support organization
89 may enter into contracts or agreements with or without
90 competitive bidding, in its discretion, for the protection,
91 enhancement, or preservation of historic properties.

92

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 445
SPONSOR(S): Proctor
TIED BILLS:

Intergovernmental Cooperation

IDEN./SIM. BILLS: SB 1070

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Education Innovation & Career Preparation</u>	<u>8 Y, 0 N</u>	<u>Beagle</u>	<u>White</u>
2) <u>Schools & Learning Council</u>		<u>Beagle</u> <i>GB</i>	<u>Cobb</u> <i>ccc</i>
3) _____			
4) _____			
5) _____			

SUMMARY ANALYSIS

Section 163.01, F.S., authorizes public agencies, including district school boards, to enter into interlocal agreements with one another for services and facilities. Such agreements may allow for one or more parties to provide services in exchange for payment or for a mutual exchange of services.

District school boards may enter into interlocal agreements with other public agencies concerning services or facilities if there is express statutory authority or if the agreement serves an educational purpose. Some school boards have been prevented from entering into agreements that may have resulted in more cost effective and efficient use of public resources because the purpose of the agreement was determined to be non-educational. While s. 1003.02, F.S., specifically authorizes a district school board to provide transportation of students, rent buildings, and provide maintenance to school plants, it does not specify that such activities may be achieved by interlocal agreement with other public agencies.

Section 1006.21, F.S., requires district school boards to provide public school students with transportation to school or school activities. Section 1006.261, F.S., authorizes school boards to enter into agreements to provide transportation services to transportation disadvantaged and elderly persons, participants in welfare transition programs, and school-age children attending activities sponsored by nonprofit civic organizations. It also specifies terms for reimbursing the school board for such services. Entities that contract to use school buses in this manner must release the school board from all liability and carry liability insurance.

House Bill 445 amends s. 163.01(6), F.S., to authorize public agencies to provide for the use or maintenance of facilities or equipment by interlocal agreement. The bill provides that compensation for such activities may be provided on a cost reimbursement basis or on the basis of educational benefits received by the employees of a party or students of the public agency.

The bill amends s. 1003.02(1), F.S., to specifically authorize a district school board to provide transportation of students, rent buildings, and provide maintenance to school plants by interlocal agreement pursuant to s. 163.01, F.S.

The bill amends s. 1006.261, F.S., to authorize district school boards to enter into agreements with local governments or certain state agencies to use school buses for public transportation or for other public purposes. The bill also provides for reimbursement to school boards based upon maintenance costs or other activities attributable to the use of the buses under the agreement. It requires a public agency receiving such services to indemnify and hold the school board harmless from all liability stemming from such use of its school buses.

The bill does not appear to have a fiscal impact on state or local governments. **(See Fiscal Analysis & Economic Impact Statement).**

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0445d.SLC.doc
DATE: 3/13/2008

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:

Effect of Proposed Changes

Interlocal Agreements: Statute authorizes two or more public agencies, including district school boards, to enter into interlocal agreements with other public agencies for the joint use of services and facilities.¹ An interlocal agreement may provide:

- That one or more of the parties will administer or execute the agreement;
- That one or more of the parties will provide all or part of the services; and
- The manner in which such services will be provided.

An interlocal agreement may also provide for the mutual exchange of services without payment or any contribution other than such services.² Each party to an interlocal agreement must possess the authority to take the action called for in the agreement.³

House Bill 445 authorizes public agencies to provide for the use or maintenance of facilities or equipment by interlocal agreement, thereby expanding the permissible uses for such agreements. The bill provides that an interlocal agreement may provide for compensation on a cost reimbursement basis or on the basis of educational benefits received by the employees of a party or students of the public agency.

Powers of District School Boards: Currently, the Florida Constitution,⁴ as implemented by the Florida K-20 Education Code,⁵ grants district school boards both express and discretionary powers. Prior to 1978, district school boards were charged with "responsibility for the organization and control of the public schools of the district" and their powers were limited to those expressly provided in statute.⁶ In 1978, the Legislature expanded the powers of district school boards to include discretionary powers:

In accordance with the provisions of s. 4(b) of Art. IX of the State Constitution, district school boards shall operate, control, and supervise all free public schools in their respective districts and may exercise any power for educational purposes except as otherwise provided by the state constitution or law.⁷

¹ See s. 163.01, F.S. (defining "public agency" to include, among other things, a state government, county, city, school district, single and multipurpose special district, single and multipurpose public authority, metropolitan or consolidated government, an independently elected public officer, any agency of the United States Government, a federally recognized Native American tribe, and any similar entity of any other state of the United States).

² Section 163.01(6), F.S.

³ Section 163.01(4), F.S.

⁴ Fla. Const. Art. IX, § 4(b).

⁵ See s. 1000.01(1), F.S. (providing that Chapters 1000-1013, F.S., shall be known as the Florida K-20 Education Code).

⁶ Section 230.03(2), F.S. (1978)(This section was repealed and transferred to s. 1001.32, F.S., by Chapter 2002-387, L.O.F.); See also *Harvey v. Board of Public Instruction for Sarasota County*, 101 Fla. 273, 276 (Fla. 1931); *Buck v. McLean*, 115 So.2d 764, 765 (Fla. Dist. Ct. App. 1 1959).

⁷ Chapter 78-86, L.O.F.

The 1978 legislation defined “educational purpose” to mean, “any activity or power exercised in the establishment and maintenance of courses, classes, institutions, and services adequate to meet the educational needs of all citizens of the district.”⁸

These provisions were amended again in 1983. The definition of “educational purpose” and language conditioning a school board’s exercise of its discretionary powers on whether the action serves an “educational purpose” were deleted. Provisions authorizing a school board to exercise any power “*except as otherwise provided by the State Constitution or law*” were amended to provide that such powers may be exercised unless “*expressly prohibited by the State Constitution or general law*.”⁹

Despite these revisions, the Attorney General (AG) has maintained the requirement that a school board’s exercise of discretionary powers must serve a direct educational purpose.¹⁰ The AG has construed the 1983 revisions as not superseding “all other laws relating to or vesting powers in the State Board of Education.”¹¹ In so reasoning, the AG has maintained that school board discretionary powers must be “consistent and in harmony” with the constitutional and statutory powers granted to the State Board of Education.¹² Subsequent AG opinions reiterate this stance.¹³

District school boards may enter into interlocal agreements with other public agencies for services or use of facilities if there is express statutory authority or if the agreement serves an educational purpose. Some school boards have been prevented from entering into agreements that may have resulted in more cost effective and efficient use of public resources because the purpose of the agreement was determined to be non-educational.¹⁴ The bill amends s. 1003.02(1), F.S., to specifically authorize a district school board to provide transportation of students, rent buildings as part of its school facilities program, and provide maintenance to school plants by interlocal agreement pursuant to s. 163.01, F.S.

Use of School Buses for Public Purposes: Under current law, district school boards are required to provide public school students with transportation to school or school activities.¹⁵ School boards are also authorized to use school buses for other specified public purposes.¹⁶ School boards may enter into agreements with:

- A local government or certain state agencies to provide transportation services to the transportation disadvantaged¹⁷ and the elderly;
- A regional workforce board to provide transportation services to participants in welfare transition programs; and
- A nonprofit civic organization to provide transportation for school-age children to group sponsored activities.¹⁸

⁸ *Id.*

⁹ Chapter 83-324, L.O.F.

¹⁰ Op. Att’y Gen. Fla. 83-72 (1983), Op. Att’y Gen. Fla. 07-45 (2007). *See also* Florida Board of Education General Counsel’s Opinion (March 23, 1989).

¹¹ Op. Att’y Gen. Fla. 83-72 (1983).

¹² Op. Att’y Gen. Fla. 83-72 (1983). *See also* Section 1001.32(1), F.S.

¹³ *See* Op. Att’y Gen. Fla. 84-58 (1984), Op. Att’y Gen. Fla. 84-95 (1984), Op. Att’y Gen. Fla. 89-87 (1989), Op. Att’y Gen. Fla. 95-67 (1995), and Op. Att’y Gen. Fla. 99-04 (1999).

¹⁴ Op. Att’y Gen. Fla. 07-45 (2007), Florida Board of Education General Counsel’s Opinion (March 23, 1989).

¹⁵ Section 1006.21, F.S.

¹⁶ Section 1006.261, F.S.

¹⁷ Section 427.011(1), F.S. (defines “transportation disadvantaged” to mean “those persons who because of physical or mental disability, income status, or age are unable to transport themselves or to purchase transportation and are, therefore, dependent upon others to obtain access to health care, employment, education, shopping, social activities, or other life-sustaining activities, or [certain disabled or at-risk children]”).

¹⁸ Section 1006.261(1), F.S.

Agreements with local governments or state agencies must provide for full or partial reimbursement of the school board at a rate proportionate to its share of fixed and operating costs attributable to such uses.¹⁹ Agreements with nonprofit civic organizations must provide for compensation that is at least equal to the costs incurred by the board.²⁰ In all cases, the agreement must indemnify and hold the school board harmless from all liability stemming from such use of its school buses. Likewise, a local government, state agency, or nonprofit organization must carry liability insurance.²¹

The bill authorizes district school boards to enter into agreements with a local government or state agency to use school buses to assist in the provision of public transportation and for other public purposes additional to serving the transportation disadvantaged and the elderly. The bill also provides for reimbursement to school boards based upon the cost of maintenance or other activities attributable to the use of buses under the agreement. The bill requires a public agency receiving such services to indemnify and hold the school board harmless from all liability stemming from such use of its school buses.

C. SECTION DIRECTORY:

Section 1.: Amending s. 163.01, F.S.; authorizing public agencies to provide for the use or maintenance of facilities or equipment by interlocal agreement; and providing such agreements may provide for compensation based upon reimbursement of costs or educational benefits received by the employees of a party or students of the public agency.

Section 2.: Amending s. 1003.02, F.S.; authorizing district school boards to provide transportation of students, rent buildings, and provide maintenance of school plants by interlocal agreement pursuant to s. 163.01, F.S.

Section 3.: Amending s. 1006.261, F.S.; authorizing district school boards to enter into agreements with specified governmental agencies to use school buses for public transportation and for other public purposes; providing for reimbursement to school boards based upon the cost of maintenance or other activities; and requiring a public agency to indemnify and hold the school board harmless from all liability stemming from such use of its school buses.

Section 4.: Providing an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not appear to have a fiscal impact on state revenues.

2. Expenditures:

This bill does not appear to have a fiscal impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to have a fiscal impact on local revenues.

¹⁹ Section 1006.261(1)(a) and (b), F.S.

²⁰ Section 1006.261(1)(c), F.S.

²¹ Section 1006.261(2), F.S.

2. Expenditures:

This bill does not appear to have a fiscal impact on local expenditures

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to the Department of Education (DOE), the bill may reduce revenues earned by private transportation providers resulting from the expanded use of governmentally-operated school buses for public transportation or other public purposes.²²

D. FISCAL COMMENTS:

The bill enables district school boards to contract with other public agencies for the joint use of certain public resources. Whether school districts achieve cost savings or incur additional expenses will be largely contingent on the terms of the interlocal agreement. School districts may incur additional costs associated with insurance, overtime paid to district employees, and cost analyses and monitoring of agreements.²³

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to take an action requiring the expenditure of funds.

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

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

At lines 51-53, the bill allows a party to an interlocal agreement to receive compensation based upon the "educational benefits received by the employees of a party or students of the public agency." Although the term "educational benefit" is used sporadically in the Florida Statutes, nowhere is the term defined. Thus, it is unclear which types of activities would be deemed "educational benefits." The DOE bill analysis recommends the deletion of this language.²⁴

D. STATEMENT OF THE SPONSOR

²² Department of Education, 2008 Bill Analysis for HB 445.

²³ *Id.*

²⁴ *Id.*

None.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 4, 2008, the Committee on Education Innovation and Career Preparation reported the bill favorably with one amendment. The amendment removes the ambiguous phrase "or on the basis of educational benefits received by the employees of a party or students of the public agency" at lines 51-53. Please see "Drafting Issues or Other Comments" above.

29 WHEREAS, section 163.31777, Florida Statutes, relating to
 30 public schools interlocal agreements, states, in part, that the
 31 county and municipalities located within the geographic area of
 32 a school district shall enter into an interlocal agreement with
 33 the district school board which jointly establishes the specific
 34 ways in which the plans and processes of the district school
 35 board and the local governments are to be coordinated, NOW,
 36 THEREFORE,

37

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

39

40 Section 1. Subsection (6) of section 163.01, Florida
 41 Statutes, is amended to read:

42 163.01 Florida Interlocal Cooperation Act of 1969.--

43 (6) An interlocal agreement may provide for one or more
 44 parties to the agreement to administer or execute the agreement.
 45 One or more parties to the agreement may agree to provide all or
 46 a part of the services set forth in the agreement in the manner
 47 provided in the agreement. The parties may provide for the
 48 mutual exchange of services without payment of any contribution
 49 other than such services. The parties may provide for the use or
 50 maintenance of facilities or equipment of another party on a
 51 cost-reimbursement basis or on the basis of educational benefits
 52 received by the employees of a party or students of the public
 53 agency.

54 Section 2. Paragraphs (e) and (f) of subsection (1) of
 55 section 1003.02, Florida Statutes, are amended to read:

56 1003.02 District school board operation and control of
 57 public K-12 education within the school district.--As provided
 58 in part II of chapter 1001, district school boards are
 59 constitutionally and statutorily charged with the operation and
 60 control of public K-12 education within their school district.
 61 The district school boards must establish, organize, and operate
 62 their public K-12 schools and educational programs, employees,
 63 and facilities. Their responsibilities include staff
 64 development, public K-12 school student education including
 65 education for exceptional students and students in juvenile
 66 justice programs, special programs, adult education programs,
 67 and career education programs. Additionally, district school
 68 boards must:

69 (1) Provide for the proper accounting for all students of
 70 school age, for the attendance and control of students at
 71 school, and for proper attention to health, safety, and other
 72 matters relating to the welfare of students in the following
 73 fields:

74 (e) Transportation.--Make provision for the transportation
 75 of students to the public schools or school activities they are
 76 required or expected to attend, efficiently and economically, in
 77 accordance with the requirements of chapter 1006, which function
 78 may be accomplished, in whole or part, by means of an interlocal
 79 agreement under s. 163.01.

80 (f) Facilities and school plant.--

81 1. Approve and adopt a districtwide school facilities
 82 program, in accordance with the requirements of chapter 1013.

- 83 2. Approve plans for locating, planning, constructing,
 84 sanitating, insuring, maintaining, protecting, and condemning
 85 school property as prescribed in chapter 1013.
- 86 3. Approve and adopt a districtwide school building
 87 program.
- 88 4. Select and purchase school sites, playgrounds, and
 89 recreational areas located at centers at which schools are to be
 90 constructed, of adequate size to meet the needs of projected
 91 students to be accommodated.
- 92 5. Approve the proposed purchase of any site, playground,
 93 or recreational area for which school district funds are to be
 94 used.
- 95 6. Expand existing sites.
- 96 7. Rent buildings when necessary, which function may be
 97 accomplished, in whole or part, by means of an interlocal
 98 agreement under s. 163.01.
- 99 8. Enter into leases or lease-purchase arrangements, in
 100 accordance with the requirements and conditions provided in s.
 101 1013.15(2).
- 102 9. Provide for the proper supervision of construction.
- 103 10. Make or contract for additions, alterations, and
 104 repairs on buildings and other school properties.
- 105 11. Ensure that all plans and specifications for buildings
 106 provide adequately for the safety and well-being of students, as
 107 well as for economy of construction.
- 108 12. Provide adequately for the proper maintenance and
 109 upkeep of school plants, which function may be accomplished, in

110 whole or part, by means of an interlocal agreement under s.
 111 163.01.

112 13. Carry insurance on every school building in all school
 113 plants including contents, boilers, and machinery, except
 114 buildings of three classrooms or less which are of frame
 115 construction and located in a tenth class public protection zone
 116 as defined by the Florida Inspection and Rating Bureau, and on
 117 all school buses and other property under the control of the
 118 district school board or title to which is vested in the
 119 district school board, except as exceptions may be authorized
 120 under rules of the State Board of Education.

121 14. Condemn and prohibit the use for public school
 122 purposes of any building under the control of the district
 123 school board.

124 Section 3. Paragraph (a) of subsection (1) and paragraph
 125 (a) of subsection (2) of section 1006.261, Florida Statutes, are
 126 amended to read:

127 1006.261 Use of school buses for public purposes.--

128 (1)(a) Each district school board may enter into
 129 agreements with the governing body of a county or municipality
 130 in the school district or any state agency or agencies
 131 established or identified to assist in the provision of public
 132 transportation and other public purposes, including, but not
 133 limited to, providing for the needs of the transportation
 134 disadvantaged, as defined in s. 427.011, including, but not
 135 limited to, the elderly, pursuant to Pub. L. No. 89-73, as
 136 amended, for the use of the school buses of the school district
 137 by departments, boards, commissions, or officers of such county

138 or municipality or of the state for county, municipal, or state
 139 purposes, including, but not limited to, transportation of the
 140 transportation disadvantaged or other public purposes. Each such
 141 agreement shall provide for reimbursement of the district school
 142 board, in full or in part, for the proportionate share of fixed
 143 and operating costs incurred by the district school board
 144 attributable to the use of the buses pursuant to the agreement
 145 or attributable to the maintenance or other activities conducted
 146 by the district school board.

147 (2) (a) The governing body or state agency or agencies
 148 established or identified pursuant to Pub. L. No. 89-73; or the
 149 nonprofit corporation or nonprofit civic organization or group,
 150 or an agency established or identified to assist the
 151 transportation disadvantaged as defined in s. 427.011, or a
 152 public agency otherwise receiving services from a district
 153 school board shall indemnify and hold harmless the district
 154 school board from any and all liability by virtue of the use of
 155 the buses pursuant to an agreement authorized by this section.

156 Section 4. This act shall take effect upon becoming a law.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Bill No. **HB 445**

COUNCIL/COMMITTEE ACTION

ADOPTED ___ (Y/N)
ADOPTED AS AMENDED ___ (Y/N)
ADOPTED W/O OBJECTION ___ (Y/N)
FAILED TO ADOPT ___ (Y/N)
WITHDRAWN ___ (Y/N)
OTHER _____

1 **This amendment is traveling with the bill and requires no further action.**

2 Council/Committee hearing bill: Schools & Learning Council.
3 Committee on Education Innovation and Career Preparation
4 recommends the following:

5
6
7
8
9

Amendment

Remove line(s) 51-53 and insert:
cost-reimbursement basis.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 603 Textbook Affordability

SPONSOR(S): Flores

TIED BILLS: **IDEN./SIM. BILLS:** SB 2350

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Schools & Learning Council		Merritt <i>AM</i>	Cobb <i>OC</i>
2) Policy & Budget Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

A recent study by the United States Government Accountability Office found that college textbook prices have risen at twice the rate of annual inflation over the last two decades.

This bill prohibits employees of a community college or state university from receiving anything of value in exchange for requiring a student to purchase a specific textbook for coursework and instruction. The bill does provide exceptions that permit an employee to receive: sample copies, instructor copies, and instructional materials; royalties for books that include the instructor's own work; honoraria; compensation for reviewing and preparing supporting material; and, training in the use of course materials.

This bill requires community colleges and state universities to post on their websites the books that will be required for each course, including the International Standard Book Number (ISBN) and other relevant information for identifying the book, at least 30 days before the first day of class. The State Board of Education (SBE) and Board of Governors (BOG) are required to create policies, procedures, and guidelines for textbook notification for classes added after the notification deadline.

This bill requires the SBE and the BOG to adopt policies, procedures, and guidelines by March 1, 2009 to further efforts to minimize the cost of textbooks. These policies, procedures, and guidelines must include: sufficient time for bookstores to confirm availability, especially with regard to used books; confirmation, as part of the adoption process, that all required bundled materials will be used; confirmation, as part of the adoption process, that a new edition differs substantially from the earlier editions; and, ways to provide required textbooks to students who could not otherwise afford them.

The fiscal impact of the bill is expected to be minimal. Some institutions may experience minor costs associated with web design and training.

The effective date provided is July 1, 2008.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0603.SLC.doc
DATE: 3/13/2008

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – The bill requires the State Board of Education and the Board of Governors to adopt policies, procedures, and guidelines for community colleges and state universities that will help minimize the cost of textbooks. The bill requires community colleges and state universities to post on their websites certain textbook information.

B. EFFECT OF PROPOSED CHANGES:

Background

A recent study by the United States Government Accountability Office found that college textbook prices have risen at twice the rate of annual inflation over the last two decades. The same study also found that escalating costs of postsecondary education, including tuition and textbooks, is of national importance because these costs can have negative effects on access and affordability.¹

Currently OPPAGA is finalizing a report on Textbook Affordability. In this review, OPPAGA surveyed community colleges and universities about the price of textbooks and required course materials for the courses with the most student enrollment across 13 disciplines.² Preliminary information found that community college students can expect to pay about \$117 for required course materials per course.³ This results in an expense of approximately \$468 per semester if a student takes a full course load (4 courses), which is 58% of the tuition cost for those courses. At state universities, students can expect to pay about \$127 per course for required materials.⁴ This results in an expense of approximately \$508 per semester for a full course load (4 courses), which is 37% of the tuition cost for those courses.

OPPAGA's preliminary information shows that students can, on average, save a small amount by purchasing required course materials either online or from local, private bookstores. Overall, however, required course materials most often cost between \$20 more or less than the campus bookstore's retail price. OPPAGA identified five commonly used potential cost-saving mechanisms among the state's public postsecondary institutions:⁵

- Provide textbooks on reserve in the school library;
- Implement textbook buy-back programs;
- Encourage faculty to consider textbook costs before selecting and assigning course materials;

¹ U.S. Gov't Accountability Office, College Textbooks: Enhanced Offerings Appear to Drive Recent Price Increases, GAO-05-806 (July 2005).

² Preliminary information received during a meeting with OPPAGA on 3/10/08.

³ The price for required course materials is the midpoint price between the average low and high material costs for all 13 disciplines.

⁴ See footnote 3.

⁵ See footnote 2.

- Provide unbundled course materials (according to the Board of Governors, instructors don't always have a choice in unbundling textbooks); and,
- Provide electronic textbook subscriptions.

Fewer institutions use another five potential cost-saving mechanisms:

- Provide students with money-saving tips;
- Request publishers to disclose textbook shelf-life;
- Use customized textbooks;
- Request publishers to disclose textbook revisions; and,
- Implement a textbook advisory committee.

Florida is not the only state that is addressing the issue of textbook affordability. In 2007 alone, more than 85 bills in 27 states dealt with textbook affordability.⁶ At the end of the year, 10 states enacted 15 laws or resolutions to reduce textbook costs.⁷

- Arkansas now requires booklists to be posted at the bookstore or on the school's website at a set time before the next semester, prevents state employees from receiving inducements to adopt textbooks for classes, and regulates royalties earned by faculty for materials that were adopted for classes at their institution.
- California signed a bill into law that encourages faculty to place textbook orders with sufficient lead time and prohibits acceptance of inducements for textbook adoptions.
- Minnesota now requires publishers to disclose the ISBN, price, bundles, alternative formats, and summary of revisions for each textbook; asks instructors to submit booklists at least 30 days before the start of the term; and asks bookstores to notify students of book adoptions at least 15 days before the term's start.
- Oklahoma signed a bill into law that requires campus bookstores to sell bundle components individually, requires publishers to provide information to faculty on prices and revision history, and prohibits employees from receiving inducements for textbook adoptions.
- Oregon now requires publishers to provide textbook information, including pricing and how long the book is going to be on the market, to a prospective purchaser; and requires publishers to sell materials in individual bundle components.
- Tennessee signed a bill into law that requires the University of Tennessee System and Tennessee Board of Regents to develop policies and procedures requiring: faculty to submit booklists in a timely manner to ensure availability and for posting online with ISBNs; campus stores to sell bundled components individually; and the school's library to provide copies of the textbooks at no charge.
- Washington now requires textbook policies to be developed for community colleges (universities already have policies in place) and requires publishers to inform faculty of the wholesale prices of textbooks and the history of their revisions.

⁶ State Legislatures Magazine, *Textbook Turmoil: Is Containing the Cost of College Textbooks a Role for State Legislatures?* (Feb 2008)

⁷ See footnote 6.

As of March 4, 2008 there are 38 bills either filed or in the drafting stage from 24 states, that focus on textbook affordability.⁸

In 2006, Congress asked the Advisory Committee on Student Financial Assistance (ACSFA) to conduct a one-year study of the cost of college textbooks and to make recommendations on increasing the affordability of textbooks. The report was released in May 2007 and titled, "Turn the Page: Making College Textbooks More Affordable." The study identified best practices and innovations occurring in the states and on campuses aimed at reducing textbook costs, particularly for lower and middle income students. Among the best practices listed in the report were: submitting textbook orders to the bookstore on time, retaining older editions of books, and posting the textbook lists and ISBNs for the textbooks online.⁹

Congress has 4 bills that have been introduced this session that deal with textbook affordability.¹⁰ One of those bills, H.R. 4137, has already been voted on and passed in the House. The textbook provision of H.R. 4137 requires:

- That the publisher, when providing information about textbooks and supplemental materials, provide the following information:
 - o The price;
 - o The copyright dates of all previous editions;
 - o The substantial content revisions made between the current edition and the previous edition; and
 - o Whether the textbook is available in any other format and the price in that format.
- Textbooks and supplemental materials that are bundled be offered as unbundled;
- Institutions to provide, online or in print, the ISBN and retail price of the textbooks that are required and recommended for each course; and,
- Institutions to make available to college bookstores, the institution's course schedule; the ISBN and retail price information for any required or recommended books; the number of students enrolled in each class; and the maximum student enrollment for each class.

In 2006, the Florida House of Representatives, Committee on Colleges and Universities staff surveyed Florida's state universities and community colleges to collect information regarding current policies and practices that may impact the cost of textbooks to students. The survey showed that there is no uniformity with how public postsecondary education institutions in Florida handle textbook adoption, faculty limitations on receiving compensation for textbook adoption, and student notification of required textbooks.¹¹ The State Board of Education (SBE) and the Board of Governors (BOG) currently do not have policies and procedures regarding textbook adoption. However, most institutions have established their own policies and procedures. The textbook adoption policies vary from formal processes set out in their collective bargaining agreements between the union and the board of trustees to the more popular, less formal faculty discussions or committee meetings. There are institutions that have express prohibitions against employees receiving compensation for textbook adoption, but most other institutions either have less restrictive policies, from filling out Conflict of Interest forms to relying on the institution's code of ethics, or don't have policies at all. Textbook information at most postsecondary

⁸ National Association of College Stores, <http://www.nacs.org/news/statebills.asp>

⁹ ACSFA, *Turn the Page: Making College Textbooks More Affordable* (May 2007)

¹⁰ National Association of College Stores, <http://www.nacs.org/news/federalbills.asp>

¹¹ See Survey on Textbook Policies and Practices at Florida's postsecondary education institutions, conducted by the Committee on Colleges and Universities in Summer 2006.

institutions is available at the campus bookstore or the campus bookstore's website; the institution's own specific textbook information website; or through online syllabi.¹²

Effect of Proposed Changes

This bill prohibits employees of a community college or state university from receiving anything of value in exchange for requiring a student to purchase a specific textbook for coursework and instruction. The bill provides exceptions that permit an employee to receive: sample copies, instructor copies, and instructional materials; royalties for books that include the instructor's own work; honoraria; compensation for activities such as reviewing and preparing supporting material; and, training in the use of course materials.

This bill requires community colleges and state universities to post on their websites the books that will be required for each course, including the International Standard Book Number (ISBN) and other relevant information for identifying the book, at least 30 days before the first day of class. The SBE and BOG are required to create policies, procedures and guidelines for textbook notification for classes added after the notification deadline.

This bill requires the SBE and the BOG to adopt policies, procedures, and guidelines by March 1, 2009 to further efforts to minimize the cost of textbooks. These policies, procedures, and guidelines must include: sufficient time for bookstores to confirm availability, especially with regard to used books; confirmation, as part of the adoption process, that all required bundled materials will be used; confirmation, as part of the adoption process, that the new edition differs substantially from the earlier editions; and, ways to provide required textbooks to students who could not otherwise afford them.

The BOG suggests that the terms "textbook" and "bundled materials" should be clearly defined in this bill. The BOG also notes that some publishing companies require faculty to use the most recent edition of the textbook, and that this obligation would interfere with the requirement for faculty to determine if there is a significant difference between newer and older editions of the textbook.¹³

The DOE indicates that the requirement to provide textbooks to students who could not otherwise afford them will require community college and university faculty to determine who meets this specific qualification.¹⁴ The BOG suggests that it could be hard to implement a program that provides textbooks to students with financial need without funding support, because libraries normally do not carry every textbook that is used and if the library does carry the textbook, normally it will not carry a sufficient supply of that textbook.¹⁵

C. SECTION DIRECTORY:

Section 1: Creates a new section, s. 1004.09, F.S., prohibiting certain actions of community college and state university employees regarding student purchase of textbooks; requiring the institution to provide timely notification of textbook adoptions to the student; requiring adoptions of policies and procedures by the State Board of Education and Board of Governors to minimize textbook costs.

¹² See footnote 9.

¹³ Board of Governors Analysis of House Bill 603.

¹⁴ Department of Education Analysis of House Bill 603.

¹⁵ See footnote 13.

Section 2: Provides an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not appear to have a fiscal impact on state government revenues.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill may reduce the cost postsecondary education students pay for textbooks.

D. FISCAL COMMENTS:

The fiscal impact of this bill is expected to be minimal. Some institutions may experience minor costs associated with web design and training.

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:

None.

B. RULE-MAKING AUTHORITY:

This bill does not create any rule-making authority; however, this bill does require the adoption of policies, procedures, and guidelines.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

Waived by the sponsor due to time constraints.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to textbook affordability; creating s.
 3 1004.09, F.S.; prohibiting certain actions of community
 4 college or state university employees that relate to
 5 student purchase of required textbooks; authorizing
 6 receipt of certain instructional materials, compensation,
 7 and training; requiring student notification of required
 8 textbooks; requiring adoption of specified policies and
 9 practices to minimize the cost of textbooks; providing an
 10 effective date.

11
 12 WHEREAS, textbooks are an essential part of a comprehensive
 13 and high-quality postsecondary education, and

14 WHEREAS, the availability and affordability of textbooks
 15 directly impact the quality and affordability of postsecondary
 16 education, and

17 WHEREAS, the United States Government Accountability Office
 18 recently reported that in the last two decades college textbook
 19 prices have increased at twice the rate of inflation, and

20 WHEREAS, the United States Government Accountability Office
 21 reported that, while many factors affect textbook pricing, the
 22 increasing costs associated with developing instructional
 23 supplements to accompany textbooks best explain price increases
 24 in recent years, and

25 WHEREAS, the United States Government Accountability Office
 26 reported that college textbook prices in the United States may
 27 exceed prices in other countries because prices reflect market

28 conditions found in each country, such as the willingness and
 29 ability of students to purchase the textbook, and

30 WHEREAS, the cost of textbooks is one component considered
 31 in making federal and state-funded financial aid awards, and, as
 32 such, escalating textbook prices can impact federal and state
 33 spending, and

34 WHEREAS, state universities and community colleges should
 35 consider the least costly practices in assigning textbooks when
 36 such practices are educationally sound, NOW, THEREFORE,

37

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

39

40 Section 1. Section 1004.09, Florida Statutes, is created
 41 to read:

42 1004.09 Textbook affordability.--

43 (1) No employee of a community college or state university
 44 may demand or receive any payment, loan, subscription, advance,
 45 deposit of money, service, or anything of value, present or
 46 promised, in exchange for requiring students to purchase a
 47 specific textbook for coursework or instruction.

48 (2) An employee may receive:

49 (a) Sample copies, instructor copies, or instructional
 50 materials.

51 (b) Royalties or other compensation from sales of
 52 textbooks that include the instructor's own writing or work.

53 (c) Honoraria for academic peer review of course
 54 materials.

55 (d) Fees associated with activities such as reviewing,

56 critiquing, or preparing support materials for textbooks
 57 pursuant to guidelines adopted by the State Board of Education
 58 or the Board of Governors.

59 (e) Training in the use of course materials and learning
 60 technologies.

61 (3) Community colleges and state universities shall post
 62 on their websites, as early as is feasible, but not less than 30
 63 days prior to the first day of class for each term, a list of
 64 each textbook required for each course offered at the
 65 institution during the upcoming term. The posted list shall
 66 include the International Standard Book Number (ISBN) for each
 67 textbook along with other relevant information necessary to
 68 identify the specific textbook or textbooks required for each
 69 course. The State Board of Education and the Board of Governors
 70 shall include in the policies, procedures, and guidelines
 71 adopted under subsection (4) certain limited exceptions to this
 72 notification requirement for classes added after the
 73 notification deadline.

74 (4) By March 1, 2009, the State Board of Education and the
 75 Board of Governors each shall adopt policies, procedures, and
 76 guidelines for implementation by community colleges and state
 77 universities, respectively, that further efforts to minimize the
 78 cost of textbooks for students attending such institutions while
 79 maintaining the quality of education and academic freedom. The
 80 policies, procedures, and guidelines shall provide for the
 81 following:

82 (a) That textbook adoptions are made with sufficient lead
 83 time to bookstores so as to confirm availability of the

84 requested materials and, where possible, ensure maximum
85 availability of used books.

86 (b) That, in the textbook adoption process, the intent to
87 use all items ordered, particularly each individual item sold as
88 part of a bundled package, is confirmed by the course instructor
89 or the academic department offering the course before the
90 adoption is finalized.

91 (c) That a course instructor or the academic department
92 offering the course determines, before a textbook is adopted,
93 the extent to which a new edition differs significantly and
94 substantively from earlier versions and the value of changing to
95 a new edition.

96 (d) That the establishment of policies shall address the
97 availability of required textbooks to students otherwise unable
98 to afford the cost.



99 Section 2. This act shall take effect July 1, 2008.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1021 Prekindergarten Education Pilot Program

SPONSOR(S): Ausley

TIED BILLS: IDEN./SIM. BILLS: SB 2606

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Schools & Learning Council		Gillespie 	Cobb 
2) Policy & Budget Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

House Bill 1021 establishes a pilot program for enhancing the quality of the Voluntary Prekindergarten Education (VPK) Program in Gadsden, Jefferson, Leon, Liberty, Madison, Taylor, and Wakulla counties. The design for the pilot program is as follows:

- The program is established as a 3-year coordinated pilot;
- Participation by prekindergarten education providers is voluntary;
- The program must provide opportunities for individuals with baccalaureate or higher degrees to teach in the VPK program;
- The Early Learning Coalition of the Big Bend Region must develop a curriculum for the pilot program in consultation with a community college, and the curriculum must provide each participant with early education training designed to enhance the quality of the VPK program and with health and safety training; and
- Individuals participating in the pilot program must complete the curriculum.

The bill specifies that the pilot program is to be administered by the Early Learning Coalition of the Big Bend Region. The coalition is directed to recruit participants for the program, determine the required training, and provide assistance for the placement of participants (individuals and prekindergarten education providers).

The bill does not provide funding for the pilot program but authorizes the coalition to apply for grants and funding for implementation of the pilot program. The bill also specifies that implementation of the pilot program is not required until the coalition secures the necessary funding. Accordingly, the bill does not appear to create a fiscal impact on the state or local governments.

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:

Present Situation:

In 2002, the voters of Florida approved an amendment to the State Constitution which required the Legislature to establish a prekindergarten program for every 4-year-old child in the state.¹ The amendment specified that the prekindergarten program must be voluntary, high quality, free, and delivered according to professionally accepted standards. In December 2004, to implement the constitutional amendment, the Legislature created the Voluntary Prekindergarten Education (VPK) Program.² The VPK program allows a parent to enroll his or her child in a voluntary, free prekindergarten program offered during the year before the child is eligible for admission to kindergarten. The program gives parents of eligible children a choice among three program options:³

- A 540-instructional-hour school-year prekindergarten program delivered by a private provider that has a director with a prekindergarten director credential, that has classes of at least 4 and not more than 18 students, that has for each class at least one instructor who holds at least a child development associate (CDA) or equivalent state-approved credential and who completes a 5-clock-hour course in emergent literacy training, and that, for classes of 11 or more students, has a second instructor who is not required to have those credentials or training;⁴
- A 300-instructional-hour summer prekindergarten program delivered by a public school or private provider that has classes of at least 4 and not more than 10 students, and that has for each class at least one Florida-certified teacher or an instructor who holds a bachelor's or higher degree in specified early learning degree programs;⁵ or
- If offered in a school district that meets class-size reduction requirements, a 540-instructional-hour school-year prekindergarten program delivered by a public school that has classes of at least 4 and not more than 18 students, that has for each class at least one instructor who holds at least a CDA or equivalent state-approved credential and who completes a 5-clock-hour course in emergent literacy training, and that, for classes of 11 or more students, has a second instructor who is not required to have those credentials or training.⁶

Current law allows a private provider or public school offering the VPK program to select or design its own curriculum.⁷ However, a curriculum must be developmentally appropriate and must:

- Be designed to prepare a student for early literacy;

¹ Section 1(b) & (c), Art. IX of the State Constitution.

² Chapter 2004-484, L.O.F. (2004); part V of ch. 1002, F.S.

³ Section 1002.53, F.S.

⁴ Section 1002.55, F.S.

⁵ Section 1002.61, F.S.

⁶ Section 1002.63, F.S.

⁷ Section 1002.67(2)(a), F.S.

- Enhance the age-appropriate progress of students in achieving performance standards adopted by the Department of Education (DOE); and
- Prepare students to be ready for kindergarten.⁸

DOE is required to assign each private provider and public school in the VPK program a “kindergarten readiness rate” based on the performance of the provider’s or school’s students on a statewide kindergarten screening (currently known as the Florida Kindergarten Readiness Screener (FLKRS)⁹).¹⁰

If a private provider’s or public school’s kindergarten readiness rate falls below the minimum satisfactory rate established by the State Board of Education for 2 consecutive years, the provider or school is placed on probation and must, among other corrective actions, use of a curriculum approved by DOE.¹¹

The 2004 legislation expressed the intent of the Legislature that prekindergarten instructors continue to improve their skills and preparation through education and training, so that the following “aspirational” goals are achieved:

- By the 2010-2011 school year:
 - Each prekindergarten class will have at least one instructor who holds an associate’s or higher degree in the field of early childhood education or child development; and
 - Each prekindergarten class composed of 11 or more students, in addition to an instructor with an associate’s or higher degree, will have a second instructor who has a child development associate (CDA) or state-approved equivalent credential.¹²
- By the 2013-2014 school year, each prekindergarten class will have at least one instructor who holds a bachelor’s or higher degree in the field of early childhood education or child development.¹³

Thirty-one early learning coalitions are regionally established in communities to administer early learning programs at the local level.¹⁴ The Early Learning Coalition of the Big Bend Region currently serves families in Gadsden, Jefferson, Leon, Liberty, Madison, Taylor, and Wakulla counties.¹⁵

Proposed Changes:

The bill establishes a pilot program for enhancing the quality of the Voluntary Prekindergarten Education (VPK) Program in Gadsden, Jefferson, Leon, Liberty, Madison, Taylor, and Wakulla counties. The design for the pilot program is as follows:

- The program is established as a 3-year coordinated pilot;
- Participation by prekindergarten education providers is voluntary;
- The program must provide opportunities for individuals with baccalaureate or higher degrees to teach in the VPK program;

⁸ Section 1002.67(2)(b), F.S.

⁹ See, e.g., Florida Department of Education, *Florida Kindergarten Readiness Screener (FLKRS) State Report of District Results, Fall 2007* (2007), available at <http://www.fldoe.org/earlylearning/pdf/flkrs-stdt-public-schools.pdf> (last visited Mar. 14, 2008).

¹⁰ Section 1002.69(5), F.S.

¹¹ Sections 1002.67(2)(a), (2)(c), (3)(c)2. & 1002.69(6), F.S.

¹² Section 1, ch. 2004-484, L.O.F. (2004); § 1002.65(2)(a), F.S.

¹³ Section 1002.65(2)(b), F.S.

¹⁴ Each early learning coalition is composed of 18 to 35 members. Section 411.01(5)(a)4., F.S. The chair and two additional members of a coalition are appointed by the Governor, and the remaining members are appointed locally. Section 411.01(5)(a)5. and 6., F.S.

¹⁵ Early Learning Coalition of the Big Bend Region, *About Us*, at <http://www.elcbigbend.org/About.htm> (last visited Mar. 14, 2008).

- The Early Learning Coalition of the Big Bend Region must develop a curriculum for the pilot program in consultation with a community college, and the curriculum must provide each participant with early education training designed to enhance the quality of the VPK program and with health and safety training; and
- Individuals participating in the pilot program must complete the curriculum.

The bill specifies that the pilot program is to be administered by the Early Learning Coalition of the Big Bend Region. The coalition is directed to recruit participants for the program, determine the required training, and provide assistance for the placement of participants (individuals and prekindergarten education providers).

The bill does not provide funding for the pilot program but authorizes the coalition to apply for "appropriate grants and funding for implementation of the pilot program." The bill also specifies that implementation of the pilot program is not required until the coalition secures the necessary funding.

The bill provides an effective date of July 1, 2008.

C. SECTION DIRECTORY:

Section 1. Creates an unnumbered section establishing a pilot program for enhancing the quality of the Voluntary Prekindergarten Education Program.

Section 2. Provides an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See D. FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill does not provide funding for the pilot program but authorizes the Early Learning Coalition of the Big Bend Region to apply for "appropriate grants and funding for implementation of the pilot program." The bill also specifies that implementation of the pilot program is not required until the coalition secures the necessary funding. Thus, the bill does not appear to create a fiscal impact on the state.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require a county or municipality to spend funds or take an action requiring expenditures; reduce the authority that counties and municipalities had as of February 1, 1989, to raise revenues in the aggregate; or reduce the percentage of a state tax shared in the aggregate with counties and municipalities as of February 1, 1989.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill appears to interchangeably use the term "participant" to mean both children enrolled in the VPK program and prekindergarten education providers. Accordingly, the bill is unclear (lines 23-29) whether children enrolling in the VPK program with a prekindergarten education provider must complete a curriculum developed by the Early Learning Coalition of the Big Bend Region, whether providers are required to complete a training curriculum, or both.

D. STATEMENT OF THE SPONSOR

Waived by sponsor due to time constraints.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to the prekindergarten education pilot
 3 program; establishing the pilot program to enhance the
 4 quality of the Voluntary Prekindergarten Education
 5 Program; specifying counties and providing requirements
 6 for individual participants; providing for voluntary
 7 participation by prekindergarten providers; providing
 8 duties of the Early Learning Coalition of the Big Bend
 9 Region and community colleges; authorizing application for
 10 funding; providing an effective date.

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

13
 14 Section 1. Pilot program to enhance the quality of the
 15 Voluntary Prekindergarten Education Program.--

16 (1) There is established a 3-year coordinated pilot
 17 program in Leon, Gadsden, Liberty, Wakulla, Taylor, Madison, and
 18 Jefferson Counties. The purpose of the pilot program is to
 19 enhance the quality of Florida's Voluntary Prekindergarten
 20 Education Program by providing individuals who hold a
 21 baccalaureate or higher degree with the opportunity to teach in
 22 the Voluntary Prekindergarten Education Program.

23 (2) (a) An individual participating in the pilot program
 24 must complete a curriculum that is developed by the Early
 25 Learning Coalition of the Big Bend Region in consultation with a
 26 community college in the pilot program region. The curriculum
 27 shall provide each participant with early education training

28 that is designed to enhance the quality of the prekindergarten
 29 education program and with necessary health and safety training.

30 (b) Participation in the pilot program by prekindergarten
 31 education providers is voluntary.

32 (3) The pilot program shall be administered by the Early
 33 Learning Coalition of the Big Bend Region. The coalition shall
 34 recruit participants, determine required training, and provide
 35 placement assistance for individual and prekindergarten provider
 36 participants.

37 (4) The Early Learning Coalition of the Big Bend Region
 38 may apply for appropriate grants and funding for implementation
 39 of the pilot program. Implementation of the pilot program is not
 40 required until such funding has been secured.

41 Section 2. This act shall take effect July 1, 2008.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 213 Education

SPONSOR(S): Legg

TIED BILLS: **IDEN./SIM. BILLS:** SB 242

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Education Innovation & Career Preparation</u>	<u>7 Y, 0 N</u>	<u>Beagle</u>	<u>White</u>
2) <u>Schools & Learning Council</u>		<u>Beagle</u> <i>GB</i>	<u>Cobb</u> <i>cc</i>
3) _____			
4) _____			
5) _____			

SUMMARY ANALYSIS

In recent years, the prevalence of single-gender schools and classes has increased. Approximately 366 public schools in the United States offer single-gender educational opportunities. Department of Education data for the 2007-2008 school year indicates the following statewide enrollment for single-gender classes in grades Prekindergarten through 12: (a) math: 17,946 students; (b) science: 15,459 students; (c) social studies: 13,935 students; and (d) language arts: 70,627 students. California, District of Columbia, Michigan, Nebraska, Nevada, New York, Ohio, Tennessee, Virginia, and Wisconsin currently have laws permitting some form of single-gender educational opportunity. Recently adopted federal law permits local education agencies (LEAs) to implement single-gender schools and classes.

House Bill 213 authorizes a district school board to establish a single-gender school, class, or program within a school if the board also offers:

- A coeducational school, class, or program that has substantially equal academic standards; and
- A school, class, or program for students of the other gender that has substantially equal academic standards.

The bill provides that no student may be required to enroll in a single-gender school, class, or program. Student participation must be voluntary.

The bill does not appear to have a fiscal impact on state or local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Empower Families-- The bill authorizes school districts to provide an additional education choice option to students and parents.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Single Gender Education Programs

In recent years, the prevalence of single-gender schools and classes has increased significantly. The emergence of single-gender education is rooted in research indicating that girls and boys have unique learning styles. Based on this research, proponents assert that, because separating students by gender enables teachers to use instructional techniques targeted to the learning styles of each gender, some students may be better served in a single-gender learning environment.¹

A pilot project initiated in 2004-2005 at Woodward Elementary School in Deland, Florida, in partnership with Stetson University, found increased rates of student proficiency in single-gender classes. Over the past three academic years, student FCAT data indicated that 37% of boys and 59% of girls in coed classes scored proficient on FCAT subjects as compared to 86% of boys and 75% of girls in single-sex classes.² Other research regarding the educational and social impacts of single-gender education, however, has been largely inconclusive.³

Approximately 366 public schools in the United States offer single-gender educational opportunities.⁴ Department of Education data for the 2007-2008 school year indicates the following statewide enrollment for single-gender classes in grades Prekindergarten through 12: (a) math: 17,946 students; (b) science: 15,459 students; (c) social studies: 13,935 students; and (d) language arts: 70,627 students.⁵ California, District of Columbia, Michigan, Nebraska, Nevada, New York, Ohio, Tennessee, Virginia, and Wisconsin currently have laws permitting some form of single-gender education program.⁶

¹ The Gurian Institute *available at* <http://www.gurianinstitute.com>. See also National Association for Single Sex Public Education *available at* <http://www.singlesexschools.org/schools-classrooms.htm>.

² See National Association of Single Sex Public Education, *Single Sex Versus Coed: The Evidence available at* <http://www.singlesexschools.org/research-singlesexvscoed.htm>.

³ See U.S. Department of Education, Office of Planning, Evaluation and Policy Development, *Single-Sex Versus Coeducational Schooling: A Systematic Review* (September 2005)(Finding that whether single gender education produces better academic outcomes than coeducational education is unclear. For example, students in single gender schools showed improved performance on "all-subject" academic achievement tests in the short term; however, there was no apparent link to improved performance over the long term.); and Smithers, Alan and Pamela Robinson, The Centre for Education and Employment, University of Buckingham, *The Paradox of Single-Sex co-Educational Schooling* (July 2006) (Stating that the, "main determinants of a school's performance are the ability and social background of the pupils," and that the determination as to whether to implement a single gender or coeducational student configuration should, "be a matter of judgment. " "It is for the providers to work out which they think is the most appropriate to offer in their circumstances, and for parents to choose the schools they think would best suit their children." Also noting that single gender student configurations have been found to benefit disadvantaged students in American schools.)

⁴ National Association for Single Sex Public Education, *Single-Sex Schools/Schools with Single-Sex Classrooms/What's the Difference?* *available at* <http://www.singlesexschools.org/schools-schools.htm>.

⁵ Data provided by the Department of Education, Office of Data, Reporting, and Accountability Services (February 7, 2008).

⁶ Cal. Educ. Code § 58521 (West 2007), D.C. Code Ann. § 38-1851.07(2007), Mich. Comp. Laws Ann. § 380.475 (2007), Neb. Rev. Stat § 79-1807 (2007), Nev. Rev. Stat 386.580 (Michie 2007), N.Y. Educ. Law § 2854 (McKinney 2007), Ohio Rev. Code Ann. § 3314.06 (Anderson 2007), Tenn. Code Ann. § 492-108 (2007), Va. Code Ann. § 22.1-212.1:1 (2007), and Wis. Stat. Ann. § 118.40 (2007).

Federal Law: The No Child Left Behind Act of 2001 (NCLB) states that federal funds may be provided to LEAs for the purpose of implementing innovative assistance programs, which may include single-gender schools and classrooms.⁷ 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).⁸ Title IX prohibits gender-based discrimination by educational institutions that receive federal funding.⁹ 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.¹⁰ These regulations became effective in November of 2006.¹¹

The 2006 regulations establish separate standards for single-gender classes, including extracurricular activities,¹² and schools. In general, both single-gender classes and schools must be nonvocational¹³ in nature and may only serve elementary or secondary students.¹⁴ 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.¹⁵

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;¹⁶ and (b) may also be required to offer a substantially equal single-gender option to members of the other gender.¹⁷ A LEA choosing to offer a single-gender school must provide students of the other gender a substantially equal single-gender school or coeducational school.¹⁸

State Law: Statute prohibits gender-based discrimination by public K-20 educational institutions that receive state or federal funding. Such institutions may not restrict access by establishing admission criteria to a program or course based on gender; however, students may be separated by gender for:

⁷ 20 U.S.C.A. § 7215(a)(23).

⁸ See 34 C.F.R. 106.34(b)-(f) and 34 C.F.R. 106.35(both amended in 2006).

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

¹⁰ Federal Register, Vol. 67, No. 89 (May 8, 2002) available at <http://www.ed.gov/legislation/FedRegister/proprule/2002-2/050802a.html>.

¹¹ Federal Register, Vol. 71, No. 206 (October 24, 2006) available at <http://www.ed.gov/legislation/FedRegister/finrule/2006-4/102506a.pdf>.

¹² 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).

¹³ 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).

¹⁴ 34 C.F.R. s. 106.34.

¹⁵ 34 C.F.R. s. 106.34(b).

¹⁶ 34 C.F.R. s. 106.34(b)(1)(iv).

¹⁷ 34 C.F.R. s. 106.34(b)(2).

¹⁸ 34 C.F.R. s. 106.34(c)(1).

(a) physical education classes involving participation in bodily contact sports;¹⁹ and (b) classes dealing primarily with human reproduction.²⁰

Effect of Proposed Changes

House Bill 213 authorizes a district school board to establish a single-gender school, class, or program within a school if the board also offers:

- A coeducational school, class, or program that has substantially equal academic standards; and
- A school, class, or program for students of the other gender that has substantially equal academic standards.

The bill provides that no student may be required to enroll in a single-gender school, class, or program. Student participation must be voluntary.

C. SECTION DIRECTORY:

Section 1.: Authorizes a district school board to establish a single-gender school, class, or program within a school; requires districts to provide substantially equal single-gender and coeducational options to students; and requires student enrollment in single-gender educational options to be voluntary.

Section 2.: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not appear to have a fiscal impact on state revenues.

2. Expenditures:

This bill does not appear to have a fiscal impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to have a fiscal impact on local revenues.

2. Expenditures:

This bill does not appear to have a fiscal impact on local expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a direct economic impact on the private sector.

¹⁹ Section 1000.05(3)(c), F.S., states, "For the purpose of this section, bodily contact sports include wrestling, boxing, rugby, ice hockey, football, basketball, and other sports in which the purpose or major activity involves bodily contact."

²⁰ Section 1000.05(2), F.S. (These provisions also prohibit discrimination on the basis of race, ethnicity, disability, and other factors).

D. FISCAL COMMENTS:

If a district school board chooses to establish a single-gender school, class, or program, it will be required by the bill to also provide both a single-gender and a coeducational alternative of substantially equal quality to all other students. School districts may incur additional costs in complying with this requirement.

School districts that choose to provide professional development training in instructional practices targeted to the strengths of female and male students may incur additional costs. One provider's fee schedule for such training indicates a cost of \$6,000.²¹

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to take an action requiring the expenditure of funds.

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

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

2. Other:

Equal Protection: The constitutionality of gender classifications may be subject to challenge under the Equal Protection Clause of the Federal Constitution.²² The standard of review for gender classifications is intermediate-level scrutiny. The burden of proof is on the defendant to show that the classification is substantially related to the achievement of an important government objective.²³ In some cases, courts have employed a more rigorous standard by requiring the defendant to also demonstrate an "exceedingly persuasive justification" for the gender classification.²⁴

The United States Supreme Court has decided two cases specifically addressing the constitutionality of single-gender education programs. Both cases dealt with single-gender admissions policies at state-sponsored universities. In *Mississippi University for Women v. Hogan*, the court declared the defendant university's female-only admissions policy for its nursing school to be unconstitutional. The university argued that its policy was intended to compensate for past discrimination against women. The court rejected this argument, reasoning that its policy perpetuated the stereotype that nursing was an all-female profession.²⁵ Because the university had a policy of permitting male students to audit into its nursing courses, the court also rejected university's argument that the presence of men at the school disrupted female's ability to learn.²⁶ The court held that the university's use of overly-broad female stereotypes to justify its policy did not satisfy its burden to demonstrate an "exceedingly persuasive

²¹ The Gurian Institute, Fee Schedule for Michael Gurian and the Gurian Institute Training Division.

²² U.S. Const. amend. XIV, § 1.

²³ *Wengler v. Druggists Mutual Insurance Co.*, 446 U.S. 142, 150 (1980).

²⁴ *See Kirchberg v. Feenstra*, 450 U.S. 455, 461 (1981).

²⁵ *Hogan*, 102 U.S. 3331, 3339 (1982).

²⁶ *Id.* at 3340.

justification” for the classification. Nor did it prove that its policy served “important governmental objectives” in a manner “substantially related to the achievement of those objectives.”²⁷

In *United States v. Virginia*, the court declared the Virginia Military Institute’s (VMI) male-only admissions policy to be unconstitutional. VMI argued that its course of study, which included rigorous military training unsuitable to women, necessitated its all-male admissions policy. The court rejected this reasoning, stating that gender classifications must not be justified on the basis of overly-broad generalizations and stereotypes of female inferiority.²⁸ The court also addressed VMI’s assertion that its policy was justified because it had established an all-female university to provide comparable leadership education to female students. The court rejected this argument, reasoning that the all-female school was inferior to VMI in all facets. Among other things, it lacked VMI’s resources, student capacity, faculty, facilities, reputation, and network of alumni. As such, it did not provide comparable educational benefits for female students.²⁹

Title IX: Prior to revision in 2006, the regulations for Title IX prohibited single-gender classes in all cases except: (a) physical education classes during participation in contact sports; (b) physical education classes that result from the application of objective standards of physical ability; (c) elementary and secondary courses dealing primarily with human sexuality; and (d) choruses based on vocal range or quality, which may result in a single sex or predominantly single sex grouping.³⁰ Likewise, a LEA was prohibited from establishing a single-gender school unless it also made a comparable program available to the other gender “pursuant to the single policies and criteria of admission, courses, services, and facilities comparable to each course, service, and facility offered in or through such schools.”³¹ In light of the *Hogan* and *VMI* cases, the USDOE interpreted “comparable program” to mean that, in order to operate a single-gender school, the LEA was required to open a “comparable” single-gender school for the other gender.³²

Subsequently in 2006, the regulations for Title IX were amended in order to provide LEAs with greater flexibility to establish single-gender schools as authorized by the NCLB Act. According to the USDOE’s Office of Civil Rights (OCR):

The purpose of the amendments would be to support efforts of school districts to improve educational outcomes for children and to provide public school parents with a diverse array of educational options that respond to the educational needs of their children, while at the same time ensuring appropriate safeguards against discrimination.³³

The 2006 regulations establish separate standards for single-gender classes, including extracurricular activities,³⁴ and schools. In general, both single-gender classes and schools must be nonvocational³⁵

²⁷ *Id.*

²⁸ *United States v. Virginia*, 518 U.S. 515, 533-534 (1996).

²⁹ *Id.* at 547-554.

³⁰ See 34 C.F.R. 106.34(b)-(f) (prior to its amendment in 2006).

³¹ See 34 C.F.R. 106.35 (prior to its amendment in 2006).

³² U.S. Department of Education, Guidelines Regarding Single-Sex Classrooms and Schools, 4000-01-U (May 3, 2002) available at <http://www.ed.gov/about/offices/list/ocr/t9-guidelines-ss.html>.

³³ Federal Register, Vol. 67, No. 89 (May 8, 2002) available at <http://www.ed.gov/legislation/FedRegister/proprule/2002-2/050802a.html>.

³⁴ 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).

³⁵ 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).

in nature and may only serve elementary or secondary students.³⁶ Enrollment in a single-gender class or school must be entirely voluntary.³⁷

A LEA may establish a single-gender classroom for the purpose of 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.³⁸ 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;³⁹ and (b) may also be required to offer a substantially equal single-gender option to students of the other gender.⁴⁰

A LEA must provide single-gender classes in an evenhanded manner when seeking to fulfill its important objectives. Thus, if the LEA's purpose for establishing a single-gender class is to provide diverse learning opportunities, it must include students of both genders and their parents in assessing whether students and parents are interested in such an option. Similarly, if the LEA seeks to establish a single-gender class in order to better serve the learning needs of students, it must assess the needs of both genders and determine whether a single-gender class is appropriate to meet those needs. Thus, a LEA may not arbitrarily decide to offer single-gender classes exclusively to students of one gender. It may only provide a single-gender class exclusively to students of one gender if it determines that: (1) students of the other gender are not interested in a single-gender option, or (2) students of the other gender do not have learning needs that can be addressed by a single-gender class. Under these circumstances, the LEA would only be required to provide a substantially equal coeducational option to students of the other gender.⁴¹

Single-gender classrooms must 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 and that all coeducational and single-gender options are of substantially equal quality.⁴²

The regulations set forth a non-exclusive list of factors to be used in determining whether a coeducational or single-gender alternative is "substantially equal." These factors include: the policies and criteria for admission; the educational benefits provided, including the quality of the curriculum, services, instructional materials, and technology; the qualifications of faculty and staff; geographic accessibility; the quality and accessibility of facilities; and intangibles, such as faculty reputation.⁴³ Such factors form the basis of inquiry for required program evaluations by LEAs and investigations of complaints filed against such programs with the USDOE's OCR.⁴⁴

Title IX does not cover admissions to nonvocational elementary and secondary schools.⁴⁵ Nonetheless, USDOE formerly interpreted Title IX to require a LEA that operated a single-gender

³⁶ 34 C.F.R. s. 106.34.

³⁷ 34 C.F.R. s. 106.34(b)(iii).

³⁸ 34 C.F.R. s. 106.34(b)(1)(i).

³⁹ 34 C.F.R. s. 106.34(b)(1)(iv).

⁴⁰ 34 C.F.R. s. 106.34(b)(2).

⁴¹ Federal Register, Vol. 71, No. 206 (October 25, 2006) available at <http://www.ed.gov/legislation/FedRegister/finrule/2006-4/102506a.pdf>.

⁴² 34 C.F.R. s. 106.34(b).

⁴³ 34 C.F.R. 106.34(b)(3) and (c)(3).

⁴⁴ Federal Register, Vol. 71, No. 206 (October 24, 2006) available at <http://www.ed.gov/legislation/FedRegister/finrule/2006-4/102506a.pdf>.

⁴⁵ 20 U.S.C.A. § 1681(a)(1). ("in regard to admissions to educational institutions, this section shall apply only to institutions of vocational education, professional education, and graduate higher education, and to public institutions of higher education").

school for one gender to also offer a single-gender school for the other gender.⁴⁶ This interpretation changed under the 2006 Title IX regulations. Now, a LEA choosing to offer a single-gender school has the option to provide students of the other gender a substantially equal single-gender school or a coeducational school.⁴⁷

B. RULE-MAKING AUTHORITY:

This bill does not appear to create, modify, or eliminate rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 1000.05, F.S., provides that public K-20 institutions may not restrict access by establishing admission criteria to a program or course based on gender, except that students may be separated by gender for: (a) physical education classes involving participation in bodily contact sports; and (b) classes dealing primarily with human reproduction. Consideration may be given to amending the section to also include an exception for the single-gender schools, classes, and programs authorized by the bill.

D. STATEMENT OF THE SPONSOR

Representative Legg submitted the following sponsor statement:

As the single-gender classroom trend grows nationally, we are seeing more and more positive results. Because girls and boys are so diverse, single-gender classrooms offer unique educational opportunities for both. Allowing school districts the choice to offer single-gender classrooms will facilitate a better understanding of the learning differences of boys and girls. In addition, it will ultimately give students the chance to learn in an environment with less distractions and a greater emphasis on the individual needs of each student.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On February 5, 2008, the Committee on Education Innovation and Career Preparation adopted a strike everything amendment and reported the bill favorably as amended. The strike everything amendment:

- Amends s. 1000.05, F.S., which prohibits separation of students by gender subject to certain exceptions, to create an exception for the single-gender programs authorized by the bill.
- Amends s. 1002.20(6), F.S., to add single-gender programs to the list of school choice options about which school districts are required to inform parents.
- Assigns a section number, s. 1002.311, F.S., to the undesignated section created by the bill to authorize establishment of single-gender programs.
- Requires single-gender programs to be in compliance with 34 C.F.R. s. 106.34., and revises the section so that it uses terminology that is consistent with the federal regulation.
- Provides, consistent with the federal regulation, that single-gender programs must be nonvocational and may be offered to elementary, middle, or high school students.
- Requires each school district to evaluate its single-gender programs every two years to ensure compliance with the state law and federal regulation.

⁴⁶ U.S. Department of Education, Guidelines Regarding Single-Sex Classrooms and Schools, 4000-01-U (May 3, 2002) *available at* <http://www.ed.gov/about/offices/list/ocr/t9-guidelines-ss.html>.

⁴⁷ 34 C.F.R. s. 106.34(c)(1).

1 A bill to be entitled
 2 An act relating to education; authorizing district school
 3 boards to establish a school, class, or educational
 4 program in which enrollment is limited to students of a
 5 single gender; providing conditions to such authorization;
 6 requiring that students' participation in single-gender
 7 classes be voluntary; providing an effective date.

8
 9 Be It Enacted by the Legislature of the State of Florida:

10
 11 Section 1. Single-gender schools, classes, and programs
 12 authorized.--

13 (1) Subject to subsection (2), a district school board may
 14 establish and maintain a school, class, or program within a
 15 school in which enrollment is limited to students of a single
 16 gender if the school district also makes available to students a
 17 coeducational school, class, or program that has substantially
 18 equal academic standards and a school, class, or program for
 19 students of the other gender which has substantially equal
 20 academic standards.

21 (2) If a district school board establishes a single-gender
 22 school, class, or program as described in subsection (1), the
 23 school district may not require participation by any of its
 24 students in the single-gender school, class, or program. The
 25 school board must ensure that participation by students in a
 26 single-gender school, class, or program is voluntary.

27 Section 2. This act shall take effect July 1, 2008.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Bill No. **HB 213**

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

1 **This amendment is traveling with the bill and requires no further action.**

2 Council/Committee hearing bill: Schools & Learning Council.
3 Committee on Education Innovation and Career Preparation
4 recommends the following:

5
6 **Amendment (with title amendment)**

7 Remove everything after the enacting clause and insert:

8 Section 1. Paragraph (d) of subsection (2) of section
9 1000.05, Florida Statutes, is amended to read:

10 1000.05 Discrimination against students and employees in
11 the Florida K-20 public education system prohibited; equality of
12 access required.--

13 (2).

14 (d) Students may be separated by gender for a single-
15 gender program under s. 1002.311, for any portion of a class
16 that deals with human reproduction or during participation in
17 bodily contact sports. For the purpose of this section, bodily
18 contact sports include wrestling, boxing, rugby, ice hockey,
19 football, basketball, and other sports in which the purpose or
20 major activity involves bodily contact.

21 Section 2. Paragraph (a) of subsection (6) of section
22 1002.20, Florida Statutes, is amended to read:

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

23 1002.20 K-12 student and parent rights.--Parents of public
24 school students must receive accurate and timely information
25 regarding their child's academic progress and must be informed
26 of ways they can help their child to succeed in school. K-12
27 students and their parents are afforded numerous statutory
28 rights including, but not limited to, the following:

29 (6) EDUCATIONAL CHOICE.--

30 (a) Public school choices.--Parents of public school
31 students may seek whatever public school choice options that are
32 applicable to their students and are available to students in
33 their school districts. These options may include controlled
34 open enrollment, single-gender programs, lab schools, charter
35 schools, charter technical career centers, magnet schools,
36 alternative schools, special programs, advanced placement, dual
37 enrollment, International Baccalaureate, International General
38 Certificate of Secondary Education (pre-AICE), Advanced
39 International Certificate of Education, early admissions, credit
40 by examination or demonstration of competency, the New World
41 School of the Arts, the Florida School for the Deaf and the
42 Blind, and the Florida Virtual School. These options may also
43 include the public school choice options of the Opportunity
44 Scholarship Program and the McKay Scholarships for Students with
45 Disabilities Program.

46 Section 3. Section 1002.311, Florida Statutes, is created
47 to read:

48 1002.311.-- Single-gender programs authorized.

49 (1) Subject to subsection (2) and in accordance with 34
50 C.F.R. s. 106.34, a district school board may establish and
51 maintain a nonvocational class, extracurricular activity, or
52 school for elementary, middle, or high school students in which

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

53 enrollment is limited to a single gender if the school district
54 also makes available a substantially equal:

55 (a) Single-gender class, extracurricular activity, or
56 school to students of the other gender; and

57 (b) Coeducational class, extracurricular activity, or
58 school to all students.

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

61 (a) May not require participation by any student. The
62 district school board must ensure that participation in the
63 single-gender class, extracurricular activity, or school is
64 voluntary.

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

69 Section 4. This act shall take effect July 1, 2008.

70
71 -----
72 **T I T L E A M E N D M E N T**

73 Remove the entire title and insert:

74 An act relating to education; amending s. 1000.05, F.S;
75 providing that students may be separated by gender for specified
76 single-gender programs; amending s. 1002.20, F.S.; providing
77 that public school choice options may include single-gender
78 programs; creating s. 1002.311, F.S.; authorizing district
79 school boards to establish a nonvocational class,
80 extracurricular activity, or school in which enrollment is
81 limited to students of a single gender; providing conditions for
82 such authorization; requiring that students' participation in
83 single-gender programs be voluntary; requiring evaluation of

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

84 single-gender programs every two years; providing an effective
85 date
86

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 207 Educator Certification Requirements

SPONSOR(S): Sachs and others

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on K-12</u>	<u>7 Y, 0 N</u>	Gillespie	Ahearn
2) <u>Schools & Learning Council</u>		Gillespie <i>[Signature]</i>	Cobb <i>[Signature]</i>
3) <u>Policy & Budget Council</u>			
4) _____			
5) _____			

SUMMARY ANALYSIS

House Bill 207 requires the State Board of Education to develop subject area examinations for the following foreign languages: Spanish, French, German, Latin, Hebrew, Italian, and Chinese. Since the state board has developed examinations for Spanish, French, German, and Latin, the bill effectively requires the development of examinations for the three remaining foreign languages: Hebrew, Italian, and Chinese. Passage of a subject area examination is one option for an applicant to demonstrate the required mastery of subject area knowledge for purposes of earning a teaching certificate.

The Department of Education (DOE) estimates that the cost for development and administration of three new foreign language examinations in Hebrew, Italian, and Chinese is approximately \$1.3 to \$1.5 million over the first three years. However, the Committee on K-12 adopted an amendment that:

- Removes the requirement that DOE develop foreign language subject area examinations in seven languages;
- Authorizes applicants seeking a teaching certificate to demonstrate mastery of subject area knowledge by passing the subject area examination for a world language, if DOE develops an examination for the language, which may include, but is not limited to, Arabic, Chinese, Farsi, French, German, Greek, Haitian Creole, Hebrew, Hindi, Italian, Japanese, Portuguese, Russian, and Spanish; and
- For a world language for which DOE has not developed a subject area examination, allows applicants seeking a teaching certificate to demonstrate mastery of subject area knowledge by earning a bachelor's or higher degree and attaining oral and written foreign language proficiency on national examinations administered by the American Council of Teachers of Foreign Languages.

By removing the requirement that DOE develop subject area examinations in three languages (Hebrew, Italian, and Chinese) for which the department has not previously developed examinations, the amendment in effect eliminates the bill's fiscal impact to the state.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0207b.SLC.doc
DATE: 3/14/2008

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:

Present Situation:

An applicant seeking a teaching certificate in Florida must, among other things, demonstrate mastery of subject area knowledge.¹ The applicant may demonstrate mastery of subject area knowledge through, among other options, one of the following:

- Achievement of passing scores on subject area examinations required by rules adopted by the State Board of Education; or
- For a subject area for which a subject area examination is not developed and required by state board rule, completion of subject area specialization requirements specified in state board rule and verification of the applicant's attainment of the essential subject matter competencies by the school district, state-supported school, or private school employing the applicant.²

The State Board of Education is required to designate the certification areas for subject area examinations.³ Under the Florida Teacher Certification Examinations (FTCE) program, the state board has developed subject area examinations for four foreign languages: Spanish, French, German, and Latin.⁴ The Department of Education (DOE) first administered examinations for these foreign languages in October 1989.⁵

The state board has also established specialization requirements for certification in 10 modern languages: Chinese, French, German, Greek, Hebrew, Italian, Japanese, Portuguese, Russian, and Spanish.⁶ State board rule establishes three options for meeting the specialization requirements:

- Bachelor's or higher degree with an undergraduate or graduate major in one of the modern languages;
- Bachelor's or higher degree with 30 semester hours in one of the modern languages; or
- Bachelor's or higher degree and completion of the Basic Program of the Defense Language Institute⁷ of the U.S. Department of Defense in one of the modern languages.⁸

¹ Section 1012.56(2)(h), F.S.

² Section 1012.56(4)(a) & (b), F.S.

³ Section 1012.56(8)(c), F.S.

⁴ Rule 6A-4.0021(9)(d) & (j), F.A.C.; Florida Department of Education, *Florida Teacher Certification Examinations (FTCE), Competencies and Skills: Twelfth Edition*, at <http://www.fldoe.org/asp/ftce/ftcecomp.asp> (last visited Mar. 14, 2008).

⁵ Florida Department of Education, Division of Accountability, Research, and Measurement, *Assessment and Accountability Briefing Book 9* (2007), available at <http://fcatt.fldoe.org/pdf/BriefingBook07web.pdf> (last visited Mar. 14, 2008).

⁶ Rule 6A-4.0243(1), F.S.

⁷ See Defense Language Institute, Foreign Language Center, at <http://www.dliflc.edu> (last visited Mar. 14, 2008).

⁸ Rule 6A-4.0243(1)(a), (b) & (d), F.A.C.

In addition, an applicant completing specialization requirements in one modern language may obtain specialization in a second modern language if the applicant has a bachelor's or higher degree and completes 21 semester hours in the second modern language.⁹

State board rule establishes two options for meeting specialization requirements for certification in Latin:

- Bachelor's or higher degree with an undergraduate or graduate major in Latin; or
- Bachelor's or higher degree with 30 semester hours in Latin.¹⁰

In addition, an applicant completing specialization requirements in a modern language may obtain specialization in Latin if the applicant has a bachelor's or higher degree and completes 21 semester hours in Latin.¹¹

On February 19, 2008, the State Board of Education approved an amendment to its rule establishing specialization requirements for foreign languages.¹² The amended rule:

- Adds Arabic, Farsi, Haitian Creole, and Hindi to the 10 modern languages for which an applicant may obtain specialization;¹³ and
- Authorizes an applicant for specialization in any of the 15 modern languages, for which there is no Florida-developed subject area examination, to meet the specialization requirements through earning a bachelor's or higher degree and scoring above the intermediate level on the oral and written proficiency tests administered for the language by the American Council on the Teaching of Foreign Languages (ACTFL).¹⁴

ACTFL currently offers proficiency assessments for each of the modern languages listed in the state board rule.¹⁵

According to DOE, the following numbers of schools and school districts are currently teaching the following foreign languages:

- Italian: 57 schools in 15 districts;
- Chinese: 25 schools in 9 districts; and
- Hebrew: 0 schools in 0 districts.¹⁶

DOE reports that there are currently 109 persons certified in Italian, 14 persons certified in Chinese, and 10 persons certified in Hebrew in the state.¹⁷

⁹ Rule 6A-4.0243(1)(c), F.A.C.

¹⁰ Rule 6A-4.0243(2)(a) & (b), F.A.C.

¹¹ Rule 6A-4.0243(2)(c), F.A.C.

¹² Florida Department of State, *Florida Administrative Weekly*, Vol. 34, No. 3, at 288-289 (Jan. 18, 2008), available at <https://www.flrules.org/Faw/FAWDocuments/FAWVOLUMEFOLDERS2008/3403/3403doc.pdf> (last visited Mar. 14, 2008).

¹³ Proposed rule 6A-4.0243(1), F.A.C.

¹⁴ Proposed rule 6A-4.0243(2)(e), F.A.C.

¹⁵ American Council on the Teaching of Foreign Languages, *Current List of Assessment Languages*, at https://www.languagetesting.com/language_list_acad.htm (last visited Mar. 14, 2008).

¹⁶ Florida Department of Education, *2008 Agency Bill Analysis of HB 207*, at 1 (Nov. 26, 2007).

¹⁷ *Id.*

Proposed Changes:

The bill requires the State Board of Education to develop subject area examinations for the following foreign languages: Spanish, French, German, Latin, Hebrew, Italian, and Chinese. Since the state board has developed examinations for Spanish, French, German, and Latin, the bill effectively requires the development of examinations for the three remaining foreign languages: Hebrew, Italian, and Chinese.

The bill provides an effective date of July 1, 2008.

C. SECTION DIRECTORY:

Section 1. Amends section 1012.56, F.S., requiring DOE to establish subject area examinations in specified foreign languages.

Section 2. Provides an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

According to DOE, its teacher certification testing vendor¹⁸ estimates that the cost for development and administration of three new foreign language examinations in Hebrew, Italian, and Chinese is approximately \$1.3 to \$1.5 million over the first three years.¹⁹ DOE specifies that the development and administration of certification examinations cost approximately \$85 per examinee.²⁰

(See IV. AMENDMENTS.)

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

¹⁸ Evaluation Systems group of Pearson Education, Inc.

¹⁹ Florida Department of Education, *supra* note 16, at 2.

²⁰ *Id.*

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require a county or municipality to spend funds or take an action requiring expenditures; reduce the authority that counties and municipalities had as of February 1, 1989, to raise revenues in the aggregate; or reduce the percentage of a state tax shared in the aggregate with counties and municipalities as of February 1, 1989.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not include any provisions specifically requiring rulemaking, but the bill in effect requires the State Board of Education to amend its rule establishing requirements for the Florida Teacher Certification Examinations (FTCE).²¹

C. DRAFTING ISSUES OR OTHER COMMENTS:

DOE estimates that implementation of three new foreign language examinations will require approximately 2.5 years before the first test administration, including:

- Six months to plan, fund, and execute contract amendments;
- Eighteen months for test development of written and performance tests; and
- Six months to implement rule changes by the State Board of Education, including the state board's approval of competencies and skills and passing scores for the examinations.²²

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 11, 2008, the Committee on K-12 adopted an amendment offered by Representative Sachs (remove everything after the enacting clause). The amendment:

- Removes the requirement that DOE develop foreign language subject area examinations in seven languages;
- Authorizes applicants seeking a teaching certificate to demonstrate mastery of subject area knowledge by passing the subject area examination for a world language, if DOE develops an examination for the language, which may include, but is not limited to, Arabic, Chinese, Farsi, French, German, Greek, Haitian Creole, Hebrew, Hindi, Italian, Japanese, Portuguese, Russian, and Spanish; and
- For a world language for which DOE has not developed a subject area examination, allows applicants seeking a teaching certificate to demonstrate mastery of subject area knowledge by earning a bachelor's or higher degree and attaining oral and written foreign language proficiency on national examinations administered by the American Council of Teachers of Foreign Languages.

²¹ Rule 6A-4.0021, F.A.C.

²² Florida Department of Education, *supra* note 16, at 2.

The amendment is consistent with a proposed rule adopted by the State Board of Education on February 19, 2008.²³

By removing the requirement that DOE develop subject area examinations in three languages (Hebrew, Italian, and Chinese) for which the department has not previously developed examinations, the amendment in effect eliminates the bill's fiscal impact to the state

²³ See *supra* text accompanying notes 12-14.

HB 207

2008

1 A bill to be entitled
2 An act relating to educator certification requirements;
3 amending s. 1012.56, F.S.; requiring subject area
4 examinations in specified foreign languages for the
5 purpose of demonstrating mastery of that subject area
6 knowledge; providing an effective date.

7
8 Be It Enacted by the Legislature of the State of Florida:

9
10 Section 1. Subsection (4) of section 1012.56, Florida
11 Statutes, is amended to read:

12 1012.56 Educator certification requirements.--

13 (4) MASTERY OF SUBJECT AREA KNOWLEDGE.--Acceptable means
14 of demonstrating mastery of subject area knowledge are:

15 (a) Achievement of passing scores on subject area
16 examinations required by state board rule, such subject area
17 examinations to include foreign language examinations in
18 Spanish, French, German, Latin, Hebrew, Italian, and Chinese;

19 (b) Completion of the subject area specialization
20 requirements specified in state board rule and verification of
21 the attainment of the essential subject matter competencies by
22 the district school superintendent of the employing school
23 district or chief administrative officer of the employing state-
24 supported or private school for a subject area for which a
25 subject area examination has not been developed and required by
26 state board rule;

27 (c) Completion of the subject area specialization
28 requirements specified in state board rule for a subject

Page 1 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb0207-00

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29 coverage requiring a master's or higher degree and achievement
 30 of a passing score on the subject area examination specified in
 31 state board rule;

32 (d) A valid professional standard teaching certificate
 33 issued by another state; or

34 (e) A valid certificate issued by the National Board for
 35 Professional Teaching Standards or a national educator
 36 credentialing board approved by the State Board of Education.

37
 38 School districts are encouraged to provide mechanisms for those
 39 middle school teachers holding only a K-6 teaching certificate
 40 to obtain a subject area coverage for middle grades through
 41 postsecondary coursework or district add-on certification.

42 Section 2. This act shall take effect July 1, 2008.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **HB 207**

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

This amendment is traveling with the bill and requires no further action.

Council/Committee hearing bill: Schools & Learning Council
Committee on K-12 recommends the following:

Amendment. (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (4) of section 1012.56, Florida
Statutes, is amended to read:

1012.56 Educator certification requirements.--

(4) MASTERY OF SUBJECT AREA KNOWLEDGE.--Acceptable means
of demonstrating mastery of subject area knowledge are:

(a) Achievement of passing scores on subject area
examinations required by state board rule, which may include,
but need not be limited to, world languages in Arabic, Chinese,
Farsi, French, German, Greek, Haitian Creole, Hebrew, Hindi,
Italian, Japanese, Portuguese, Russian, and Spanish;

(b) Completion of a bachelor's degree or higher and
verification of the attainment of an oral proficiency interview
score above the intermediate level and a written proficiency
score above the intermediate level on a test administered by the

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

22 American Council on the Teaching of Foreign Languages for which
23 there is no Florida-developed examination;

24 (c)~~(b)~~ Completion of the subject area specialization
25 requirements specified in state board rule and verification of
26 the attainment of the essential subject matter competencies by
27 the district school superintendent of the employing school
28 district or chief administrative officer of the employing state-
29 supported or private school for a subject area for which a
30 subject area examination has not been developed and required by
31 state board rule;

32 (d)~~(e)~~ Completion of the subject area specialization
33 requirements specified in state board rule for a subject
34 coverage requiring a master's or higher degree and achievement
35 of a passing score on the subject area examination specified in
36 state board rule;

37 (e)~~(d)~~ A valid professional standard teaching certificate
38 issued by another state; or

39 (f)~~(e)~~ A valid certificate issued by the National Board
40 for Professional Teaching Standards or a national educator
41 credentialing board approved by the State Board of Education.
42

43 School districts are encouraged to provide mechanisms for those
44 middle school teachers holding only a K-6 teaching certificate
45 to obtain a subject area coverage for middle grades through
46 postsecondary coursework or district add-on certification.

47 Section 2. This act shall take effect July 1, 2008.
48
49

50 -----
51 **T I T L E A M E N D M E N T**

52 Remove the entire title and insert:

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

53 A bill to be entitled
54 An act relating to educator certification requirements;
55 amending s. 1012.56, F.S.; requiring subject area
56 examinations in specified foreign languages for the
57 purpose of demonstrating mastery of that subject area
58 knowledge; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 669 School Safety

SPONSOR(S): Thompson and others

TIED BILLS: IDEN./SIM. BILLS: SB 88, SB 790

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on K-12</u>	<u>10 Y, 0 N</u>	<u>Kutasi</u>	<u>Ahearn</u>
2) <u>Schools & Learning Council</u>	<u></u>	<u>Kutasi</u>	<u>Cobb</u>
3) <u>Policy & Budget Council</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

House Bill 669 creates the "Jeffrey Johnston Stand Up for All Students Act." The bill 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 public K-12 computer, computer system, or computer network.

The Department of Education (DOE), by October 1, 2008, must adopt a model policy prohibiting bullying and harassment. By December 1, 2008, each school district is required to adopt a bullying and harassment policy in substantial conformity with DOE's model policy. A school district must include students, parents, teachers, administrators, school staff, volunteers, community representatives, and local law enforcement agencies in the development of the district's policy. A school district's bullying and harassment policy must be published in its codes of student conduct and employee handbooks and requires ongoing implementation throughout the school year, integrated with a school's curriculum, discipline policies, and violence prevention efforts.

For the 2009-2010 school year, the bill directs that a school district's Safe Schools funding is contingent and payable to the district upon DOE's approval of the district's bullying and harassment policy. The bill specifies that DOE shall approve a district's policy if it is in substantial conformity with DOE's model policy.

Beginning with the 2010-2011 school year, a school district's annual allocation of Safe Schools funding is contingent and payable to the district upon the district's compliance with requirements for submitting reports of bullying and harassment to DOE as part of the district's reports of safety and discipline data. The bill requires the Commissioner of Education to submit an annual report to the Governor and Legislature which includes data on the district reports of bullying and harassment.

The bill provides limited civil immunity for a school employee, volunteer, student, or parent who reports bullying or harassment in good faith.

The bill also includes a "severability clause" which provides that if a provision of the bill is found to be invalid, the validity of the bill's remaining provisions are not affected.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0669b.SLC.doc

DATE: 3/13/2008

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard Individual Liberty: The bill prohibits bullying and harassment of public K-12 students and employees and establishes measures to prevent the substantial interference with a student's educational performance.

Empower Families: The bill requires a school district to regularly report to a victim's parents on the actions taken to protect the victim and notify a victim's parents of the local agencies where criminal charges may be filed against the perpetrator.

Maintain Public Security: The bill prohibits bullying and harassment of public K-12 students and employees.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

Current research presents various definitions of the term "bullying." For example:

- "Bullying can take many forms. It can be direct, indirect, physical, verbal, or psychological. The most commonly discussed forms are direct and indirect bullying.

Direct Bullying (face-to-face bullying)

- Verbal (name calling, put-downs, insults, harassment)
- Deliberately excluding certain people from groups and activities, or giving them the 'silent treatment'
- Physical (shoves, pushes, hitting, kicking, assault)
- Psychological ('dirty looks,' threats, coercion, extortion)

Indirect Bullying (bullying done behind someone's back)

- Gossip (lowering people's opinions of the victim)
- Excluding certain people from groups and activities
- Social aggression (includes things that damage a person's relationships with others, things like spreading untrue rumors about a person or telling others not be friends with someone)"¹

- Bullying is a "specific type of aggression in which:
 - 1) The behavior is intended to harm or disturb,
 - 2) There is an imbalance of power, with a more powerful person or group attacking a less powerful one, and
 - 3) The behavior occurs repeatedly over time."²

¹ National Youth Violence Prevention Resource Center, *Facts for Teens: Bullying 1* (2002), available at <http://hamfish.org/newsroom/bullying411.pdf>.

² Hamilton Fish Institute, George Washington University, *The 4-1-1 on Bullying 6* (September 2004) (citing the Mayo Clinic and the Journal of the American Medical Association), available at <http://hamfish.org/newsroom/bullying411.pdf>.

The United States Department of Education reports that, in 2005, 28 percent of students ages 12 to 18 reported having been bullied at school during the previous 6 months.³ Of these students, 58 percent said that the bullying had happened once or twice during the period, 25 percent had experienced bullying once or twice a month, 11 percent reported having been bullied once or twice a week, and 8 percent said they had been bullied almost daily.⁴

Following a series of school shootings in the late 1990s, in which the shooters were reported to be victims of bullying at school, at least 29 states have enacted anti-bullying legislation: Alaska, Arkansas, California, Colorado, Connecticut, Georgia, Idaho, Illinois, Indiana, Louisiana, Maine, Minnesota, Missouri, Nevada, New Hampshire, New Jersey, New York, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, and West Virginia.⁵

The Florida Department of Education (DOE) reports that it conducted a poll of school districts to determine which districts have an anti-bullying policy. Sixty-three districts (approximately 87.5 percent) responded that they have an anti-bullying policy.⁶ DOE reports that the general trend among the districts is not to adopt a separate anti-bullying policy but to include bullying as a violation of the code of student conduct and provide for disciplinary action.⁷ DOE also reports that 31 school districts provide some definition of bullying.⁸ In addition, 35 school districts are implementing various bullying prevention programs.⁹

Current Law:

Under current law, a district school board must adopt rules for the control and discipline of students.¹⁰ A district school board must also adopt two codes of student conduct, one for elementary schools and another for middle and high schools.¹¹ A code of student conduct must be based on the school district's

³ U.S. Department of Education, National Center for Education Statistics, *Indicators of School Crime and Safety: 2007*, NCES 2007_003, vi-vii (Dec. 2006), available at <http://nces.edu.gov/pubs2007/2007003.pdf>.

⁴ *Id.* More current data are not yet available.

⁵ Jennifer Dounay, Education Commission of the State, *State Anti-Bullying Statutes* (Apr. 2005), available at <http://www.ecs.org/clearinghouse/60/41/6041.htm>; *Recent State Policies and Activities: Safety/Student Discipline-Bullying/Conflict Resolution*, available at <http://www.ecs.org.ecs/ecscat.nsf/webtopicview?openview&restrictcategory=safety/student+discipline--bullying/conflict+resolution> (last visited Mar. 3, 2008).

⁶ DOE, *2008 Bill Analysis for HB 669* (Jan. 29, 2008).

⁷ *Id.*

⁸ *Id.*

⁹ DOE reports in *Bullying Programs in Florida Districts* (available at http://www.fldoe.org/safeschools/bull_fl.asp, last visited Mar. 3, 2008) the following implemented bullying prevention programs:

- Aggression Replacement Training (ART): Hernando and Indian River;
- Aggressors, Victims, Bystanders: Brevard, Collier, Columbia, DeSoto, Dixie, Escambia, Flagler, Glades, Lafayette, Levy, Manatee, Okaloosa, Palm Beach, Pinellas, Santa Rosa, Sarasota, St. Lucie, Union, and Volusia;
- Bullying Prevention (Olweus): Marion, Orange, Pasco, Pinellas, Sarasota, Seminole, and Sumter;
- Bullying Safe: Lee;
- Bully-Proofing Your School: Brevard and Volusia;
- Foundations: Creating Safe and Civil Schools: Clay and Duval;
- PATHS: Madison and Okaloosa;
- PeaceBuilders: Franklin and Gulf;
- Positive Action: Charlotte and Leon;
- Project ACHIEVE: Charlotte;
- Safe Schools Ambassadors: Seminole;
- Success in Stages: Build Respect, Stop Bullying: Union; and
- TRUST: Miami-Dade.

¹⁰ Fla. Stat. § 1006.07(1)(a).

¹¹ Fla. Stat. § 1006.07(2).

rules governing student conduct and discipline; must be organized and written in language understandable to students and parents; and, among other things, must contain:¹²

- Consistent policies, specific grounds for disciplinary action, and disciplinary procedures;
- Explanation of a student's rights and responsibilities;
- Notice that violence against district school board personnel, disruptive behavior on a school bus or at a bus stop, or sexual harassment are grounds for disciplinary action;
- Notice that a student possessing a firearm or weapon at school, at a school function, or on school-sponsored transportation will be expelled; and
- Notice that a student making a threat or false report involving school or school personnel's property, school transportation, or a school-sponsored activity will be expelled.

In addition, current law and rules adopted by the State Board of Education require a district school board to adopt a zero-tolerance policy on school violence, crime, the use of weapons, substance abuse, and the victimization of students.¹³

A school district's code of student conduct may assign more severe disciplinary actions when the offender appears motivated by hostility toward the victim's real or perceived gender, race, religion, color, sexual orientation, ethnicity, ancestry, national origin, political beliefs, marital status, age, social and family background, linguistic preference, or disability.¹⁴

Further, current law prohibits discrimination on the basis of race, ethnicity, national origin, gender, disability, or marital status against a student or an employee in the state system of public K-20 education.¹⁵ DOE requires educational institutions to create an educational and work environment free of harassment on the basis of race, sex, national origin or handicap.¹⁶ The department specifies that an institution is responsible for all acts of harassment between fellow employees, fellow students, or by nonemployees, if the institution knew or should have known of the harassment and failed to take corrective action.¹⁷

A district school board is required to protect a student victimized by a violent crime from further victimization.¹⁸ Except under certain circumstances, a student committing specified violent offenses is prohibited from attending the school attended by, or riding the school bus ridden by, the victim or the victim's sibling.¹⁹ In addition, if a violent offense involves a victim, school officials are required to notify the victim, and the victim's parents or legal guardian if the victim is a minor, of the offense and of the victim's right to press charges against the offender.²⁰

Current law assigns specific duties for student discipline and school safety to certain school district personnel. The duties include:

- A district school superintendent recommends student discipline and school safety plans to the district school board.²¹

¹² *Id.*

¹³ Fla. Stat. § 1006.13(1); Fla. Admin. Code Ann. r. 6A-1.0404(1).

¹⁴ Fla. Admin. Code Ann. r. 6A-1.0404(5).

¹⁵ Fla. Stat. § 1000.05(2)(a).

¹⁶ Fla. Admin. Code Ann. r. 6A-19.008.

¹⁷ *Id.*

¹⁸ Fla. Stat. § 1006.13(1)(b).

¹⁹ Fla. Stat. § 1006.13(5)(b) & (c).

²⁰ Fla. Admin. Code Ann. r. 6A-1.0404(6).

²¹ Fla. Stat. § 1006.08(1).

- A school principal or designee develops policies for delegating to teachers, instructional staff, and school bus drivers the school's responsibility for control of students.²² A school principal is directed to fully support the authority of a teacher or school bus driver to remove disobedient, disrespectful, violent, abusive, uncontrollable, or disruptive students from the classroom or school bus.²³
- A school principal must also submit reports to DOE on student discipline and school safety.²⁴ DOE compiles the reports and publicly reports the data through the School Environmental Safety Incident Reporting (SESIR) system.²⁵ The SESIR system collects data on 22 incidents of crime, violence, and disruptive behaviors that occur on school grounds, on school transportation, and at off-campus, school-sponsored events.
- A school bus driver is responsible for keeping order on the school bus and requiring good behavior from, and protecting, the students on the bus.²⁶

Safe Schools Funding:

Funding for Safe Schools is included in the Florida Education Finance Program (FEFP) as a categorical fund²⁷ and is appropriated by the Legislature through proviso language in the General Appropriations Act.²⁸ The Legislature allocated, as adjusted, \$76,617,665²⁹ for Safe Schools activities for the 2007-2008 school year.³⁰ The Safe Schools funds are allocated as follows:

- Each school district receives a \$74,483 base allocation for Safe Schools;³¹
- Two-thirds of the remaining balance is allocated based on the latest official Florida Crime Index provided by the Florida Department of Law Enforcement; and
- One-third is allocated based on each district's share of the state's total unweighted student enrollment.³²

School districts may use Safe Schools funds for various activities, including:

- After-school programs for middle school students;
- Other improvements to enhance the learning environment, including implementation of conflict-resolution strategies;
- Alternative school programs for adjudicated youth;
- Suicide prevention programs; and
- Other improvements to make the school a safe place to learn.³³

²² Fla. Stat. § 1006.09(1)(a).

²³ *Id.*

²⁴ Fla. Stat. §§ 1001.54(3) & 1006.09(6).

²⁵ Florida Department of Education, *Statewide Report on School Safety and Discipline Data*, at <http://www.firn.edu/doe/besss/sesir.htm> (last visited Mar. 3, 2008).

²⁶ Fla. Stat. § 1006.10(1) & (4).

²⁷ Fla. Stat. § 1001.62(6)(b)3.

²⁸ Specific Appropriation 86, *General Appropriations Act for Fiscal Year 2007-2008*, Chapter 2007-72, Laws of Florida.

²⁹ Upon completion of the 2007 Florida Legislative Session the allocation was \$77,150,000, with each school district receiving at least \$75,000. However, those figures were adjusted upon completion of the 2007 Florida Legislative Special Session C.; *Id.*

³⁰ Committee Substitute for Sen. Bill No. 6-C (FEFP is incorporated by reference), Chapter 2007-328, Laws of Florida.

³¹ *Id.*

³² See *supra* note 28.

³³ *Id.*

Proposed Changes:

The bill creates the “Jeffrey Johnston Stand Up for All Students Act.”³⁴ The bill 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 public K-12 computer, computer system, or computer network.

Definitions:

The bill provides definitions of the terms “bullying” and “harassment”:

- **Bullying:** 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.
- **Harassment:** Threatening insulting, or dehumanizing gesture, 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.

The bill 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.

The bill also specifies that current statutory definitions for computer crimes³⁵ and stalking³⁶ apply to the provisions created by the bill.

Model Policy:

The bill requires DOE to develop and provide to the school districts by October 1, 2008, a model policy prohibiting bullying and harassment.

School District Policies:

The bill requires a school district, by December 1, 2008, to adopt a policy prohibiting bullying and harassment against a public K-12 student or employee. A school district’s policy must be in substantial conformity to DOE’s model policy and must:

³⁴ In 2005, Jeffrey Johnson of Cape Coral, a victim of bullying and harassment from his classmates at Ida S. Baker High School in Lee County, committed suicide at the age of 15 years. See <http://jeffreyjohnston.org> (last visited Mar. 3, 2008).

³⁵ Fla. Stat. § 815.03, defines terms used to proscribe computer-related crimes throughout the chapter. The defined terms, “access,” “computer,” “computer network,” “computer software,” “computer system,” and “data” are among the terms used in the bill.

³⁶ The bill cross-references the definition of “cyberstalk” in Fla. Stat. § 784.048(1)(d). “Cyberstalk” means to engage in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person, causing substantial emotional distress to that person and serving no legitimate purpose.”

Enforcement:

- Include definitions of “bullying” and “harassment,” which must include the definitions included in the bill;
- Establish procedures for reporting and investigating a report of bullying or harassment, including anonymous reporting (the bill prohibits disciplinary action based solely on anonymous reports);
- Prescribe standards of conduct for public K-12 students and employees, disciplinary actions for a student or employee who engages in bullying or harassment or who wrongfully and intentionally accuses another of bullying or harassment; and
- Establish procedures for referring bullying and harassment reports outside of the school district’s authority to the appropriate officials (the bill specifies that a reported act of bullying or harassment is deemed to be a school-related activity).

Victim Services and Prevention:

- Establish procedures for:
 - Referring victims and offenders of bullying or harassment to counseling;
 - Regular reporting to a victim’s parents on the actions taken to protect the victim;
 - Immediately notifying the parents of both the victim and offender of bullying or harassment, as well as all local agencies where criminal charges may be filed against the offender; and
 - Training students, parents, teachers, school administrators, counseling staff, and volunteers to identify, prevent, and respond to bullying and harassment.

Statewide Reporting:

- Establish procedures for including bullying and harassment in the school district’s student discipline and school safety reports submitted to DOE (currently through the School Environmental Safety Incident Reporting (SESIR) system).

The bill allows a school district to adopt separate discrimination policies for different categories of students but requires that all students have the same protection from bullying and harassment. The bill requires a school district to include students, parents, teachers, administrators, school staff, volunteers, community representatives, and local law enforcement agencies in the development of the bullying and harassment policy.

The bill requires the policy to be included in the district’s codes of student conduct and employee handbooks and requires ongoing implementation throughout the school year, integrated with a school’s curriculum, discipline policies, and violence prevention efforts.

Immunity for Reporting:

The bill provides:

A school employee, school volunteer, student, or parent who promptly reports in good faith an act of bullying or harassment to the appropriate school official designated in the school district’s policy and who makes this report in compliance with the procedures set forth in the policy is immune from a cause of action for damages arising out of the reporting itself or any failure to remedy the reported incident.

Computer Issues:

The bill prohibits a person charged with a disciplinary action under a school district's policy or other prosecution from raising the "physical location" or "time of access" of a computer-related incident as a defense to the charges. The bill also exempts a person who uses a computer, computer system, or computer network from violations of the bullying and harassment policies, when the person acts within the scope of lawful employment or investigates a bullying or harassment violation under the school district's policy.

Contingency of Safe Schools Funds:

The bill provides that, for the 2009-2010 school year, a school district's Safe Schools funding "is contingent upon and payable to the school district upon [DOE's] approval of the school district's bullying and harassment policy." The bill specifies that DOE must approve a district's policy if it is in substantial conformity with the department's model policy.

The bill also requires that, each year beginning with the 2010-2011 school year, a school district's Safe Schools funding "shall be contingent upon and payable to the school district upon" the district's compliance with "all reporting procedures" in the bill, that is, submitting reports of bullying and harassment to DOE as part of the district's reports of safety and discipline data.³⁷

Annual Report to Governor and Legislature:

The bill requires the Commissioner of Education to report to the Governor and presiding officers of the Legislature by January 1 of each year on the implementation of policies prohibiting bullying and harassment, including reports of bullying and harassment submitted to DOE as part of the school districts' student discipline and school safety data.

First Amendment:

The bill requires construction of its provisions consistent with the First Amendment to the United States Constitution.

Severability Provision:

The bill provides that its provisions are severable. If any provision or the application thereof is held invalid, then the invalidity of the provision does not affect other provisions or applications of the bill which can be given effect without the invalid provision or application.

Effective Date:

The bill provides that it takes effect upon becoming a law.

C. SECTION DIRECTORY:

Section 1. Creates section 1006.147, Florida Statutes, which prohibits bullying and harassment of public K-12 students and employees.

Section 2. Provides a severability provision.

³⁷ In paragraph (4)(k), a school district is required to submit student discipline and school safety reports to DOE (currently through the School Environmental Safety Incident Reporting (SESIR) system). The bill appears to make Safe Schools funding contingent upon the submission of these reports.

Section 3. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

According to DOE, the department "will be required to compile and aggregate the reported incidents of bullying and harassment, including those that do not meet the criteria of the prohibited act."³⁸

DOE further reports,

the department will also be required to oversee the withholding of funds from any school district that did not comply with the act. Historically, safe schools funding has been provided through the FEFP with the following components:

- A lump sum distributed to each district, with the remainder distributed as follows:
- Two-thirds based on the latest official Florida Crime Index provided by the Department of Law Enforcement
- One-third based on each district's share of the state's total unweighted student enrollment.³⁹

DOE indicates that the above-described workload increase can be absorbed by existing staff.⁴⁰

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to impact the revenues of counties or municipalities.

2. Expenditures:

DOE notes in its analysis that,

An estimated 87.5 percent of school districts have adopted an anti-bullying policy similar to the requirements of the bill. [DOE] staff time would be required to evaluate whether a school district's adopted policy complies with the requirements of the bill. At a minimum, resources would have to be assigned to the training of staff about the anti-bullying policy adopted by the district pursuant to the requirements. The exact fiscal impact cannot be determined.⁴¹

³⁸ DOE, *2008 Bill Analysis for HB 669* (Jan. 29, 2008).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Legislature allocated, as adjusted, \$76,617,665⁴² for Safe Schools for fiscal year 2007-2008, including an allocation formula guaranteeing a school district at least \$74,483.⁴³ The bill requires the withholding of Safe Schools funds for noncompliance with reporting requirements. The withholding of Safe Schools funds may adversely affect other district safety and security activities

The bill requires school districts to adopt policies, revise codes of student conduct and employee handbooks, train employees, and revise reporting of student discipline and school safety data. DOE estimates that there would be costs associated with implementing these requirements but does not quantify an estimate.⁴⁴

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require a county or municipality to spend funds or take an action requiring expenditures, reduce the authority that counties and municipalities had as of February 1, 1989, to raise revenues in the aggregate, or reduce the percentage of a state tax shared in the aggregate with counties and municipalities as of February 1, 1989.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not create new authority for rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

In subsection (4) of section 1, the bill requires a school district to adopt a "policy prohibiting bullying and harassment." Subsection (5) of section 1 authorizes a district to establish separate "discrimination policies" that include categories of students. Since current law prohibits discrimination on the basis of race, ethnicity, national origin, gender, disability, or marital status against a student or employee in the state system of public K-20 education,⁴⁵ the bill is unclear whether it authorizes school districts to prohibit discrimination against new categories of students or whether it allows a school district to establish separate bullying and harassment policies for different categories of students (e.g., one policy for elementary school, a second policy for middle school, and a third policy for high school).

⁴² See *supra* note 29.

⁴³ DOE, *2008 Bill Analysis for HB 669* (Jan. 29, 2008).

⁴⁴ *Id.*

⁴⁵ Fla. Stat. § 1000.05(2)(a).

D. STATEMENT OF THE SPONSOR

Section (3) (b) page 2 line 49-52, of the bill, includes “use of data or computer software, or written, verbal, or physical conduct directed against a student.” This addresses the concern of cyberbullying.

There is no fiscal impact as long as school districts comply with the law.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

None.

1 A bill to be entitled
 2 An act relating to school safety; creating s. 1006.147,
 3 F.S.; providing a short title; prohibiting bullying and
 4 harassment of any student or employee of a public K-12
 5 educational institution; providing definitions; requiring
 6 each school district to adopt a policy prohibiting such
 7 bullying and harassment; providing minimum requirements
 8 for the contents of the policy; requiring the Department
 9 of Education to develop a model policy; providing
 10 immunity; providing restrictions with respect to defense
 11 of an action and application of the section; requiring
 12 department approval of a school district's policy and
 13 school district compliance with reporting procedures as
 14 prerequisites to receipt of safe schools funds; requiring
 15 a report on implementation; providing for construction;
 16 providing for severability; providing an effective date.

17
 18 Be It Enacted by the Legislature of the State of Florida:

19
 20 Section 1. Section 1006.147, Florida Statutes, is created
 21 to read:

22 1006.147 Bullying and harassment prohibited.--

23 (1) This section may be cited as the "Jeffrey Johnston
 24 Stand Up for All Students Act."

25 (2) Bullying or harassment of any student or employee of a
 26 public K-12 educational institution is prohibited:

27 (a) During any education program or activity conducted by
 28 a public K-12 educational institution;

29 (b) During any school-related or school-sponsored program
 30 or activity or on a school bus of a public K-12 educational
 31 institution; or

32 (c) Through the use of data or computer software that is
 33 accessed through a computer, computer system, or computer
 34 network of a public K-12 educational institution.

35 (3) For purposes of this section:

36 (a) "Bullying" means systematically and chronically
 37 inflicting physical hurt or psychological distress on one or
 38 more students and may involve:

- 39 1. Teasing;
- 40 2. Social exclusion;
- 41 3. Threat;
- 42 4. Intimidation;
- 43 5. Stalking;
- 44 6. Physical violence;
- 45 7. Theft;
- 46 8. Sexual, religious, or racial harassment;
- 47 9. Public humiliation; or
- 48 10. Destruction of property.

49 (b) "Harassment" means any threatening, insulting, or
 50 dehumanizing gesture, use of data or computer software, or
 51 written, verbal, or physical conduct directed against a student
 52 or school employee that:

- 53 1. Places a student or school employee in reasonable fear
 54 of harm to his or her person or damage to his or her property;
- 55 2. Has the effect of substantially interfering with a
 56 student's educational performance, opportunities, or benefits;

57 or

58 3. Has the effect of substantially disrupting the orderly
 59 operation of a school.

60 (c) Definitions in s. 815.03 and the definition in s.
 61 784.048(1)(d) relating to stalking are applicable to this
 62 section.

63 (d) The definitions of "bullying" and "harassment"
 64 include:

65 1. Retaliation against a student or school employee by
 66 another student or school employee for asserting or alleging an
 67 act of bullying or harassment. Reporting an act of bullying or
 68 harassment that is not made in good faith is considered
 69 retaliation.

70 2. Perpetuation of conduct listed in paragraph (a) or
 71 paragraph (b) by an individual or group with intent to demean,
 72 dehumanize, embarrass, or cause physical harm to a student or
 73 school employee by:

74 a. Incitement or coercion;

75 b. Accessing or knowingly causing or providing access to
 76 data or computer software through a computer, computer system,
 77 or computer network within the scope of the district school
 78 system; or

79 c. Acting in a manner that has an effect substantially
 80 similar to the effect of bullying or harassment.

81 (4) By December 1, 2008, each school district shall adopt
 82 a policy prohibiting bullying and harassment of any student or
 83 employee of a public K-12 educational institution. Each school
 84 district's policy shall be in substantial conformity with the

85 Department of Education's model policy mandated in subsection
 86 (5). The school district bullying and harassment policy shall
 87 afford all students the same protection regardless of their
 88 status under the law. The school district may establish separate
 89 discrimination policies that include categories of students. The
 90 school district shall involve students, parents, teachers,
 91 administrators, school staff, school volunteers, community
 92 representatives, and local law enforcement agencies in the
 93 process of adopting the policy. The school district policy must
 94 be implemented in a manner that is ongoing throughout the school
 95 year and integrated with a school's curriculum, a school's
 96 discipline policies, and other violence prevention efforts. The
 97 school district policy must contain, at a minimum, the following
 98 components:

- 99 (a) A statement prohibiting bullying and harassment.
- 100 (b) A definition of bullying and a definition of
 101 harassment that include the definitions listed in this section.
- 102 (c) A description of the type of behavior expected from
 103 each student and employee of a public K-12 educational
 104 institution.
- 105 (d) The consequences for a student or employee of a public
 106 K-12 educational institution who commits an act of bullying or
 107 harassment.
- 108 (e) The consequences for a student or employee of a public
 109 K-12 educational institution who is found to have wrongfully and
 110 intentionally accused another of an act of bullying or
 111 harassment.
- 112 (f) A procedure for reporting an act of bullying or

113 harassment, including provisions that permit a person to
 114 anonymously report such an act. However, this paragraph does not
 115 permit formal disciplinary action to be based solely on an
 116 anonymous report.

117 (g) A procedure for the prompt investigation of a report
 118 of bullying or harassment and the persons responsible for the
 119 investigation. The investigation of a reported act of bullying
 120 or harassment is deemed to be a school-related activity and
 121 begins with a report of such an act.

122 (h) A process to investigate whether a reported act of
 123 bullying or harassment is within the scope of the district
 124 school system and, if not, a process for referral of such an act
 125 to the appropriate jurisdiction.

126 (i) A procedure for providing immediate notification to
 127 the parents of a victim of bullying or harassment and the
 128 parents of the perpetrator of an act of bullying or harassment,
 129 as well as notification to all local agencies where criminal
 130 charges may be pursued against the perpetrator.

131 (j) A procedure to refer victims and perpetrators of
 132 bullying or harassment for counseling.

133 (k) A procedure for including incidents of bullying or
 134 harassment in the school's report of data concerning school
 135 safety and discipline required under s. 1006.09(6). The report
 136 must include each incident of bullying or harassment and the
 137 resulting consequences, including discipline and referrals. The
 138 report must include in a separate section each reported incident
 139 of bullying or harassment that does not meet the criteria of a
 140 prohibited act under this section with recommendations regarding

141 such incidents. The Department of Education shall aggregate
 142 information contained in the reports.

143 (1) A procedure for providing instruction to students,
 144 parents, teachers, school administrators, counseling staff, and
 145 school volunteers on identifying, preventing, and responding to
 146 bullying or harassment.

147 (m) A procedure for regularly reporting to a victim's
 148 parents the actions taken to protect the victim.

149 (n) A procedure for publicizing the policy, which must
 150 include its publication in the code of student conduct required
 151 under s. 1006.07(2) and in all employee handbooks.

152 (5) To assist school districts in developing policies
 153 prohibiting bullying and harassment, the Department of Education
 154 shall develop a model policy that shall be provided to school
 155 districts no later than October 1, 2008.

156 (6) A school employee, school volunteer, student, or
 157 parent who promptly reports in good faith an act of bullying or
 158 harassment to the appropriate school official designated in the
 159 school district's policy and who makes this report in compliance
 160 with the procedures set forth in the policy is immune from a
 161 cause of action for damages arising out of the reporting itself
 162 or any failure to remedy the reported incident.

163 (7) (a) The physical location or time of access of a
 164 computer-related incident cannot be raised as a defense in any
 165 disciplinary action initiated under this section.

166 (b) This section does not apply to any person who uses
 167 data or computer software that is accessed through a computer,
 168 computer system, or computer network when acting within the

169 scope of his or her lawful employment or investigating a
170 violation of this section in accordance with school district
171 policy.

172 (8) Distribution of safe schools funds to a school
173 district provided in the 2009-2010 General Appropriations Act is
174 contingent upon and payable to the school district upon the
175 Department of Education's approval of the school district's
176 bullying and harassment policy. The department's approval of
177 each school district's bullying and harassment policy shall be
178 granted upon certification by the department that the school
179 district's policy has been submitted to the department and is in
180 substantial conformity with the department's model bullying and
181 harassment policy as mandated in subsection (5). Distribution of
182 safe schools funds provided to a school district in fiscal year
183 2010-2011 and thereafter shall be contingent upon and payable to
184 the school district upon the school district's compliance with
185 all reporting procedures contained in this section.

186 (9) On or before January 1 of each year, the Commissioner
187 of Education shall report to the Governor, the President of the
188 Senate, and the Speaker of the House of Representatives on the
189 implementation of this section. The report shall include data
190 collected pursuant to paragraph (4) (k).

191 (10) Nothing in this section shall be construed to abridge
192 the rights of students or school employees that are protected by
193 the First Amendment to the Constitution of the United States.

194 Section 2. If any provision of this act or the application
195 thereof to any person or circumstance is held invalid, the
196 invalidity shall not affect other provisions or applications of

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197 | the act which can be given effect without the invalid provision
198 | or application, and to this end the provisions of this act are
199 | declared severable.

200 | Section 3. This act shall take effect upon becoming a law.