



Education Committee

Wednesday, April 13, 2011

1:00 PM – 4:00 PM

Reed Hall – 102 HOB

Meeting Packet

**Dean Cannon
Speaker**

**William Proctor
Chair**



The Florida House of Representatives

Education Committee

Dean Cannon
Speaker

William L. "Bill" Proctor
Chair

AGENDA

Education Committee
April 13, 2011
1:00 pm – 4:00 pm
Reed Hall - 102 HOB

I. Call to Order/Roll Call

II. Opening Remarks

III. Consideration of the following bills:

- CS/HB 301 Youth Athletes by K-20 Innovation Subcommittee, Rep. Renuart
- CS/HB 1329 John M. McKay Scholarships for Students with Disabilities Program by K-20 Innovation Subcommittee, Rep. Bileca
- CS/HB 1331 School Choice by PreK-12 Appropriations Subcommittee, Rep. Bileca
- HB 7151 Postsecondary Education by Rep. Stargel
- HB 7219 School Food Service and Nutrition Programs by State Affairs Committee, Rep. McKeel

IV. Consideration of the following proposed committee substitute:

- PCS for CS/HM 1445 -- Colleges and Universities Authorized to Operate Educational Programs Beyond the Secondary Level

V. Closing Remarks and Adjournment

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 301 (2011)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE 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WITHDRAWN	___	(Y/N)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 Committee/Subcommittee hearing bill: Education Committee
2 Representative Coley offered the following:

3
4 **Amendment**

5 Remove lines 38-39 and insert:
6 return from a physician licensed under chapter 458, chapter 459,
7 or chapter 460, based upon the Acute Concussion Evaluation
8 (ACE), Centers for Disease Control and Prevention, National
9 Center for Injury Prevention and Control "Heads Up" Program.
10 Prior to issuing a written clearance to play, a

11
12
13 Remove line 78 and insert:
14 chapter 458, chapter 459, or chapter 460 based upon the Acute
15 Concussion Evaluation (ACE), Centers for Disease Control and
16 Prevention, National Center for Injury Prevention and Control
17 "Heads Up" Program. Prior to issuing a written clearance

1 A bill to be entitled
 2 An act relating to youth athletes; amending ss. 943.0438
 3 and 1006.20, F.S.; requiring an independent sanctioning
 4 authority for youth athletic teams and the Florida High
 5 School Athletic Association to adopt guidelines, bylaws,
 6 and policies relating to the nature and risk of concussion
 7 and head injury in youth athletes; requiring informed
 8 consent for participation in practice or competition;
 9 requiring removal from practice or competition under
 10 certain circumstances and written clearance to return;
 11 providing an effective date.

12
 13 Be It Enacted by the Legislature of the State of Florida:

14
 15 Section 1. Paragraphs (e), (f), and (g) are added to
 16 subsection (2) of section 943.0438, Florida Statutes, to read:
 17 943.0438 Athletic coaches for independent sanctioning
 18 authorities.—

19 (2) An independent sanctioning authority shall:

20 (e) Adopt guidelines to educate athletic coaches,
 21 officials, administrators, youth athletes, and their parents or
 22 guardians of the nature and risk of concussion and head injury.

23 (f) Adopt bylaws or policies that require the parent or
 24 guardian of a youth participating in athletic competition or who
 25 is a candidate for an athletic team to sign and return an
 26 informed consent that explains the nature and risk of concussion
 27 and head injury, including the risk of continuing to play after
 28 concussion or head injury, each year before participating in

29 athletic competition or engaging in any practice, tryout,
 30 workout, or other physical activity associated with the
 31 student's candidacy for an athletic team.

32 (g) Adopt bylaws or policies that require each youth
 33 athlete who is suspected of sustaining a concussion or head
 34 injury in a practice or competition to be removed from practice
 35 or competition at that time. A youth athlete who has been
 36 removed from practice or competition may not return to practice
 37 or competition until the youth receives written clearance to
 38 return from a physician licensed under chapter 458 or chapter
 39 459. Prior to issuing a written clearance to return to play, a
 40 physician may:

41 1. Delegate the performance of medical acts to a health
 42 care provider licensed or certified under s. 458.347, s.
 43 459.022, s. 464.012, or s. 468.707 with whom the physician
 44 maintains a formal supervisory relationship or an established
 45 written protocol that identifies the medical acts or evaluations
 46 to be performed and conditions for their performance and that
 47 attests to proficiency in the evaluation and management of
 48 concussions.

49 2. Consult with, or utilize testing and evaluation of
 50 cognitive functions performed by, a neuropsychologist licensed
 51 under chapter 490.

52 Section 2. Paragraphs (e), (f), and (g) are added to
 53 subsection (2) of section 1006.20, Florida Statutes, to read:

54 1006.20 Athletics in public K-12 schools.—

55 (2) ADOPTION OF BYLAWS.—

56 (e) The organization shall adopt guidelines to educate

57 athletic coaches, officials, administrators, student athletes,
 58 and their parents of the nature and risk of concussion and head
 59 injury.

60 (f) The organization shall adopt bylaws or policies that
 61 require the parent of a student who is participating in
 62 interscholastic athletic competition or who is a candidate for
 63 an interscholastic athletic team to sign and return an informed
 64 consent that explains the nature and risk of concussion and head
 65 injury, including the risk of continuing to play after
 66 concussion or head injury, each year before participating in
 67 interscholastic athletic competition or engaging in any
 68 practice, tryout, workout, or other physical activity associated
 69 with the student's candidacy for an interscholastic athletic
 70 team.

71 (g) The organization shall adopt bylaws or policies that
 72 require each student athlete who is suspected of sustaining a
 73 concussion or head injury in a practice or competition to be
 74 removed from practice or competition at that time. A student
 75 athlete who has been removed from practice or competition may
 76 not return to practice or competition until the student receives
 77 written clearance to return from a physician licensed under
 78 chapter 458 or chapter 459. Prior to issuing a written clearance
 79 to return to play, a physician may:

80 1. Delegate the performance of medical acts to a health
 81 care practitioner licensed or certified under s. 458.347, s.
 82 459.022, s. 464.012, or s. 468.707 with whom the physician
 83 maintains a formal supervisory relationship or an established
 84 written protocol that identifies the medical acts or evaluations

CS/HB 301

2011

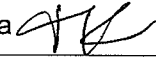
85 to be performed and conditions for their performance and that
86 attests to proficiency in the evaluation and management of
87 concussions.

88 2. Consult with, or utilize testing and evaluation of
89 cognitive functions performed by, a neuropsychologist licensed
90 under chapter 490.

91 Section 3. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 301 Youth Athletes
SPONSOR(S): K-20 Innovation Subcommittee; Renuart and others
TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 730

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) K-20 Innovation Subcommittee	14 Y, 0 N, As CS	Valenstein	Sherry
2) Health & Human Services Access Subcommittee	11 Y, 1 N	Prater	Schoolfield
3) Education Committee		Valenstein, JBV	Klebacha 

SUMMARY ANALYSIS

The bill requires independent sanctioning authorities and the Florida High School Athletic Association (FHSAA) to adopt guidelines to educate athletic coaches, officials, administrators, athletes, and their parents or guardians relating to the nature and risk of concussions and head injuries. Independent sanctioning authorities and the FHSAA must also adopt bylaws or policies that require the parent or guardian of an athlete who is participating in an athletic competition or is a candidate for an athletic team to sign an informed consent that explains the nature and risk of concussions and head injuries. The bill requires the signed informed consent to be returned prior to the athlete participating in any practice, tryout, workout, athletic competition, or other physical activity associated with candidacy for an athletic team. Additionally, the bill requires the independent sanctioning authority and the FHSAA to adopt bylaws or policies that require an athlete who is suspected of sustaining a concussion or head injury to be removed from practice or competition until the athlete receives written clearance to return from a physician or osteopathic physician. The bill also authorizes a physician or osteopathic physician to delegate the performance of medical acts to certain health care practitioners and also allows the physician to consult with, and utilize testing and evaluations performed by, neuropsychologists.

The bill does not have a fiscal impact.

The bill provides an effective date of July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Overview

Youth Athletics: Current law defines a youth athletic independent sanctioning authority as a private, nongovernmental entity that organizes, operates or coordinates a youth athletic team in Florida that includes one or more minors and is not affiliated with a private school. An independent sanctioning authority is currently required to conduct background screenings on each current and prospective athletic coach, disqualify an athletic coach that fails the background screening, and provide written notice to a disqualified athletic coach.

High School Athletics: The Florida High School Athletic Association (FSHAA) is designated as the governing nonprofit organization of athletics in Florida public schools.¹ Currently, the FHSAA is required to adopt bylaws to establish eligibility requirements for all students, prohibit recruiting students for athletic purposes, and require students participating in athletics to satisfactorily pass an annual medical evaluation.

Eleven states² across the country have passed legislation that targets youth sports-related head injuries.³ In addition, the Committee on Education and Labor of the U.S. House of Representatives held a hearing to discuss protecting student athletes from concussions on September 23, 2010.⁴

The Centers for Disease Control and Prevention (CDC) define a concussion as a type of traumatic brain injury that is caused by a bump, blow, or jolt to the head that can change the way your brain normally works. Concussions may also occur from a blow to the body that causes the head to move rapidly back and forth. In an effort to raise awareness and provide education to coaches, athletes and parents of athletes, the CDC has created free tools that provide important information on preventing, recognizing, and responding to a concussion.⁵

Effect of Proposed Changes

Youth Athletics: The bill requires an independent sanctioning authority to adopt guidelines to educate athletic coaches, officials, administrators, youth athletes, and their parents or guardians relating to the nature and risk of concussions and head injuries. An independent sanctioning authority must also adopt bylaws or policies that require the parent or guardian of a youth athlete who is participating in an athletic competition, or is a candidate for an athletic team, to sign an informed consent that explains the nature and risk of concussions and head injuries. The bill requires the signed informed consent to be returned prior to the youth athlete participating in any practice, tryout, workout, athletic competition, or other physical activity associated with candidacy for an athletic team. Additionally, the bill requires the independent sanctioning authority to adopt bylaws or policies that require a youth athlete who is suspected of sustaining a concussion or head injury to be removed from practice or competition, until the youth receives written clearance to return from a licensed physician or an osteopathic physician. The bill allows a physician or osteopathic physician to delegate the performance of medical acts to

¹ While high school is typically defined to include grades 9 through 12, for the purposes of athletics in public K-12 schools, high school is defined to include grades 6-12, s. 1006.20(1), F.S.

² The eleven states with laws that target youth sports-related head injuries are: Connecticut, Idaho, Maine, Massachusetts, New Jersey, New Mexico, Oklahoma, Oregon, Rhode Island, Virginia, and Washington.

³ Traumatic Brain Injury Legislation, National Conference of State Legislatures, Feb. 2011, *available at* www.ncsl.org/default.aspx?tabid=18687

⁴ *Available at* http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_house_hearings&docid=f:58256.pdf; *see also* Concussion in High School Sports: Overall Estimate of Occurrence is Not Available, but Key State Laws and Nationwide Guidelines Address Injury Management, United States Government Accountability Office, May 20, 2010, *available at* <http://www.gao.gov/new.items/d10569t.pdf>.

⁵ Concussion in Sports, Centers for Disease Control and Prevention, *available at* <http://www.cdc.gov/concussion/sports/index.html>.

advanced registered nurse practitioners, physician assistants, osteopathic physician assistants, and athletic trainers with whom the physician maintains a formal supervisory relationship or established written protocol that identifies the medical acts or evaluations to be performed and the conditions for their performance, and attests to proficiency in the evaluation and management of concussions. The bill also allows physicians and osteopathic physicians to consult with, or utilize testing and evaluations performed by, neuropsychologists.

High School Athletics: The bill requires the FHSAA to adopt additional guidelines and bylaws or policies related to concussions and head injuries. The FHSAA must adopt guidelines to educate athletic coaches, officials, administrators, student athletes, and their parents relating to the nature and risk of concussions and head injuries. The FHSAA must also adopt either bylaws or policies that require the parent of a student athlete who is a candidate for an interscholastic athletic team or is participating in an interscholastic athletic competition to sign an informed consent that explains the nature and risk of concussions and head injuries. The bill requires the signed informed consent to be returned prior to the student athlete participating in any practice, tryout, workout, athletic competition, or other physical activity associated with candidacy for an athletic team. Additionally, the bill requires FHSAA to adopt bylaws or policies that require a student athlete who is suspected of sustaining a concussion or head injury to be removed from practice or competition, until the student receives written clearance to return from a licensed physician or an osteopathic physician. The bill allows a physician or osteopathic physician to delegate the performance of medical acts to advanced registered nurse practitioners, physician assistants, osteopathic physician assistants, and athletic trainers with whom the physician maintains a formal supervisory relationship or established written protocol that identifies the medical acts or evaluations to be performed and the conditions for their performance, and attests to proficiency in the evaluation and management of concussions. The bill also allows physicians and osteopathic physicians to consult with, or utilize testing and evaluations performed by, neuropsychologists.

The bill requires both independent sanctioning authorities and the FHSAA to adopt policies relating to concussions and head injuries. As the bill does not require the entities to develop the policies, the entities will likely be able to use policies and information made available through the CDC and other sources.

B. SECTION DIRECTORY:

Section 1. Amends s. 943.0438, F.S., to require an independent sanctioning authority for youth athletic teams to adopt bylaws or policies relating to the nature and risk of concussions and head injuries in youth athletes; to require informed consent for participation in practice or competition; to require removal from practice or competition under certain circumstances and certain written clearance to return.

Section 2. Amends s. 1006.20, F.S., to require the Florida High School Athletic Association to adopt guidelines, bylaws, or policies relating to the nature and risk of concussions and head injuries in youth athletes; to require informed consent for participation in practice or competition; to require removal from practice or competition under certain circumstances and certain written clearance to return.

Section 3. Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

- The bill requires the adoption of guidelines to educate "their parents." It is unclear whose parents need to be educated.
- Consideration might be given to changing concussions and head injuries to traumatic brain injuries, because the Center for Disease Control and Prevention refers to them as such.
- The bill refers to a student's candidacy on line 31. This should be changed to youth athlete's candidacy because this section deals with youth athletes, not student athletes.
- The bill requires the FHSAA to adopt guidelines or policies; however, the section of law being amended is entitled "Adoption of Bylaws." Change guidelines on line 56 to bylaws, and remove policies from line 60.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 15, 2011, the K-20 Innovation Subcommittee adopted two amendments and the bill was reported favorably as a Committee Substitute. The amendments made the following changes to the bill:

Amendment 1 limited the health care practitioners eligible to provide the necessary written clearance for a youth athlete to return to play after a suspected head injury by authorizing only a physician or an osteopathic physician. The amendment allowed a physician or an osteopathic physician to delegate the performance of medical acts to certain health care practitioners and also allows the physician to consult with, and utilize testing and evaluations performed by, neuropsychologists. The bill, prior to the amendment, required a student to obtain written clearance from physicians, physician assistants, anesthesiologist assistants, osteopathic

physicians, osteopathic physician assistants, osteopathic anesthesiologist assistants, and advanced registered nurse practitioners prior to returning to practice or competition.

Amendment 2 limited the health care practitioners eligible to provide the necessary written clearance for a student athlete to return to play after a suspected head injury by authorizing only a physician or an osteopathic physician. The amendment allowed a physician or an osteopathic physician to delegate the performance of medical acts to certain health care practitioners and also allows the physician to consult with, and utilize testing and evaluations performed by, neuropsychologists. The bill, prior to the amendment, required a student to obtain written clearance from physicians, physician assistants, anesthesiologist assistants, osteopathic physicians, osteopathic physician assistants, osteopathic anesthesiologist assistants, and advanced registered nurse practitioners prior to returning to practice or competition.

1 A bill to be entitled

2 An act relating to the John M. McKay Scholarships for
3 Students with Disabilities Program; amending s. 1002.39,
4 F.S.; making scholarships available to students with
5 disabilities who have a 504 accommodation plan issued
6 under s. 504 of the federal Rehabilitation Act; allowing a
7 parent to request and receive a scholarship for a student
8 to enroll in and attend a private school if the student
9 has a 504 accommodation plan; providing that students with
10 certain temporary 504 accommodation plans are ineligible
11 for a scholarship; requiring that the school district
12 notify a parent of available options within 10 days after
13 a 504 accommodation plan is issued; providing that a
14 parent may choose to enroll the student in a public school
15 in an adjacent district under certain conditions;
16 providing for scholarship amounts; providing an effective
17 date.

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

20
21 Section 1. Subsection (1), paragraph (a) of subsection
22 (2), subsection (3), paragraphs (a) and (e) of subsection (5),
23 and paragraph (a) of subsection (10) of section 1002.39, Florida
24 Statutes, are amended to read:

25 1002.39 The John M. McKay Scholarships for Students with
26 Disabilities Program.—There is established a program that is
27 separate and distinct from the Opportunity Scholarship Program

28 | and is named the John M. McKay Scholarships for Students with
 29 | Disabilities Program.

30 | (1) THE JOHN M. MCKAY SCHOLARSHIPS FOR STUDENTS WITH
 31 | DISABILITIES PROGRAM.—The John M. McKay Scholarships for
 32 | Students with Disabilities Program is established to provide the
 33 | option to attend a public school other than the one to which
 34 | assigned, or to provide a scholarship to a private school of
 35 | choice, for students with disabilities for whom:

36 | (a) An individual educational plan has been written in
 37 | accordance with rules of the State Board of Education; or

38 | (b) A 504 accommodation plan has been issued under s. 504
 39 | of the Rehabilitation Act of 1973.

40 |
 41 | Students with disabilities include K-12 students who are
 42 | documented as having an intellectual disability; a speech
 43 | impairment; a language impairment; a hearing impairment,
 44 | including deafness; a visual impairment, including blindness; a
 45 | dual sensory impairment; an orthopedic impairment; an other
 46 | health impairment; an emotional or behavioral disability; a
 47 | specific learning disability, including, but not limited to,
 48 | dyslexia, dyscalculia, or developmental aphasia; a traumatic
 49 | brain injury; a developmental delay; or autism spectrum
 50 | disorder.

51 | (2) JOHN M. MCKAY SCHOLARSHIP ELIGIBILITY.—The parent of a
 52 | student with a disability may request and receive from the state
 53 | a John M. McKay Scholarship for the child to enroll in and
 54 | attend a private school in accordance with this section if:

55 | (a) The student has:

56 1. Received specialized instructional services under the
 57 Voluntary Prekindergarten Education Program pursuant to s.
 58 1002.66 during the previous school year and the student has a
 59 current individual educational plan developed by the local
 60 school board in accordance with rules of the State Board of
 61 Education for the John M. McKay Scholarships for Students with
 62 Disabilities Program or a 504 accommodation plan has been issued
 63 under s. 504 of the Rehabilitation Act of 1973;

64 2. Spent the prior school year in attendance at a Florida
 65 public school or the Florida School for the Deaf and the Blind.
 66 For purposes of this subparagraph, prior school year in
 67 attendance means that the student was enrolled and reported by:

68 a. A school district for funding during the preceding
 69 October and February Florida Education Finance Program surveys
 70 in kindergarten through grade 12, which includes time spent in a
 71 Department of Juvenile Justice commitment program if funded
 72 under the Florida Education Finance Program;

73 b. The Florida School for the Deaf and the Blind during
 74 the preceding October and February student membership surveys in
 75 kindergarten through grade 12; or

76 c. A school district for funding during the preceding
 77 October and February Florida Education Finance Program surveys,
 78 was at least 4 years of age when so enrolled and reported, and
 79 was eligible for services under s. 1003.21(1)(e); or

80 3. Been enrolled and reported by a school district for
 81 funding, during the October and February Florida Education
 82 Finance Program surveys, in any of the 5 years prior to the
 83 2010-2011 fiscal year; has a current individualized educational

84 plan developed by the district school board in accordance with
 85 rules of the State Board of Education for the John M. McKay
 86 Scholarship Program no later than June 30, 2011; and receives a
 87 first-time John M. McKay scholarship for the 2011-2012 school
 88 year. Upon request of the parent, the local school district
 89 shall complete a matrix of services as required in subparagraph
 90 (5)(b)1. for a student requesting a current individualized
 91 educational plan in accordance with the provisions of this
 92 subparagraph.

93

94 However, a dependent child of a member of the United States
 95 Armed Forces who transfers to a school in this state from out of
 96 state or from a foreign country due to a parent's permanent
 97 change of station orders is exempt from this paragraph but must
 98 meet all other eligibility requirements to participate in the
 99 program.

100 (3) JOHN M. MCKAY SCHOLARSHIP PROHIBITIONS.—A student is
 101 not eligible for a John M. McKay Scholarship ~~while he or she is:~~

102 (a) While he or she is enrolled in a school operating for
 103 the purpose of providing educational services to youth in
 104 Department of Juvenile Justice commitment programs;

105 (b) While he or she is receiving a Florida tax credit
 106 scholarship under s. 1002.395;

107 (c) While he or she is receiving an educational
 108 scholarship pursuant to this chapter;

109 (d) While he or she is participating in a home education
 110 program as defined in s. 1002.01(1);

111 (e) While he or she is participating in a private tutoring
 112 program pursuant to s. 1002.43;

113 (f) While he or she is participating in a virtual school,
 114 correspondence school, or distance learning program that
 115 receives state funding pursuant to the student's participation
 116 unless the participation is limited to no more than two courses
 117 per school year;

118 (g) While he or she is enrolled in the Florida School for
 119 the Deaf and the Blind; ~~or~~

120 (h) While he or she is not having regular and direct
 121 contact with his or her private school teachers at the school's
 122 physical location; or

123 (i) If he or she has been issued a temporary 504
 124 accommodation plan under s. 504 of the Rehabilitation Act of
 125 1973 which is valid for 6 months or less.

126 (5) SCHOOL DISTRICT OBLIGATIONS; PARENTAL OPTIONS.—

127 (a)1. By April 1 of each year and within 10 days after an
 128 individual education plan meeting or a 504 accommodation plan is
 129 issued under s. 504 of the Rehabilitation Act of 1973, a school
 130 district shall notify the parent of the student of all options
 131 available pursuant to this section, inform the parent of the
 132 availability of the department's telephone hotline and Internet
 133 website for additional information on John M. McKay
 134 Scholarships, and offer that student's parent an opportunity to
 135 enroll the student in another public school in ~~within~~ the
 136 district.

137 2. The parent is not required to accept the offer of
 138 enrolling in another public school in lieu of requesting a John

CS/HB 1329

2011

139 M. McKay Scholarship to a private school. However, if the parent
 140 chooses the public school option, the student may continue
 141 attending a public school chosen by the parent until the student
 142 graduates from high school.

143 3. If the parent chooses a public school consistent with
 144 the district school board's choice plan under s. 1002.31, the
 145 school district shall provide transportation to the public
 146 school selected by the parent. The parent is responsible to
 147 provide transportation to a public school chosen that is not
 148 consistent with the district school board's choice plan under s.
 149 1002.31.

150 (e) The parent of a student may choose, as an alternative,
 151 to enroll the student in and transport the student to a public
 152 school in an adjacent school district which has available space
 153 and has a program with the services agreed to in the student's
 154 individual education plan or 504 accommodation plan already in
 155 place, and that school district shall accept the student and
 156 report the student for purposes of the district's funding
 157 pursuant to the Florida Education Finance Program.

158 (10) JOHN M. MCKAY SCHOLARSHIP FUNDING AND PAYMENT.—

159 (a)1. The maximum scholarship granted for an eligible
 160 student with disabilities shall be equivalent to the base
 161 student allocation in the Florida Education Finance Program
 162 multiplied by the appropriate cost factor for the educational
 163 program that would have been provided for the student in the
 164 district school to which he or she was assigned, multiplied by
 165 the district cost differential.

166 2. In addition, a share of the guaranteed allocation for
 167 exceptional students shall be determined and added to the amount
 168 in subparagraph 1. The calculation shall be based on the
 169 methodology and the data used to calculate the guaranteed
 170 allocation for exceptional students for each district in chapter
 171 2000-166, Laws of Florida. Except as provided in subparagraphs
 172 3. and 4., the calculation shall be based on the student's
 173 grade, matrix level of services, and the difference between the
 174 2000-2001 basic program and the appropriate level of services
 175 cost factor, multiplied by the 2000-2001 base student allocation
 176 and the 2000-2001 district cost differential for the sending
 177 district. The calculated amount shall include the per-student
 178 share of supplemental academic instruction funds, instructional
 179 materials funds, technology funds, and other categorical funds
 180 as provided in the General Appropriations Act.

181 3. The scholarship amount for a student who is eligible
 182 under sub-subparagraph (2)(a)2.b. shall be calculated as
 183 provided in subparagraphs 1. and 2. However, the calculation
 184 shall be based on the school district in which the parent
 185 resides at the time of the scholarship request.

186 4. Until the school district completes the matrix required
 187 by paragraph (5)(b), the calculation shall be based on the
 188 matrix that assigns the student to support level I of service as
 189 it existed prior to the 2000-2001 school year. When the school
 190 district completes the matrix, the amount of the payment shall
 191 be adjusted as needed.

192 5. The scholarship amount for a student eligible under s.
 193 504 of the Rehabilitation Act of 1973 shall be based on the

CS/HB 1329

2011

194 | program cost factor the student currently generates through the
195 | Florida Education Finance Program.

196 | Section 2. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1329 John M. McKay Scholarships for Students with Disabilities Program
SPONSOR(S): K-20 Innovation Subcommittee; Bileca and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 1656

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) K-20 Innovation Subcommittee	14 Y, 0 N, As CS	Ourand	Sherry
2) PreK-12 Appropriations Subcommittee	11 Y, 3 N	Seifert	Heflin
3) Education Committee		Ourand <i>WCO</i>	Klebacha <i>JK</i>

SUMMARY ANALYSIS

The bill expands eligibility for John M. McKay Scholarships to students who have been issued a 504 accommodation plan. However, the bill excludes students that have been issued a 504 plan with a duration of six months or less.

The bill maintains the requirement that school districts notify parents of all school choice options available to them by April 1 of each year and within ten days after an individual education plan (IEP) meeting; however, the bill also requires school districts to notify parents of all available choice options within 10 days after a 504 accommodation plan is issued.

The bill continues to authorize parents to enroll their children in a public school in an adjacent school district which has available space if the school has a program with the services agreed to in the student's IEP; however, the bill expands this to include schools with the services agreed to in the 504 accommodation plan. The bill continues to require the parent to provide transportation if the parent chooses this option.

The bill provides that the scholarship amount for a student eligible under s. 504 of the Rehabilitation Act will be based on the current student program cost factor generated by the student under the Florida Education Finance Program (FEFP). The amount of the scholarship for students with 504 accommodation plans will be equal to the amount of funding the school district currently receives for the student through the FEFP.

The bill provides an effective date of July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Law

The John M. McKay Scholarships for Students with Disabilities Program (McKay Scholarship Program) provides scholarships for eligible students with disabilities¹ to attend an eligible public or private school of their choice.²

To be eligible to receive a McKay scholarship, the student must:

- Have received specialized instructional services under the Voluntary Prekindergarten Education Program during the previous school year and have a current individual educational plan (IEP);³
- Have spent the prior school year in attendance at a Florida public school or the Florida School for the Deaf and the Blind; or
- Have been enrolled and reported by a school district for funding, during the October and February Florida Education Finance Program (FEFP) surveys, in any of the 5 years prior to 2010-11 fiscal year; have a current IEP no later than June 30, 2011; and receive a first-time McKay scholarship for the 2011-12 school year.⁴

Additionally, parents must obtain acceptance for admission to an eligible school and request a scholarship at least 60 days before the date of the first scholarship payment. Parents must make the request for a McKay scholarship directly to the Department of Education (DOE).⁵

Students are not eligible to receive McKay scholarships while they are enrolled in a Department of Juvenile Justice commitment program; receiving a Florida tax credit scholarship; receiving an Opportunity Scholarship; participating in a home education program; participating in a private tutoring program; participating in a virtual school, correspondence school, or distance learning program that receives state funding pursuant to the student's participation unless the participation is limited to no more than two courses per school year; enrolled in the Florida School for the Deaf and Blind; or do not have regular and direct contact with their private school teachers at the school's physical location.⁶

By April 1 of each year and within 10 days of an IEP meeting, the school district must:

- Notify parents of all options available under the McKay Scholarship program;

¹ Students with disabilities include K-12 students who are documented as having an intellectual disability; a speech impairment; a language impairment; a hearing impairment, including deafness; a visual impairment, including blindness; a dual sensory impairment; an orthopedic impairment; an other health impairment; an emotional or behavioral disability; a specific learning disability, including, but not limited to, dyslexia, dyscalculia, or developmental aphasia; a traumatic brain injury; a developmental delay; or autism spectrum disorder. Section 1002.39(1), F.S.

² Section 1002.39(1), F.S.

³ An IEP is a written statement developed by the student's school which consists of the following statements: the student's present levels of educational performance; annual goals, including short term instructional objectives; the specific special education and related services to be provided to the student and the extent to which the student will be able to participate in regular educational programs; the projected dates for initiation of services and the anticipated duration of the services; appropriate objective criteria and evaluation procedures and schedules for determining on at least an annual basis, whether short term instructional objectives are being achieved; and the needed transition services. Rule 6D-3.0021(1)(a), F.A.C.

⁴ Section 1002.39(2)(a), F.S.

⁵ Section 1002.39(2)(b), F.S.

⁶ Section 1002.39(3), F.S.

- Inform the parent of the availability of DOE's telephone hotline and website for additional information on the McKay Scholarship Program; and
- Offer the parent an opportunity to enroll their child in another public school within the district.⁷

Parents may choose to enroll their child in a public school in an adjacent school district which has available space if the school has a program with the services agreed to in the student's IEP. If a parent chooses this option, the parent is responsible for providing transportation. The adjacent school district must accept the student and report the student for purposes of receiving funding through the FEFP.⁸

School districts are required to complete a matrix of services⁹ for each student placed in an exceptional student education program.¹⁰ The matrix must assign the student to one of the levels of service as they existed prior to the 2000-2001 school year.¹¹ The scholarship amount is based in part on the matrix of services assigned to the student; however, if a matrix of services has not yet been assigned, the scholarship amount must be based on the matrix that assigns the student to support level I of service as it existed prior to the 2000-2001 school year until the school district completes the matrix for that student.¹² Additionally, the amount of the scholarship awarded to the student is supplemented by a calculation based partly on the matrix of services completed for that student.¹³

504 Accommodation Plans

The Rehabilitation Act of 1973 (Rehabilitation Act) defines the term individual with a disability to include individuals who have a physical or mental impairment that substantially limits one or more major life activities of the individual; who have a record of such impairment; or who are regarded as having such an impairment.¹⁴ Section 504 of the Rehabilitation Act specifies that "[n]o otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."¹⁵ The Rehabilitation Act provides individuals with disabilities the opportunity to participate in any activity receiving federal funding, including public education.¹⁶

A 504 Accommodation Plan is formulated by a team of parents, teachers, and other staff members for a student identified as an individual with a disability under the Rehabilitation Act. The plan provides a description of the accommodations the school will provide to the student.¹⁷ Students under a 504 plan do not receive additional funding above the base level under the FEFP. Generally, a student with a 504 plan does not have an IEP or a matrix of services.

⁷ Section 1002.39(5)(a)1., F.S.

⁸ Section 1002.39(5)(e), F.S.

⁹ The matrix of services form collects information about the student and his or her exceptionality and contains checklists of services in five domains: curriculum and learning environment; social/emotional behavior; independent functioning; health care; and communication. The matrix of services identifies and documents the services or supports that each exceptional student requires in order for his or her educational needs to be met. Matrixes are completed by trained school personnel at least annually and are based upon a student's IEP. Whenever a student's plan is reviewed, the student's matrix of services is also reviewed. Districts must ensure that matrixes reflect current services. *Exceptional Student Education/Florida Education Finance Program (ESE/FEFP) Matrix of Services*, Florida Department of Education, Bureau of Exceptional Education and Student Services, 2004 Revised Edition; reprinted 2006, at 5, 13-16.

¹⁰ Sections 1011.62(1)(e), F.S.; 1002.39(5)(b), F.S.

¹¹ Section 1002.39(5)(b), F.S.

¹² Section 1002.39(10)(a)4., F.S.

¹³ Section 1002.39(10)(a)2., F.S.

¹⁴ 29 U.S.C. § 705(20)(B), incorporating 42 U.S.C. § 12102 (1); 34 C.F.R. § 104.3(j).

¹⁵ 29 U.S.C. § 794(a); see also 34 C.F.R. § 104.4.

¹⁶ 34 C.F.R. § 104.2.

¹⁷ Florida Department of Education, *A Parent and Teacher Guide to Section 504: Frequently Asked Questions*, available at: www.fldoe.org/ese/pdf/504bro.pdf (last visited March 17, 2011). Examples of such accommodations include: permission to self-administer diabetes medication, special dietary considerations for allergies, and assistance with carrying books. Florida Department of Education, Bureau of Exceptional Education & Student Services, *Section 504*.

Effect of the Bill

The bill extends eligibility for McKay scholarships to students who have been issued a 504 accommodation plan. However, the bill excludes students that have been issued a 504 accommodation plan with a duration of six months or less.

The bill maintains the requirement that school districts notify parents of all school choice options available to them by April 1 of each year and within ten days after an IEP meeting; however, the bill also requires school districts to notify parents of all available choice options within 10 days after a 504 accommodation plan is issued.

The bill continues to authorize parents to enroll their children in a public school in an adjacent school district which has available space if the school has a program with the services agreed to in the student's IEP; however, the bill expands this to include schools with the services agreed to in the 504 accommodation plan. The bill continues to require the parent to provide transportation if the parent chooses this option.

The bill provides that the scholarship amount for a student eligible under s. 504 of the Rehabilitation Act will be based on the current student program cost factor generated by the student under the Florida Education Finance Program (FEFP). The amount of the scholarship for students with 504 accommodation plans will be equal to the amount of funding the school district currently receives for the student through the FEFP.

B. SECTION DIRECTORY:

Section 1. Amends s. 1002.39, F.S. expanding eligibility for McKay Scholarships to students under certain 504 accommodation plans.

Section 2. Provides an effective date of July 1, 2011.

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:

The bill expands the number of students eligible for the McKay scholarship and limits the scholarship to the amount of funding for the additional students to the amount they currently generate in the FEFP.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 28, 2011, the K-20 Innovation Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment removed eligibility for students with Tier 3 Response to Intervention plans and amended the amount of the scholarship received for students with a 504 plan. Previously, the scholarship was based on the matrix that assigned the student to support level I of service as it existed prior to the 2000-2001 school year. The scholarship is now based on the current student program cost factor the student generates through the FEFP.

1 A bill to be entitled
 2 An act relating to school choice; amending s. 1002.38,
 3 F.S.; revising legislative intent and eligibility
 4 requirements for participation in the Opportunity
 5 Scholarship Program; deleting provisions that authorize an
 6 opportunity scholarship for attendance at a private
 7 school; requiring that an opportunity scholarship remain
 8 in force until the student graduates from high school;
 9 revising school district obligations and deleting
 10 provisions relating to private schools to conform to
 11 changes made by the act; amending ss. 1001.42 and 1002.20,
 12 F.S.; conforming provisions to changes made by the act;
 13 deleting an obsolete provision relating to the John M.
 14 McKay Scholarships for Students with Disabilities Program;
 15 providing an effective date.

16
 17 Be It Enacted by the Legislature of the State of Florida:

18
 19 Section 1. Section 1002.38, Florida Statutes, is amended
 20 to read:

21 1002.38 Opportunity Scholarship Program.—

22 (1) FINDINGS AND INTENT.—The purpose of this section is to
 23 provide enhanced opportunity for students in this state to gain
 24 the knowledge and skills necessary for postsecondary education,
 25 a career education, or the world of work. The Legislature
 26 recognizes that the voters of the State of Florida, in the
 27 November 1998 general election, amended s. 1, Art. IX of the
 28 Florida Constitution so as to make education a paramount duty of

29 the state. The Legislature finds that the State Constitution
 30 requires the state to provide a uniform, safe, secure,
 31 efficient, and high-quality system which allows the opportunity
 32 to obtain a high-quality education. The Legislature further
 33 finds that a student should not be compelled, against the wishes
 34 of the student's parent, to remain in a school found by the
 35 state to be failing for 2 years in a 4-year period. The
 36 Legislature shall make available opportunity scholarships in
 37 order to give parents the opportunity for their children to
 38 attend a public school that is performing satisfactorily ~~or to~~
 39 ~~attend an eligible private school when the parent chooses to~~
 40 ~~apply the equivalent of the public education funds generated by~~
 41 ~~his or her child to the cost of tuition in the eligible private~~
 42 ~~school as provided in paragraph (6)(a). Eligibility of a private~~
 43 ~~school shall include the control and accountability requirements~~
 44 ~~that, coupled with the exercise of parental choice, are~~
 45 ~~reasonably necessary to secure the educational public purpose,~~
 46 ~~as delineated in subsection (4).~~

47 (2) OPPORTUNITY SCHOLARSHIP ELIGIBILITY.—

48 (a) A public school student's parent may request and
 49 receive ~~from the state~~ an opportunity scholarship for the
 50 student to enroll in and attend a public ~~private~~ school in
 51 accordance with the provisions of this section if:

52 ~~(a)~~1. By assigned school attendance area or by special
 53 assignment, the student has spent the prior school year in
 54 attendance at a public school that has been designated pursuant
 55 to s. 1008.34 as performance grade category "D" or "F" ~~failing~~
 56 ~~to make adequate progress,~~ and that is in one of the two lowest-

57 performing categories pursuant to s. 1008.33 ~~has had 2 school~~
 58 ~~years in a 4-year period of such low performance,~~ and the
 59 student's attendance occurred during a school year in which such
 60 designation was in effect;

61 2. The student has been in attendance elsewhere in the
 62 public school system and has been assigned to such school for
 63 the next school year; or

64 3. The student ~~is entering kindergarten or first grade and~~
 65 has been notified that he or she ~~the student~~ has been assigned
 66 to such school for the next school year.

67 ~~(b) The parent has obtained acceptance for admission of~~
 68 ~~the student to a private school eligible for the program~~
 69 ~~pursuant to subsection (4), and has notified the Department of~~
 70 ~~Education and the school district of the request for an~~
 71 ~~opportunity scholarship no later than July 1 of the first year~~
 72 ~~in which the student intends to use the scholarship.~~

73 (b) ~~The provisions of This section~~ does ~~shall~~ not apply to
 74 a student who is enrolled in a school operating for the purpose
 75 of providing educational services to youth in Department of
 76 Juvenile Justice commitment programs. For purposes of continuity
 77 of educational choice, the opportunity scholarship shall remain
 78 in force until the student graduates from high school ~~returns to~~
 79 ~~a public school or, if the student chooses to attend a private~~
 80 ~~school the highest grade of which is grade 8, until the student~~
 81 ~~matriculates to high school and the public high school to which~~
 82 ~~the student is assigned is an accredited school with a~~
 83 ~~performance grade category designation of "C" or better.~~
 84 ~~However, at any time upon reasonable notice to the Department of~~

CS/HB 1331

2011

85 ~~Education and the school district, the student's parent may~~
 86 ~~remove the student from the private school and place the student~~
 87 ~~in a public school, as provided in subparagraph (3)(a)2.~~

88 (3) SCHOOL DISTRICT OBLIGATIONS.—

89 (a) A school district shall, for each student enrolled in
 90 or assigned to a school that has been designated as provided in
 91 subsection (2) ~~performance grade category "F" for 2 school years~~
 92 ~~in a 4-year period:~~

93 1. Timely notify the parent of the student as soon as such
 94 designation is made of all options available pursuant to this
 95 section.

96 2. Offer that student's parent an opportunity to enroll
 97 the student in a ~~the~~ public school within the district that has
 98 been designated by the state pursuant to s. 1008.34 as a school
 99 performing higher than that in which the student is currently
 100 enrolled or to which the student has been assigned, but not less
 101 than performance grade category "C." ~~The parent is not required~~
 102 ~~to accept this offer in lieu of requesting a state opportunity~~
 103 ~~scholarship to a private school.~~ The student shall have the
 104 opportunity to continue attendance in attending the higher-
 105 performing higher performing public school feeder pattern shall
 106 ~~remain in force~~ until the student graduates from high school.

107 (b) The parent of a student enrolled in or assigned to a
 108 school that has been designated as provided in subsection (2)
 109 ~~performance grade category "F" for 2 school years in a 4-year~~
 110 ~~period~~ may choose as an alternative to subparagraph (a)2. to
 111 enroll the student in and transport the student to a higher-
 112 performing public school that has available space in any other

CS/HB 1331

2011

113 ~~an adjacent~~ school district in the state, and that school
 114 district shall accept the student and report the student for
 115 purposes of the district's funding pursuant to the Florida
 116 Education Finance Program.

117 (c) For students in the school district who are
 118 participating in the state Opportunity Scholarship Program, the
 119 school district shall provide locations and times to take all
 120 statewide assessments required pursuant to s. 1008.22.

121 (d) Students with disabilities who are eligible to receive
 122 services from the school district under federal or state law,
 123 and who participate in this program, remain eligible to receive
 124 services from the school district as provided by federal or
 125 state law.

126 (e) ~~If for any reason a qualified private school is not~~
 127 ~~available for the student or~~ If the parent chooses to request
 128 that the student be enrolled in a higher-performing ~~the higher~~
 129 ~~performing~~ public school in the school district, ~~rather than~~
 130 ~~choosing to request the state opportunity scholarship,~~
 131 transportation costs to the higher-performing ~~higher-performing~~
 132 public school shall be the responsibility of the school
 133 district. The district may utilize state categorical
 134 transportation funds or state-appropriated public school choice
 135 incentive funds for this purpose. .

136 ~~(4) PRIVATE SCHOOL ELIGIBILITY. To be eligible to~~
 137 ~~participate in the Opportunity Scholarship Program, a private~~
 138 ~~school must be a Florida private school, may be sectarian or~~
 139 ~~nonsectarian, and must:~~

140 ~~(a) Demonstrate fiscal soundness by being in operation for~~

141 ~~1 school year or provide the Department of Education with a~~
 142 ~~statement by a certified public accountant confirming that the~~
 143 ~~private school desiring to participate is insured and the owner~~
 144 ~~or owners have sufficient capital or credit to operate the~~
 145 ~~school for the upcoming year serving the number of students~~
 146 ~~anticipated with expected revenues from tuition and other~~
 147 ~~sources that may be reasonably expected. In lieu of such a~~
 148 ~~statement, a surety bond or letter of credit for the amount~~
 149 ~~equal to the opportunity scholarship funds for any quarter may~~
 150 ~~be filed with the department.~~

151 ~~(b) Notify the Department of Education and the school~~
 152 ~~district in whose service area the school is located of its~~
 153 ~~intent to participate in the program under this section by May 1~~
 154 ~~of the school year preceding the school year in which it intends~~
 155 ~~to participate. The notice shall specify the grade levels and~~
 156 ~~services that the private school has available for the~~
 157 ~~Opportunity Scholarship Program.~~

158 ~~(c) Comply with the antidiscrimination provisions of 42~~
 159 ~~U.S.C. s. 2000d.~~

160 ~~(d) Meet state and local health and safety laws and codes.~~

161 ~~(e) Accept scholarship students on an entirely random and~~
 162 ~~religious-neutral basis without regard to the student's past~~
 163 ~~academic history; however, the private school may give~~
 164 ~~preference in accepting applications to siblings of students who~~
 165 ~~have already been accepted on a random and religious-neutral~~
 166 ~~basis.~~

167 ~~(f) Be subject to the instruction, curriculum, and~~
 168 ~~attendance criteria adopted by an appropriate nonpublic school~~

169 ~~accrediting body and be academically accountable to the parent~~
 170 ~~for meeting the educational needs of the student. The private~~
 171 ~~school must furnish a school profile which includes student~~
 172 ~~performance.~~

173 ~~(g) Employ or contract with teachers who hold a~~
 174 ~~baccalaureate or higher degree, or have at least 3 years of~~
 175 ~~teaching experience in public or private schools, or have~~
 176 ~~special skills, knowledge, or expertise that qualifies them to~~
 177 ~~provide instruction in subjects taught.~~

178 ~~(h) Comply with all state statutes relating to private~~
 179 ~~schools.~~

180 ~~(i) Accept as full tuition and fees the amount provided by~~
 181 ~~the state for each student.~~

182 ~~(j) Agree not to compel any student attending the private~~
 183 ~~school on an opportunity scholarship to profess a specific~~
 184 ~~ideological belief, to pray, or to worship.~~

185 ~~(k) Adhere to the tenets of its published disciplinary~~
 186 ~~procedures prior to the expulsion of any opportunity scholarship~~
 187 ~~student.~~

188 ~~(5) OBLIGATION OF PROGRAM PARTICIPATION.~~

189 ~~(a) Any student participating in the Opportunity~~
 190 ~~Scholarship Program must remain in attendance throughout the~~
 191 ~~school year, unless excused by the school for illness or other~~
 192 ~~good cause, and must comply fully with the school's code of~~
 193 ~~conduct.~~

194 ~~(b) The parent of each student participating in the~~
 195 ~~Opportunity Scholarship Program must comply fully with the~~
 196 ~~private school's parental involvement requirements, unless~~

197 ~~excused by the school for illness or other good cause.~~
 198 ~~(c) The parent shall ensure that the student participating~~
 199 ~~in the Opportunity Scholarship Program takes all statewide~~
 200 ~~assessments required pursuant to s. 1008.22.~~
 201 ~~(d) A participant who fails to comply with this subsection~~
 202 ~~shall forfeit the opportunity scholarship.~~
 203 ~~(6) OPPORTUNITY SCHOLARSHIP FUNDING AND PAYMENT.~~
 204 ~~(a) The maximum opportunity scholarship granted for an~~
 205 ~~eligible student shall be a calculated amount equivalent to the~~
 206 ~~base student allocation in the Florida Education Finance Program~~
 207 ~~multiplied by the appropriate cost factor for the educational~~
 208 ~~program that would have been provided for the student in the~~
 209 ~~district school to which he or she was assigned, multiplied by~~
 210 ~~the district cost differential. In addition, the calculated~~
 211 ~~amount shall include the per student share of instructional~~
 212 ~~materials funds, technology funds, and other categorical funds~~
 213 ~~as provided for this purpose in the General Appropriations Act.~~
 214 ~~(b) The amount of the opportunity scholarship shall be the~~
 215 ~~calculated amount or the amount of the private school's tuition~~
 216 ~~and fees, whichever is less. Fees eligible shall include~~
 217 ~~textbook fees, lab fees, and other fees related to instruction,~~
 218 ~~including transportation.~~
 219 ~~(c) The school district shall report all students who are~~
 220 ~~attending a private school under this program. The students~~
 221 ~~attending private schools on opportunity scholarships shall be~~
 222 ~~reported separately from those students reported for purposes of~~
 223 ~~the Florida Education Finance Program.~~
 224 ~~(d) The public or private school that provides services to~~

CS/HB 1331

2011

225 ~~students with disabilities shall receive the weighted funding~~
 226 ~~for such services at the appropriate funding level consistent~~
 227 ~~with the provisions of s. 1011.62(1)(c).~~

228 ~~(c) For purposes of calculating the opportunity~~
 229 ~~scholarship, a student will be eligible for the amount of the~~
 230 ~~appropriate basic cost factor if:~~

231 ~~1. The student currently participates in a Group I program~~
 232 ~~funded at the basic cost factor and is not subsequently~~
 233 ~~identified as having a disability; or~~

234 ~~2. The student currently participates in a Group II~~
 235 ~~program and the parent has chosen a private school that does not~~
 236 ~~provide the additional services funded by the Group II program.~~

237 ~~(f) Following annual notification on July 1 of the number~~
 238 ~~of participants, the Department of Education shall transfer from~~
 239 ~~each school district's appropriated funds the calculated amount~~
 240 ~~from the Florida Education Finance Program and authorized~~
 241 ~~categorical accounts to a separate account for the Opportunity~~
 242 ~~Scholarship Program for quarterly disbursement to the parents of~~
 243 ~~participating students.~~

244 ~~(g) Upon proper documentation reviewed and approved by the~~
 245 ~~Department of Education, the Chief Financial Officer shall make~~
 246 ~~opportunity scholarship payments in four equal amounts no later~~
 247 ~~than September 1, November 1, February 1, and April 1 of each~~
 248 ~~academic year in which the opportunity scholarship is in force.~~
 249 ~~The initial payment shall be made after Department of Education~~
 250 ~~verification of admission acceptance, and subsequent payments~~
 251 ~~shall be made upon verification of continued enrollment and~~
 252 ~~attendance at the private school. Payment must be by individual~~

CS/HB 1331

2011

253 ~~warrant made payable to the student's parent and mailed by the~~
 254 ~~Department of Education to the private school of the parent's~~
 255 ~~choice, and the parent shall restrictively endorse the warrant~~
 256 ~~to the private school.~~

257 ~~(7) LIABILITY. No liability shall arise on the part of the~~
 258 ~~state based on any grant or use of an opportunity scholarship.~~

259 ~~(4)(8) RULES.—The State Board of Education may adopt rules~~
 260 ~~pursuant to ss. 120.536(1) and 120.54 to implement the~~
 261 ~~provisions of this section. Rules shall include penalties for~~
 262 ~~noncompliance with subsections (3) and (5). However, the~~
 263 ~~inclusion of eligible private schools within options available~~
 264 ~~to Florida public school students does not expand the regulatory~~
 265 ~~authority of the state, its officers, or any school district to~~
 266 ~~impose any additional regulation of private schools beyond those~~
 267 ~~reasonably necessary to enforce requirements expressly set forth~~
 268 ~~in this section.~~

269 Section 2. Subsection (20) of section 1001.42, Florida
 270 Statutes, is amended to read:

271 1001.42 Powers and duties of district school board.—The
 272 district school board, acting as a board, shall exercise all
 273 powers and perform all duties listed below:

274 (20) OPPORTUNITY SCHOLARSHIPS.—Adopt policies allowing
 275 students attending schools that have been designated with a
 276 grade of "D" or "F," pursuant to s. 1008.34 and that are in one
 277 of the two lowest-performing categories pursuant to s. 1008.33
 278 ~~failing to make adequate progress, for 2 school years in a 4-~~
 279 ~~year period~~ to attend a higher-performing ~~higher-performing~~
 280 school in the district or any other an adjoining district in the

CS/HB 1331

2011

281 ~~state or be granted a state opportunity scholarship to a private~~
 282 ~~school~~, in conformance with s. 1002.38 and State Board of
 283 Education rule.

284 Section 3. Paragraph (b) of subsection (6) of section
 285 1002.20, Florida Statutes, is amended to read:

286 1002.20 K-12 student and parent rights.—Parents of public
 287 school students must receive accurate and timely information
 288 regarding their child's academic progress and must be informed
 289 of ways they can help their child to succeed in school. K-12
 290 students and their parents are afforded numerous statutory
 291 rights including, but not limited to, the following:

292 (6) EDUCATIONAL CHOICE.—

293 (b) Private school choices.—Parents of public school
 294 students may seek private school choice options under certain
 295 programs.

296 ~~1. Under the Opportunity Scholarship Program, the parent~~
 297 ~~of a student in a failing public school may request and receive~~
 298 ~~an opportunity scholarship for the student to attend a private~~
 299 ~~school in accordance with the provisions of s. 1002.38.~~

300 1.2. Under the McKay Scholarships for Students with
 301 Disabilities Program, the parent of a public school student with
 302 a disability ~~who is dissatisfied with the student's progress~~ may
 303 request and receive a McKay Scholarship for the student to
 304 attend a private school in accordance with the provisions of s.
 305 1002.39.

306 2.3. Under the Florida Tax Credit Scholarship Program, the
 307 parent of a student who qualifies for free or reduced-price
 308 school lunch may seek a scholarship from an eligible nonprofit

CS/HB 1331

2011

309 | scholarship-funding organization in accordance with the
310 | provisions of s. 1002.395.

311 | Section 4. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1331 School Choice
SPONSOR(S): Bileca and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 1822

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) K-20 Innovation Subcommittee	13 Y, 0 N	Valenstein	Sherry
2) PreK-12 Appropriations Subcommittee	13 Y, 0 N, As CS	Seifert	Heflin
3) Education Committee		Valenstein <i>JBV</i>	Klebacha <i>TK</i>

SUMMARY ANALYSIS

The bill expands the definition of a failing school for purposes of student eligibility for the Opportunity Scholarship Program (OSP). The bill changes the classification of a failing school from a school receiving two "F's" in a four-year period to a school that receives a "D" or an "F" in the prior year and is in one of the two lowest categories of differentiated accountability.

The bill expands the authorization parents currently have to choose a higher-performing public school that has space available in an adjacent school district to allow a parent to choose a higher-performing public school in any other school district in the state. The bill maintains the transportation requirements for school districts, thus, if a parent chooses a public school outside of the assigned school district, the parent is responsible for providing transportation. However, if a parent chooses a higher-performing public school within the assigned district, the school district is required to provide transportation. The authorization for use of categorical funds remains an option for school districts to provide the transportation required for opportunity scholarship recipients.

The bill repeals all portions of the law relating to the OSP private school choice options. This complies with existing case law that found this portion of the OSP unconstitutional.

The bill also makes necessary conforming changes relating to the expanded definition of a failing school for the OSP.

See FISCAL COMMENTS and DRAFTING ISSUES OR OTHER COMMENTS.

This bill provides an effective date of July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Overview

Opportunity Scholarship Program

The Opportunity Scholarship Program (OSP) was created in 1999 as part of a broad education reform package known as the A+ Plan.¹ The OSP was designed to provide parents of public school students in failing schools the opportunity to send their children to another public school performing satisfactorily or to an eligible private school. For purposes of the OSP, a failing school is a school that has received a performance grade of "F" for two years in a four-year period, this currently encompasses 24 schools.²

When created, both sectarian and nonsectarian private schools were eligible to receive an Opportunity Scholarship if the school met all the requirements established by law.³ However, in 2006, the Florida Supreme Court ruled that the private school scholarship option of the OSP violates the State Constitution. The Court's narrowly tailored opinion addressed only the issue of whether the State Constitution prohibits the state from expending public funds to allow students to use an Opportunity Scholarship to obtain a private school education. The Court held that "through the OSP the state is fostering plural, nonuniform systems of education in direct violation of the constitutional mandate for a uniform system of free public schools."⁴ Accordingly, an Opportunity Scholarship may now only be used to attend a public school of choice.

Due to the Court's ruling, a student may use an Opportunity Scholarship to attend either, a public school within the school district designated by the state as performing higher than that in which the student is currently enrolled or to which the student has been assigned, but not less than performance grade category "C," or a public school, in an adjacent school district, with available space that has been designated by the state as a higher-performing public school. If a parent chooses a school in an adjacent school district, the parent is responsible for transporting the student to and from the school.⁵

Currently, a student that receives an Opportunity Scholarship may continue attending a higher performing public school within the district or in an adjacent district until he or she graduates from high school.⁶

Differentiated Accountability

Differentiated accountability is a system for categorizing schools based upon student achievement and determining appropriate interventions for those schools with low student achievement. Schools are categorized according to the causes and severity of substandard student achievement. School improvement interventions are then applied to the school based upon the school's categorization. A school's categorization determines the type and intensity of school improvement interventions and whether interventions are directed by the school, school district, or state. The lowest performing schools receive more comprehensive interventions, while schools that are closer to meeting student achievement goals receive less intensive interventions.⁷

The six categories that comprise the differentiated accountability system include: Schools Not Required to Participate in Differentiated Accountability Strategies; Prevent I, Correct I, Prevent II, Correct II, and

¹ Section 2, ch. 99-398, L.O.F.

² Email, Department of Education Staff (March 16, 2011).

³ Section 2, ch. 99-398, L.O.F.

⁴ *Bush v. Holmes*, 919 So.2d 392 (Fla. 2006).

⁵ Section 1002.38(3)(a) and (b), F.S.

⁶ Section 1002.38(3)(a) and (b), F.S.

⁷ Section 1008.33, F.S.; rule 6A-1.099811, F.A.C.

Intervene.⁸ In 2010 there were 22 schools in the Intervene category and 961 schools in the Correct II category.⁹

Each category is based upon the school's grade, and the level and rate of change in student performance in the areas of reading and mathematics, disaggregated into student subgroups as described in the federal No Child Left Behind Act.¹⁰

Effect of Proposed Changes

The bill expands the definition of a failing school for purposes of student eligibility for the OSP. The bill changes the classification of a failing school from a school receiving two "F's" in a four-year period to a school that receives a "D" or an "F" in the prior year and has been classified in one of the two lowest-performing categories within the differentiated accountability program (*i.e.*, Correct II or Intervene). This expands the number of eligible schools to include 121 additional schools; however, of the 121 schools, 114 schools are Title I schools currently participating in the federal choice option.^{11,12}

The bill continues to allow a student to maintain the Opportunity Scholarship until the student graduates high school, but specifies the student may choose to continue attending the higher-performing public school feeder pattern¹³ until graduation. This appears to allow students to remain in the same schools as their classmates, regardless of the performance level of the feeder pattern school or their assigned school.

The bill expands the authorization parents currently have to choose a higher-performing public school that has space available in an adjacent school district to allow a parent to choose a high-performing public school in any other school district in the state. The bill maintains the transportation requirements for school districts, thus, if a parent chooses a public school outside of the assigned school district, the parent is responsible for providing transportation. However, if a parent chooses a higher-performing public school within the assigned district, the school district is required to provide transportation. The authorization for use of categorical funds remains an option for school districts to provide the transportation required for opportunity scholarship recipients.

The bill repeals all portions of the law relating to the OSP private school choice options. The bill removes these portions of the law to comply with existing case law regarding the constitutionality of using state funds to attend a private school.¹⁴

The bill also makes necessary conforming changes relating to the expanded definition of a failing school for the OSP.

B. SECTION DIRECTORY:

Section 1. Amends s. 1002.38, F.S., to revise legislative intent and eligibility requirements for participation in the Opportunity Scholarship Program; to delete provisions that authorize an Opportunity Scholarship for attendance at a private school; to require that an Opportunity Scholarship remain in force until the student graduates from high school; and to revise school district obligations and delete provisions relating to private schools to conform to changes made by the bill.

⁸ Rule 6A-1.0099811, F.A.C.

⁹ Email, Florida Department of Education Staff (Sept. 7, 2010).

¹⁰ Section 1008.33(3)(b), F.S.

¹¹ Email, Florida Department of Education (April 11, 2011).

¹² The federal No Child Left Behind Act requires school districts to provide students attending a Title I school that fails to meet adequate yearly progress for three consecutive years to transfer to a higher-performing public school. School districts are required to provide, or pay for, transportation to and from the school of choice, and are authorized to spend 20 percent of their Title I funds on a combination of choice related transportation and supplemental educational services, unless a lesser amount is required. 20 U.S.C. s. 1116(b); 34 C.F.R. s. 200.44

¹³ See Drafting Issues or Other Comments section of this analysis for discussion of feeder pattern schools.

¹⁴ See *Bush v. Holmes*, 919 So.2d 392 (Fla. 2006).

Section 2. Amends s. 1001.42, F.S., to conform provisions to changes made by the bill.

Section 3. Amends s. 1002.20, F.S., to conform provisions to changes made by the bill.

Section 4. Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See FISCAL COMMENTS.

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill expands the definition of a failing school for purposes of student eligibility for an Opportunity Scholarship. The bill maintains the requirement that school districts provide transportation for students using an Opportunity Scholarship to attend a higher-performing school within the district. By expanding the number of eligible students, the bill may cause an increase in transportation expenses for school districts. However, all but 7 of the schools included in the expanded definition are currently Title I schools and are therefore eligible for the public school choice option through the federal No Child Left Behind Act (NCLB).¹⁵

Twenty (20) percent of Title I funds must be used on a combination of choice related transportation and supplemental educational services.¹⁶ Although a school district will not be able to use its Title I funds to provide transportation for students participating in the OSP, to the degree Title I funds would no longer be needed to otherwise provide transportation for students, such funds could then be used for other educational services, thereby offsetting current school district expenditures for those other educational services.¹⁷

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill allows students to attend a higher-performing public school in any district within the state. This may impact the Florida Education Finance Program, because different school districts are funded at different rates based on the cost of living adjustment for the district.

¹⁵ Emails, Florida Department of Education (March 24, 2011 and April 11, 2011).

¹⁶ 20 U.S.C. s. 1116(b); 34 C.F.R. s. 200.44

¹⁷ See 20 U.S.C. s. 1120A(b).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Current law states, "The opportunity to continue attending the higher performing public school shall remain in force until the student graduates from high school." If the bill passes, the law will state, "The student shall have the opportunity to continue attendance in the higher-performing public school feeder pattern until the student graduates from high school." If 60 percent of an elementary school's students attend a particular middle school, that middle school is identified as the feeder pattern school.¹⁸ The bill, for example, would allow an elementary school student participating in the OSP to continue to the feeder pattern middle school, regardless of that school's performance level.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 29, 2011, the PreK-12 Appropriations Subcommittee adopted two amendments and reported the bill favorably as a Committee Substitute (CS). The amendments changed the definition of a failing school from a school receiving two "D's" in a four-year period or an "F" in a two year period to a school that has received a "D" or an "F." After these amendments, in order for a student to be eligible for an Opportunity Scholarship, the school the student is enrolled in, or scheduled to attend, must have received a school grade of "D" or "F" in the prior year and be categorized in the lowest two categories of differentiated accountability.

¹⁸ Section 1008.34(3)(a)3., F.S.

Amendment No. 1

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 Committee hearing bill: Education Committee
2 Representative(s) Stargel offered the following:

Amendment (with title amendment)

5 Remove everything after the enacting clause and insert:

6 Section 1. Subsection (3) of section 467.009, Florida
7 Statutes, is amended to read:

8 467.009 Midwifery programs; education and training
9 requirements.-

10 (3) To be accepted into an approved midwifery program, an
11 applicant shall have:

12 (a) A high school diploma or its equivalent.

13 (b) ~~Passed the college level academic scholastic test~~
14 ~~(CLAST)~~ or Taken three college-level credits each of math and
15 English or demonstrated competencies in communication and
16 computation.

17 Section 2. Section 1000.07, Florida Statutes, is repealed.

18 Section 3. Subsection (3) of section 1001.64, Florida
19 Statutes, is amended to read:

Amendment No. 1

20 1001.64 Community college boards of trustees; powers and
21 duties.—

22 (3) A board of trustees shall have the power to take
23 action without a recommendation from the president and shall
24 have the power to require the president to deliver to the board
25 of trustees all data and information required by the board of
26 trustees in the performance of its duties. A board of trustees
27 shall ask the Commissioner of Education to authorize an
28 investigation of the president's actions by the department's
29 inspector general if the board considers such investigation
30 necessary. The inspector general shall provide a report
31 detailing each issue under investigation and shall recommend
32 corrective action. If the inspector general identifies potential
33 legal violations, he or she shall refer the potential legal
34 violations to the Commission on Ethics, the Department of Law
35 Enforcement, the Attorney General, or another appropriate
36 authority.

37 Section 4. Subsection (4) of section 1004.015, Florida
38 Statutes, is renumbered as subsection (6) and amended, and new
39 subsections (4) and (5) are added to that section, to read:

40 1004.015 Higher Education Coordinating Council.—

41 (4) The council shall make detailed recommendations
42 relating to:

43 (a) The primary core mission of public and nonpublic
44 postsecondary education institutions in the context of state
45 access demands and economic development goals.

46 (b) Performance outputs and outcomes designed to meet
47 annual and long-term state goals, including, but not limited to,

Amendment No. 1

48 increased student access, preparedness, retention, transfer, and
49 completion. Performance measures must be consistent across
50 sectors and allow for a comparison of the state's performance to
51 that of other states.

52 (c) The state's articulation policies and practices to
53 ensure that cost benefits to the state are maximized without
54 jeopardizing quality. The recommendation shall consider return
55 on investment for both the state and students.

56 (d) A plan for workforce development education that
57 addresses:

58 1. The alignment of school district and Florida College
59 System workforce development education programs to ensure cost
60 efficiency and mission delineation, including an examination of
61 the need for both college credit and noncollege credit
62 certificate programs, an evaluation of the merit of retaining
63 the associate in applied science degree, and the consolidation
64 of adult general education programs within school districts.

65 2. The consistency of workforce education data collected
66 and reported by Florida College System institutions and school
67 districts, including the establishment of common elements and
68 definitions for any data that is used for state and federal
69 funding and program accountability.

70 (e) Baccalaureate degree authorization and production,
71 which shall include the following:

72 1. An assessment of the potential need to establish
73 comprehensive undergraduate institutions that would primarily
74 focus on the delivery of undergraduate instruction, including
75 offering baccalaureate degrees. Such institutions may include

Amendment No. 1

76 Florida College System institutions, state universities, and
77 university branch campuses. The recommendations must include
78 accountability options and address local and regional workforce
79 needs and gaps that might result from an institution's shift in
80 primary mission.

81 2. Recommendations related to appropriate student
82 enrollment and institutional expenditure thresholds for upper-
83 division programs that justify legislative consideration in
84 order to establish or reestablish an institution under the
85 oversight of the State Board of Education, the Board of
86 Governors, or another statutorily established or created
87 governing or coordinating organization.

88 3. Recommendations related to funding options and
89 strategies, student tuition and fees, student financial aid
90 funding, and other strategies to encourage performance-based
91 funding.

92 (5) The council shall submit a report outlining its
93 detailed recommendations to the Governor, the President of the
94 Senate, the Speaker of the House of Representatives, the Board
95 of Governors, and the State Board of Education by December 31,
96 2011, which specifically includes recommendations for
97 consideration by the Legislature for implementation in the 2012-
98 2013 fiscal year.

99 (6)-(4) The Board of Governors and the Department of
100 Education shall provide administrative support for the council.

101 Section 5. Paragraph (b) of subsection (4) of section
102 1004.04, Florida Statutes, is amended to read:

Amendment No. 1

103 1004.04 Public accountability and state approval for
104 teacher preparation programs.—

105 (4) INITIAL STATE PROGRAM APPROVAL.—

106 (b) Each teacher preparation program approved by the
107 Department of Education, as provided for by this section, shall
108 require students to meet the following as prerequisites for
109 admission into the program:

110 1. Have a grade point average of at least 2.5 on a 4.0
111 scale for the general education component of undergraduate
112 studies or have completed the requirements for a baccalaureate
113 degree with a minimum grade point average of 2.5 on a 4.0 scale
114 from any college or university accredited by a regional
115 accrediting association as defined by State Board of Education
116 rule or any college or university otherwise approved pursuant to
117 State Board of Education rule.

118 2. Demonstrate mastery of general knowledge, including the
119 ability to read, write, and compute, by passing the General
120 Knowledge Test of the Florida Teacher Certification Examination,
121 ~~the College Level Academic Skills Test,~~ a corresponding
122 component of the National Teachers Examination series, or a
123 similar test pursuant to rules of the State Board of Education.
124

125 Each teacher preparation program may waive these admissions
126 requirements for up to 10 percent of the students admitted.
127 Programs shall implement strategies to ensure that students
128 admitted under a waiver receive assistance to demonstrate
129 competencies to successfully meet requirements for
130 certification.

Amendment No. 1

131 Section 6. Section 1004.68, Florida Statutes, is amended
132 to read:

133 1004.68 Community college; degrees and certificates; ~~tests~~
134 ~~for certain skills.~~-

135 ~~(1)~~ Each community college board of trustees shall adopt
136 rules establishing student performance standards for the award
137 of degrees and certificates.

138 ~~(2)~~ ~~Each community college board of trustees shall require~~
139 ~~the use of scores on tests for college level communication and~~
140 ~~computation skills provided in s. 1008.345(7) as a condition for~~
141 ~~graduation with an associate in arts degree.~~

142 Section 7. Section 1007.01, Florida Statutes, is amended
143 to read:

144 1007.01 Articulation; legislative intent; purpose; role of
145 the State Board of Education and the Board of Governors;
146 articulation coordinating committee.-

147 (1) It is the intent of the Legislature to facilitate
148 articulation and seamless integration of the K-20 education
149 system by building, and sustaining, and strengthening
150 relationships among K-20 public organizations, between public
151 and private organizations, and between the education system as a
152 whole and Florida's communities. The purpose of building, and
153 sustaining, and strengthening these relationships is to provide
154 for the efficient and effective progression and transfer of
155 students within the education system and to allow students to
156 proceed toward their educational objectives as rapidly as their
157 circumstances permit. The Legislature further intends that
158 articulation policies and budget actions be implemented

Amendment No. 1

159 consistently in the practices of the Department of Education and
160 postsecondary educational institutions and expressed in the
161 collaborative policy efforts of the State Board of Education and
162 the Board of Governors.

163 (2) To improve and facilitate articulation systemwide, the
164 State Board of Education and the Board of Governors shall
165 collaboratively establish ~~recommend~~ and adopt policies and
166 guidelines to the Legislature with input from statewide K-20
167 advisory groups established by the Commissioner of Education and
168 the Chancellor of the State University System and shall
169 recommend the policies to the Legislature. The policies and
170 guidelines shall relate ~~relating~~ to:

171 (a) The alignment between the exit requirements of one
172 education system and the admissions requirements of another
173 education system into which students typically transfer.

174 (b) The identification of common courses, the level of
175 courses, institutional participation in a statewide course
176 numbering system, and the transferability of credits among such
177 institutions.

178 (c) Identification of courses that meet general education
179 or common degree program prerequisite requirements at public
180 postsecondary educational institutions.

181 (d) Dual enrollment course equivalencies.

182 (e) Articulation agreements.

183 (3) The Commissioner of Education, in consultation with
184 the Chancellor of the State University System, shall establish
185 the Articulation Coordinating Committee which shall make
186 recommendations related to statewide articulation policies to

Amendment No. 1

187 the Higher Education Coordination Council, the State Board of
188 Education, and the Board of Governors. The committee shall
189 consist of 2 members each representing the State University
190 System, the Florida College System, public career and technical
191 education, public K-12 education, and nonpublic education; and
192 one member representing students. The chair shall be elected
193 from the membership. The committee shall:

194 (a) Monitor the alignment between the exit requirements of
195 one education system and the admissions requirements of another
196 education system into which students typically transfer and make
197 recommendations for improvement.

198 (b) Propose guidelines for interinstitutional agreements
199 between and among public schools, career and technical education
200 centers, Florida College System institutions, state
201 universities, and nonpublic postsecondary institutions.

202 (c) Annually recommend dual enrollment course and high
203 school subject area equivalencies for approval by the State
204 Board of Education and the Board of Governors.

205 (d) Annually review the statewide articulation agreement
206 pursuant to s. 1007.23, and make recommendations for revisions.

207 (e) Annually review the statewide course numbering system,
208 the levels of courses, and the application of transfer credit
209 requirements among public and nonpublic institutions
210 participating in the statewide course numbering system and
211 identify instances of student transfer and admissions
212 difficulties.

213 (f) Annually publish a list of courses that meet common
214 general education and common degree program prerequisite

Amendment No. 1

215 requirements at public postsecondary institutions identified
216 pursuant to s. 1007.25.

217 (g) Examine statewide data regarding articulation to
218 identify issues and make recommendations to improve articulation
219 throughout the K-20 education system.

220 (h) Recommend roles and responsibilities of public
221 education entities in interfacing with the single, statewide
222 computer-assisted student advising system established pursuant
223 to s. 1007.28.

224 Section 8. Subsection (12) of section 1007.25, Florida
225 Statutes, is amended to read:

226 1007.25 General education courses; common prerequisites;
227 and other degree requirements.-

228 ~~(12) (a) A public postsecondary educational institution may~~
229 ~~not confer an associate in arts or baccalaureate degree upon any~~
230 ~~student who fails to successfully complete one of the following~~
231 ~~requirements:~~

232 ~~1. Achieve a score that meets or exceeds a minimum score~~
233 ~~on a nationally standardized examination, as established by the~~
234 ~~State Board of Education in conjunction with the Board of~~
235 ~~Governors; or~~

236 ~~2. Demonstrate successful remediation of any academic~~
237 ~~deficiencies and achieve a cumulative grade point average of 2.5~~
238 ~~or above, on a 4.0 scale, in postsecondary level coursework~~
239 ~~identified by the State Board of Education in conjunction with~~
240 ~~the Board of Governors. The Department of Education shall~~
241 ~~specify the means by which a student may demonstrate successful~~
242 ~~remediation.~~

Amendment No. 1

243 ~~(b) Any student who, in the best professional opinion of~~
244 ~~the postsecondary educational institution, has a specific~~
245 ~~learning disability such that the student cannot demonstrate~~
246 ~~successful mastery of one or more of the authorized examinations~~
247 ~~but is achieving at the college level in every area despite his~~
248 ~~or her disability, and whose diagnosis indicates that further~~
249 ~~remediation will not succeed in overcoming the disability, may~~
250 ~~appeal through the appropriate dean to a committee appointed by~~
251 ~~the president or the chief academic officer for special~~
252 ~~consideration. The committee shall examine the evidence of the~~
253 ~~student's academic and medical records and may hear testimony~~
254 ~~relevant to the case. The committee may grant a waiver for one~~
255 ~~or more of the authorized examinations based on the results of~~
256 ~~its review.~~

257 ~~(c) Each public postsecondary educational institution~~
258 ~~president shall establish a committee to consider requests for~~
259 ~~waivers from the requirements in paragraph (a). The committee~~
260 ~~shall be chaired by the chief academic officer of the~~
261 ~~institution and shall have four additional members appointed by~~
262 ~~the president as follows:~~

- 263 ~~1. One faculty member from the mathematics department;~~
- 264 ~~2. One faculty member from the English department;~~
- 265 ~~3. The institutional test administrator; and~~
- 266 ~~4. One faculty member from a department other than English~~
267 ~~or mathematics.~~

268 ~~(d) Any student who has taken the authorized examinations~~
269 ~~and has not achieved a passing score, but has otherwise~~
270 ~~demonstrated proficiency in coursework in the same subject area,~~

COMMITTEE AMENDMENT

Bill No. HB 7151 (2011)

Amendment No. 1

271 ~~may request a waiver from the examination requirement. Waivers~~
272 ~~shall be considered only after students have been provided test~~
273 ~~accommodations or other administrative adjustments to permit the~~
274 ~~accurate measurement of the student's proficiency in the subject~~
275 ~~areas measured by the authorized examinations. The committee~~
276 ~~shall consider the student's educational records and other~~
277 ~~evidence as to whether the student should be able to pass the~~
278 ~~authorized examinations. A waiver may be recommended to the~~
279 ~~president upon a majority vote of the committee. The president~~
280 ~~may approve or disapprove the recommendation. The president may~~
281 ~~not approve a request that the committee has disapproved. If a~~
282 ~~waiver is approved, the student's transcript shall include a~~
283 ~~statement that the student did not meet the requirements of this~~
284 ~~subsection and that a waiver was granted.~~

285 Section 9. Subsection (1) of section 1007.264, Florida
286 Statutes, is amended to read:

287 1007.264 Persons with disabilities; admission to
288 postsecondary educational institutions; substitute requirements;
289 rules and regulations.—

290 (1) Any student with a disability, as defined in s.
291 1007.02(2), who is otherwise eligible ~~except those students who~~
292 ~~have been documented as having intellectual disabilities~~, shall
293 be eligible for reasonable substitution for any requirement for
294 admission into a public postsecondary educational institution
295 where documentation can be provided that the person's failure to
296 meet the admission requirement is related to the disability.

297 Section 10. Subsection (1) of section 1007.265, Florida
298 Statutes, is amended to read:

Amendment No. 1

299 1007.265 Persons with disabilities; graduation, study
300 program admission, and upper-division entry; substitute
301 requirements; rules and regulations.—

302 (1) Any student with a disability, as defined in s.
303 1007.02(2), in a public postsecondary educational institution,
304 ~~except those students who have been documented as having~~
305 ~~intellectual disabilities,~~ shall be eligible for reasonable
306 substitution for any requirement for graduation, for admission
307 into a program of study, or for entry into the upper division
308 where documentation can be provided that the person's failure to
309 meet the requirement is related to the disability and where
310 failure to meet the graduation requirement or program admission
311 requirement does not constitute a fundamental alteration in the
312 nature of the program.

313 Section 11. Subsections (2) and (10) of section 1007.27,
314 Florida Statutes, are amended to read:

315 1007.27 Articulated acceleration mechanisms.—

316 (2) The Department of Education shall annually identify
317 and publish the minimum scores, maximum credit, and course or
318 courses for which credit is to be awarded for each College Level
319 Examination Program (CLEP) ~~general examination,~~ CLEP subject
320 examination, College Board Advanced Placement Program
321 examination, Advanced International Certificate of Education
322 examination, and International Baccalaureate examination. The
323 department shall use student performance data in subsequent
324 postsecondary courses to determine the appropriate examination
325 scores and courses for which credit is to be granted. Minimum
326 scores may vary by subject area based on available performance

Amendment No. 1

327 data. In addition, the department shall identify such courses in
328 the general education core curriculum of each state university
329 and community college.

330 ~~(10) Any student who earns 9 or more credits from one or~~
331 ~~more of the acceleration mechanisms provided for in this section~~
332 ~~is exempt from any requirement of a public postsecondary~~
333 ~~educational institution mandating enrollment during a summer~~
334 ~~term.~~

335 Section 12. Subsections (6) and (7) of section 1007.33,
336 Florida Statutes, are amended to read:

337 1007.33 Site-determined baccalaureate degree access.—

338 ~~(6)(a) Beginning July 1, 2010, and each subsequent July 1,~~
339 ~~the Division of Florida Colleges may accept and review~~
340 ~~applications from a Florida college to obtain an exemption from~~
341 ~~the State Board of Education's approval for subsequent degrees~~
342 ~~as required in subsection (5), if the Florida college is~~
343 ~~accredited by the Commission on Colleges of the Southern~~
344 ~~Association of Colleges and Schools as a baccalaureate degree-~~
345 ~~granting institution and has been offering baccalaureate degree~~
346 ~~programs for 3 or more years. The division shall develop~~
347 ~~criteria for determining eligibility for an exemption based upon~~
348 ~~demonstrated compliance with the requirements for baccalaureate~~
349 ~~degrees, primary mission, and fiscal, including, but not limited~~
350 ~~to:~~

351 ~~1. Obtaining and maintaining appropriate SACS~~
352 ~~accreditation;~~

353 ~~2. The maintenance of qualified faculty and institutional~~
354 ~~resources;~~

Amendment No. 1

355 ~~3. The maintenance of enrollment projections in previously~~
356 ~~approved programs;~~

357 ~~4. The appropriate management of fiscal resources;~~

358 ~~5. Compliance with the primary mission and responsibility~~
359 ~~requirements in subsections (2) and (3);~~

360 ~~6. The timely submission of the institution's annual~~
361 ~~performance accountability report; and~~

362 ~~7. Other indicators of success such as program completers,~~
363 ~~placements, and surveys of students and employers.~~

364 ~~(b) If the Florida college has demonstrated satisfactory~~
365 ~~progress in fulfilling the eligibility criteria in this~~
366 ~~subsection, the Division of Florida Colleges may recommend to~~
367 ~~the State Board of Education that the institution be exempt from~~
368 ~~the requirement in subsection (5) for approval of future~~
369 ~~baccalaureate degree programs. The State Board of Education~~
370 ~~shall review the division's recommendation and determine if an~~
371 ~~exemption is warranted. If the State Board of Education approves~~
372 ~~the application, the Florida college is exempt from subsequent~~
373 ~~program approval under subsection (5) and such authority is~~
374 ~~delegated to the Florida college board of trustees. If the State~~
375 ~~Board of Education disapproves of the Florida college's request~~
376 ~~for an exemption, the college shall continue to be subject to~~
377 ~~the State Board of Education's approval of subsequent~~
378 ~~baccalaureate degree programs.~~

379 ~~(c) Prior to developing or proposing a new baccalaureate~~
380 ~~degree program, all Florida colleges, regardless of an exemption~~
381 ~~from subsection (5), shall:~~

Amendment No. 1

382 ~~1. Engage in need, demand, and impact discussions with the~~
383 ~~state university in their service district and other local and~~
384 ~~regional, accredited postsecondary providers in their region.~~

385 ~~2. Send documentation, data, and other information from~~
386 ~~the inter-institutional discussions regarding program need,~~
387 ~~demand, and impact required in subparagraph 1. to the college's~~
388 ~~board of trustees, the Division of Florida Colleges, and the~~
389 ~~Chancellor of the State University System.~~

390 ~~3. Base board of trustees approval of the new program upon~~
391 ~~the documentation, data, and other information required in this~~
392 ~~paragraph and the factors in subsection (5) (d).~~

393

394 ~~The Division of Florida Colleges shall use the documentation,~~
395 ~~data, and other information required in this subsection,~~
396 ~~including information from the Chancellor of the State~~
397 ~~University System, in its compliance review.~~

398 ~~(d) The board of trustees of a Florida college that is~~
399 ~~exempt from subsection (5) must submit newly approved programs~~
400 ~~to the Division of Florida Colleges and SACS within 30 days~~
401 ~~after approval.~~

402 ~~(e) Within 30 days after receiving the approved~~
403 ~~baccalaureate degree program, the Division of Florida Colleges~~
404 ~~shall conduct a compliance review and notify the college if the~~
405 ~~proposal meets the criteria for implementation based upon the~~
406 ~~criteria in paragraphs (5) (d) and (6) (c). If the program fails~~
407 ~~to meet the criteria for implementation as determined by the~~
408 ~~Division of Florida Colleges, the college may not proceed with~~
409 ~~implementation of the program until the State Board of Education~~

Amendment No. 1

410 ~~reviews the proposal and the compliance materials and gives its~~
411 ~~final approval of the program.~~

412 ~~(6)-(7)~~ The State Board of Education shall adopt rules to
413 prescribe format and content requirements and submission
414 procedures for notices of intent, proposals, and alternative
415 proposals under subsection (5).

416 Section 13. Paragraph (a) of subsection (4) of section
417 1008.30, Florida Statutes, is amended to read:

418 1008.30 Common placement testing for public postsecondary
419 education.—

420 (4) (a) ~~Public postsecondary educational institution~~
421 Students who have been identified as requiring additional
422 preparation pursuant to subsection (1) shall enroll in college-
423 preparatory or other adult education pursuant to s. 1004.93 in
424 community colleges to develop needed college-entry skills. The
425 State Board of Education shall specify by rule provisions for
426 alternative remediation opportunities and retesting policies.
427 These students shall be permitted to take courses within their
428 degree program concurrently in other curriculum areas for which
429 they are qualified while enrolled in college-preparatory
430 instruction courses. A student enrolled in a college-preparatory
431 course may concurrently enroll only in college credit courses
432 that do not require the skills addressed in the college-
433 preparatory course. ~~The State Board of Education, in conjunction~~
434 ~~with the Board of Governors, shall specify the college credit~~
435 ~~courses that are acceptable for students enrolled in each~~
436 ~~college preparatory skill area. A degree-seeking student who~~
437 ~~wishes to earn an associate in arts or a baccalaureate degree,~~

Amendment No. 1

438 ~~but~~ who is required to complete a college-preparatory course,
439 must successfully complete the required college-preparatory
440 studies by the time the student has accumulated 12 hours of
441 lower-division college credit degree coursework; however, a
442 student may continue enrollment in degree-earning coursework
443 provided the student maintains enrollment in college-preparatory
444 coursework for each subsequent semester until college-
445 preparatory coursework requirements are completed, and provided
446 the student demonstrates satisfactory performance in degree-
447 earning coursework. A student who has accumulated 12 college
448 credit hours and has not yet demonstrated proficiency in the
449 basic competency areas of reading, writing, and mathematics must
450 be advised in writing of the requirements for associate degree
451 completion and state university admission, including information
452 about future financial aid eligibility and the potential costs
453 of accumulating excessive college credit as described in s.
454 1009.286. A passing score on a standardized, institutionally
455 ~~developed test must be achieved~~ Before a student is considered
456 to have met basic computation and communication skills
457 requirements, the student must demonstrate successful mastery of
458 the required developmental education competencies as defined in
459 State Board of Education rule; however, no student shall be
460 ~~required to retake any test or subtest that was previously~~
461 ~~passed by said student.~~ Credit awarded for college-preparatory
462 instruction may not be counted toward fulfilling the number of
463 credits required for a degree.

464 Section 14. Subsection (7) of section 1008.345, Florida
465 Statutes, is amended to read:

Amendment No. 1

466 1008.345 Implementation of state system of school
467 improvement and education accountability.—

468 (7) As a part of the system of educational accountability,
469 the Department of Education shall:

470 (a) Develop minimum standards for various grades and
471 subject areas, as required in ss. 1001.03, 1008.22, and 1008.34.

472 (b) Administer the statewide assessment testing program
473 created by s. 1008.22.

474 (c) Review the school advisory councils of each district
475 as required by s. 1001.452.

476 (d) Conduct the program evaluations required by s.
477 1001.03.

478 (e) Maintain a listing of college-level communication and
479 mathematics skills defined pursuant to s. 1008.29 as being
480 associated with successful student performance through the
481 baccalaureate level and submit it to the State Board of
482 Education and the Board of Governors for approval.

483 ~~(f) Maintain a listing of tests and other assessment~~
484 ~~procedures which measure and diagnose student achievement of~~
485 ~~college level communication and computation skills and submit it~~
486 ~~to the State Board of Education and the Board of Governors for~~
487 ~~approval.~~

488 ~~(g) Maintain for the information of the State Board of~~
489 ~~Education, the Board of Governors, and the Legislature a file of~~
490 ~~data to reflect achievement of college level communication and~~
491 ~~mathematics competencies by students in state universities and~~
492 ~~community colleges.~~

Amendment No. 1

493 ~~(h) Develop or contract for, and submit to the State Board~~
494 ~~of Education and the Board of Governors for approval, tests~~
495 ~~which measure and diagnose student achievement of college level~~
496 ~~communication and mathematics skills. Any tests and related~~
497 ~~documents developed are exempt from the provisions of s.~~
498 ~~119.07(1). The commissioner shall maintain statewide~~
499 ~~responsibility for the administration of such tests and may~~
500 ~~assign administrative responsibilities for the tests to any~~
501 ~~state university or community college. The state board, upon~~
502 ~~recommendation of the commissioner, may enter into contracts for~~
503 ~~such services beginning in one fiscal year and continuing into~~
504 ~~the next year which are paid from the appropriation for either~~
505 ~~or both fiscal years.~~

506 ~~(f)(i)~~ Perform any other functions that may be involved in
507 educational planning, research, and evaluation or that may be
508 required by the commissioner, the State Board of Education, the
509 Board of Governors, or law.

510 Section 15. Subsections (4) and (6) of section 1008.38,
511 Florida Statutes, are amended to read:

512 1008.38 Articulation accountability process.—The State
513 Board of Education, in conjunction with the Board of Governors,
514 shall develop articulation accountability measures which assess
515 the status of systemwide articulation processes authorized under
516 s. 1007.23 and establish an articulation accountability process
517 which at a minimum shall address:

518 (4) The smooth transfer of Florida College System
519 ~~community college~~ associate in arts degree graduates to a
520 Florida College System institution or a state university.

Amendment No. 1

521 (6) The relationship between student attainment of
522 college-level ~~the College Level~~ academic skills ~~Test Program~~ and
523 articulation to the upper division in public postsecondary
524 institutions.

525 Section 16. Subsection (1) of section 1009.534, Florida
526 Statutes, is amended to read:

527 1009.534 Florida Academic Scholars award.—

528 (1) A student is eligible for a Florida Academic Scholars
529 award if the student meets the general eligibility requirements
530 for the Florida Bright Futures Scholarship Program and the
531 student:

532 (a) Has achieved a 3.5 weighted grade point average as
533 calculated pursuant to s. 1009.531, or its equivalent, in high
534 school courses that are designated by the State Board of
535 Education as college-preparatory academic courses; and has
536 attained at least the score pursuant to s. 1009.531(6)(a) on the
537 combined verbal and quantitative parts of the Scholastic
538 Aptitude Test, the Scholastic Assessment Test, or the recentered
539 Scholastic Assessment Test of the College Entrance Examination,
540 or an equivalent score on the ACT Assessment Program;

541 (b) Has attended a home education program according to s.
542 1002.41 during grades 11 and 12 or has completed the
543 International Baccalaureate curriculum but failed to earn the
544 International Baccalaureate Diploma or has completed the
545 Advanced International Certificate of Education curriculum but
546 failed to earn the Advanced International Certificate of
547 Education Diploma, and has attained at least the score pursuant
548 to s. 1009.531(6)(a) on the combined verbal and quantitative

Amendment No. 1

549 parts of the Scholastic Aptitude Test, the Scholastic Assessment
550 Test, or the recentered Scholastic Assessment Test of the
551 College Entrance Examination, or an equivalent score on the ACT
552 Assessment Program;

553 (c) Has been awarded an International Baccalaureate
554 Diploma from the International Baccalaureate Office or an
555 Advanced International Certificate of Education Diploma from the
556 University of Cambridge International Examinations Office;

557 (d) Has been recognized by the merit or achievement
558 programs of the National Merit Scholarship Corporation as a
559 scholar or finalist; or

560 (e) Has been recognized by the National Hispanic
561 Recognition Program as a scholar recipient.

562
563 A student must complete a program of community service work, as
564 approved by the district school board, ~~or~~ the administrators of
565 a nonpublic school, or the Department of Education for home
566 school students, which shall include a minimum of 75 hours of
567 service work and require the student to identify a social
568 problem that interests him or her, develop a plan for his or her
569 personal involvement in addressing the problem, and, through
570 papers or other presentations, evaluate and reflect upon his or
571 her experience.

572 Section 17. This act shall take effect July 1, 2011.

573

574

575

576

Amendment No. 1

577 -----

578 T I T L E A M E N D M E N T

579 Remove the entire title and insert:
580 An act relating to postsecondary education; amending s.
581 467.009, F.S.; deleting a reference to the College-Level
582 Academic Skills Test (CLAST); repealing s. 1000.07, F.S.,
583 relating to the Florida Business and Education
584 Collaborative; amending s. 1001.64, F.S.; requiring a
585 Florida College System institution board of trustees to
586 ask the Commissioner of Education to authorize an
587 investigation of the college president by the Department
588 of Education's inspector general in specified
589 circumstances; requiring a report and recommendations;
590 requiring the inspector general to refer potential legal
591 violations to the Commission on Ethics, the Department of
592 Law Enforcement, the Attorney General, or other
593 appropriate authority; amending s. 1004.015, F.S.;
594 requiring the Higher Education Coordinating Council to
595 make recommendations and submit a report relating to core
596 missions of postsecondary education institutions,
597 performance outputs and outcomes, articulation policies,
598 workforce development education, and baccalaureate degree
599 authorization; amending s. 1004.04, F.S.; deleting a
600 reference to the CLAST; amending s. 1004.68, F.S.;
601 deleting provisions relating to the use of test scores for
602 assessment of college-level communication and computation
603 skills; amending s. 1007.01, F.S.; providing legislative
604 intent and requirements relating to articulation;

COMMITTEE AMENDMENT

Bill No. HB 7151 (2011)

Amendment No. 1

605 requiring the establishment of the Articulation
606 Coordinating Committee and providing its responsibilities;
607 amending s. 1007.25, F.S.; deleting provisions that
608 require an examination or demonstration of remediation of
609 academic deficiencies to obtain a postsecondary degree;
610 amending ss. 1007.264 and 1007.265, F.S.; deleting
611 provisions that exclude students with intellectual
612 disabilities from eligibility for substitute requirements
613 for admission to or graduation from a public postsecondary
614 education institution; amending s. 1007.27, F.S.;
615 requiring the Department of Education to use student
616 performance data to determine appropriate credit-by-
617 examination scores and courses; deleting an exemption from
618 summer-term enrollment in a public postsecondary education
619 institution for students earning accelerated credit;
620 amending s. 1007.33, F.S.; deleting an exemption from
621 provisions governing the approval process for
622 baccalaureate degrees; amending s. 1008.30, F.S.;
623 requiring rules for remediation opportunities, retesting,
624 and academic competencies; requiring that students be
625 advised of academic requirements, financial aid
626 eligibility, and certain costs; amending s. 1008.345,
627 F.S.; deleting Department of Education duties relating to
628 tests and assessment procedures that measure student
629 achievement of college-level communication and computation
630 skills; amending s. 1008.38, F.S.; revising and conforming
631 provisions relating to the articulation process; amending
632 s. 1009.534, F.S.; revising provisions relating to

COMMITTEE AMENDMENT

Bill No. HB 7151 (2011)

Amendment No. 1

633 approval of community service work for eligibility for the
634 Florida Academic Scholars award; providing an effective
635 date.
636

1 A bill to be entitled
2 An act relating to postsecondary education; amending s.
3 1004.015, F.S.; requiring the Higher Education
4 Coordinating Council to recommend plans and submit a
5 report to the Governor and the Legislature relating to
6 core missions of postsecondary education institutions,
7 performance outputs and outcomes, articulation policies,
8 workforce development education, and baccalaureate degree
9 authorization; amending s. 1007.27, F.S.; requiring the
10 Department of Education to use student performance data to
11 determine appropriate credit-by-examination scores and
12 courses; deleting an exemption from summer-term enrollment
13 in a public postsecondary education institution for
14 students with accelerated credit; amending s. 1007.33,
15 F.S.; deleting an exemption from provisions governing the
16 approval process for baccalaureate degrees; creating s.
17 1011.905, F.S.; requiring a uniform per FTE base amount to
18 be determined annually for 4-year doctor of medicine
19 degree programs offered by a state university; requiring
20 certain reporting; providing an effective date.

21
22 Be It Enacted by the Legislature of the State of Florida:

23
24 Section 1. Subsection (4) of section 1004.015, Florida
25 Statutes, is renumbered as subsection (6) and amended, and new
26 subsections (4) and (5) are added to that section, to read:
27 1004.015 Higher Education Coordinating Council.—

28 (4) The council shall, with input of the State Board of
 29 Education and the Board of Governors, recommend improvement
 30 options and implementation plans to:

31 (a) Define the primary core mission of public and
 32 nonpublic postsecondary education institutions in the context of
 33 state access demands and economic development goals.

34 (b) Establish performance outputs and outcomes designed to
 35 meet annual and long-term state goals, including, but not
 36 limited to, increased student access, preparedness, retention,
 37 transfer, and completion. Performance measures must be
 38 consistent across sectors and allow for a comparison of the
 39 state's performance to that of other states.

40 (c) Evaluate the state's articulation policies and
 41 practices to ensure that cost benefits to the state are
 42 maximized without jeopardizing quality. The evaluation shall
 43 consider return on investment for both the state and students.

44 (d) Establish a plan for the implementation of workforce
 45 development education changes that:

46 1. Align school district and Florida College System
 47 workforce development education programs to ensure cost
 48 efficiency and mission delineation, including an examination of
 49 the need for both college credit and noncollege credit
 50 certificate programs, an evaluation of the merit of retaining
 51 the associate in applied science degree, and the consolidation
 52 of adult general education programs within school districts.

53 2. Improve the consistency of workforce education data
 54 collected and reported by Florida College System institutions
 55 and school districts, including the establishment of common

56 elements and definitions for any data that is used for state and
 57 federal funding and program accountability.

58 (e) Address baccalaureate degree authorization and
 59 production, which shall include the following:

60 1. An assessment of the potential need to establish
 61 comprehensive undergraduate institutions that would primarily
 62 focus on the delivery of undergraduate instruction, including
 63 offering baccalaureate degrees. Such institutions may include
 64 Florida College System institutions, state universities, and
 65 university branch campuses. The assessment must recommend
 66 accountability options and address local and regional workforce
 67 needs and gaps that might result from an institution's shift in
 68 primary mission.

69 2. Recommendations related to appropriate student
 70 enrollment and institutional expenditure thresholds for upper-
 71 division programs that justify legislative consideration to
 72 establish or reestablish an institution under the governance and
 73 oversight of the State Board of Education, the Board of
 74 Governors, or another statutorily established or created
 75 governing or advisory organization.

76 3. Recommendations related to funding options and
 77 strategies, student tuition and fees, student financial aid
 78 funding, and other strategies to encourage performance-based
 79 funding.

80 (5) The council shall submit a report to the Governor, the
 81 President of the Senate, and the Speaker of the House of
 82 Representatives by December 31, 2011, that specifically includes
 83 recommendations for consideration by the Legislature for

84 implementation in the 2012-2013 fiscal year.

85 (6)(4) The Board of Governors and the Department of
 86 Education shall provide administrative support for the council.

87 Section 2. Subsections (2) and (10) of section 1007.27,
 88 Florida Statutes, are amended to read:

89 1007.27 Articulated acceleration mechanisms.—

90 (2) The Department of Education shall annually identify
 91 and publish the minimum scores, maximum credit, and course or
 92 courses for which credit is to be awarded for each College Level
 93 Examination Program (CLEP) ~~general examination, CLEP subject~~
 94 ~~examination, College Board Advanced Placement Program~~
 95 examination, Advanced International Certificate of Education
 96 examination, and International Baccalaureate examination. The
 97 department shall use student performance data in subsequent
 98 postsecondary courses to determine the appropriate examination
 99 scores and courses for which credit is to be granted. In
 100 addition, the department shall identify such courses in the
 101 general education core curriculum of each state university and
 102 community college.

103 ~~(10) Any student who earns 9 or more credits from one or~~
 104 ~~more of the acceleration mechanisms provided for in this section~~
 105 ~~is exempt from any requirement of a public postsecondary~~
 106 ~~educational institution mandating enrollment during a summer~~
 107 ~~term.~~

108 Section 3. Subsections (6) and (7) of section 1007.33,
 109 Florida Statutes, are amended to read:

110 1007.33 Site-determined baccalaureate degree access.—

111 ~~(6)(a) Beginning July 1, 2010, and each subsequent July 1,~~

112 ~~the Division of Florida Colleges may accept and review~~
 113 ~~applications from a Florida college to obtain an exemption from~~
 114 ~~the State Board of Education's approval for subsequent degrees~~
 115 ~~as required in subsection (5), if the Florida college is~~
 116 ~~accredited by the Commission on Colleges of the Southern~~
 117 ~~Association of Colleges and Schools as a baccalaureate degree-~~
 118 ~~granting institution and has been offering baccalaureate degree~~
 119 ~~programs for 3 or more years. The division shall develop~~
 120 ~~criteria for determining eligibility for an exemption based upon~~
 121 ~~demonstrated compliance with the requirements for baccalaureate~~
 122 ~~degrees, primary mission, and fiscal, including, but not limited~~
 123 ~~to:~~

- 124 ~~1. Obtaining and maintaining appropriate SACS~~
 125 ~~accreditation;~~
- 126 ~~2. The maintenance of qualified faculty and institutional~~
 127 ~~resources;~~
- 128 ~~3. The maintenance of enrollment projections in previously~~
 129 ~~approved programs;~~
- 130 ~~4. The appropriate management of fiscal resources;~~
- 131 ~~5. Compliance with the primary mission and responsibility~~
 132 ~~requirements in subsections (2) and (3);~~
- 133 ~~6. The timely submission of the institution's annual~~
 134 ~~performance accountability report; and~~
- 135 ~~7. Other indicators of success such as program completers,~~
 136 ~~placements, and surveys of students and employers.~~

137 ~~(b) If the Florida college has demonstrated satisfactory~~
 138 ~~progress in fulfilling the eligibility criteria in this~~
 139 ~~subsection, the Division of Florida Colleges may recommend to~~

140 ~~the State Board of Education that the institution be exempt from~~
 141 ~~the requirement in subsection (5) for approval of future~~
 142 ~~baccalaureate degree programs. The State Board of Education~~
 143 ~~shall review the division's recommendation and determine if an~~
 144 ~~exemption is warranted. If the State Board of Education approves~~
 145 ~~the application, the Florida college is exempt from subsequent~~
 146 ~~program approval under subsection (5) and such authority is~~
 147 ~~delegated to the Florida college board of trustees. If the State~~
 148 ~~Board of Education disapproves of the Florida college's request~~
 149 ~~for an exemption, the college shall continue to be subject to~~
 150 ~~the State Board of Education's approval of subsequent~~
 151 ~~baccalaureate degree programs.~~

152 ~~(c) Prior to developing or proposing a new baccalaureate~~
 153 ~~degree program, all Florida colleges, regardless of an exemption~~
 154 ~~from subsection (5), shall:~~

155 ~~1. Engage in need, demand, and impact discussions with the~~
 156 ~~state university in their service district and other local and~~
 157 ~~regional, accredited postsecondary providers in their region.~~

158 ~~2. Send documentation, data, and other information from~~
 159 ~~the inter-institutional discussions regarding program need,~~
 160 ~~demand, and impact required in subparagraph 1. to the college's~~
 161 ~~board of trustees, the Division of Florida Colleges, and the~~
 162 ~~Chancellor of the State University System.~~

163 ~~3. Base board of trustees approval of the new program upon~~
 164 ~~the documentation, data, and other information required in this~~
 165 ~~paragraph and the factors in subsection (5) (d).~~

166

167 ~~The Division of Florida Colleges shall use the documentation,~~

168 ~~data, and other information required in this subsection,~~
 169 ~~including information from the Chancellor of the State~~
 170 ~~University System, in its compliance review.~~

171 ~~(d) The board of trustees of a Florida college that is~~
 172 ~~exempt from subsection (5) must submit newly approved programs~~
 173 ~~to the Division of Florida Colleges and SACS within 30 days~~
 174 ~~after approval.~~

175 ~~(e) Within 30 days after receiving the approved~~
 176 ~~baccalaureate degree program, the Division of Florida Colleges~~
 177 ~~shall conduct a compliance review and notify the college if the~~
 178 ~~proposal meets the criteria for implementation based upon the~~
 179 ~~criteria in paragraphs (5)(d) and (6)(e). If the program fails~~
 180 ~~to meet the criteria for implementation as determined by the~~
 181 ~~Division of Florida Colleges, the college may not proceed with~~
 182 ~~implementation of the program until the State Board of Education~~
 183 ~~reviews the proposal and the compliance materials and gives its~~
 184 ~~final approval of the program.~~

185 ~~(6)(7)~~ The State Board of Education shall adopt rules to
 186 prescribe format and content requirements and submission
 187 procedures for notices of intent, proposals, and alternative
 188 proposals under subsection (5).

189 Section 4. Section 1011.905, Florida Statutes, is created
 190 to read:

191 1011.905 State university medical school funding.-
 192 Beginning with the 2012-2013 fiscal year, a uniform per FTE base
 193 amount shall be determined annually in the General
 194 Appropriations Act for each 4-year doctor of medicine degree
 195 program offered by a state university. Each college of medicine

HB 7151

2011

196 | shall uniformly report annual expenditures and outcome data for
197 | 4-year doctor of medicine degree programs to the Board of
198 | Governors.

199 | Section 5. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7151 PCB KINS 11-02 Postsecondary Education

SPONSOR(S): K-20 Innovation Subcommittee, Stargel

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: K-20 Innovation Subcommittee	13 Y, 0 N	Thomas	Sherry
1) Education Committee		Thomas <i>not</i>	Klebacha <i>CK</i>

SUMMARY ANALYSIS

The bill requires the Higher Education Coordinating Council (HECC), with input from the State Board of Education and the Board of Governors, to recommend improvement options and implementation plans to:

- Define the missions of public and nonpublic postsecondary education institutions;
- Establish performance outputs and outcomes designed to meet annual and long-term state goals;
- Evaluate Florida's articulation policies and practices;
- Establish a plan that aligns school district and Florida College System (FCS) workforce development education programs and improve the consistency of workforce education data collection and reporting by colleges and school districts; and
- Recommend a plan for addressing baccalaureate degree authorization and production. The plan shall include:
 - An assessment of the potential need to establish comprehensive undergraduate institutions;
 - Recommendations regarding a threshold for student enrollment in upper division programs that could trigger changes in governance structure; and
 - State funding options and strategies.

The Department of Education, in addition to the Board of Governors, is required to provide administrative support to the HECC.

The HECC is required to submit a report by December 31, 2011, that specifically includes recommendations for legislative consideration during the 2012 Legislative Session.

Four-year doctor of medicine degree programs at state universities are required to receive a uniform base level of support per student, as determined annually in the General Appropriations Act. Each medical school is required to report annual expenditures and outcome data to the Board of Governors.

The Department of Education is required to utilize student performance data in subsequent coursework in determining appropriate Advanced Placement (AP), College-Level Examination Program (CLEP), International Baccalaureate (IB), and Advanced International Certificate of Education (AICE) examination scores for the receipt of college credit. The Department must annually identify and publish the minimum scores, maximum credit, and course or courses for which credit is to be awarded.

The exemption from the state university system summer term enrollment requirement for students who have earned 9 or more credits through acceleration mechanisms is repealed.

The provision governing the approval process for additional baccalaureate degrees at FCS institutions offering baccalaureate degree programs for 3 or more years is removed.

The fiscal impact of the bill is indeterminate. (See FISCAL COMMENTS).

The effective date of this act is July 1, 2011.

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

STORAGE NAME: h7151.EDC.DOCX

DATE: 4/11/2011

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The bill establishes Legislative policy direction for several higher/postsecondary education issues, including: requirements for accelerated credit, exemption options for college baccalaureate degree programs, policy for funding state university medical schools, and topics for advisory reporting functions for the Higher Education Coordinating Council.

Higher Education Coordinating Council (HECC)

The Higher Education Coordinating Council was created by the Legislature in 2010 to identify unmet needs and to facilitate solutions to disputes regarding the creation of new degree programs and the establishment of new institutes, campuses, or centers. The Board of Governors (BOG) provides administrative support for the HECC.¹

The HECC is required to act as an advisory board to the Legislature, the State Board of Education and BOG. Recommendations of the HECC must be consistent with the following guiding principles:

- To achieve within existing resources a seamless academic educational system that fosters an integrated continuum of kindergarten through graduate school education for Florida's students;
- To promote consistent education policy across all educational delivery systems, focusing on students;
- To promote substantially improved articulation across all educational delivery systems;
- To promote a system that maximizes educational access and allows the opportunity for a high-quality education for all Floridians;
- To promote a system of coordinated and consistent transfer of credit and data collection for improved accountability purposes between the educational delivery systems.²

HECC is comprised of the following members: the Commissioner of Education; the Chancellor of the State University System of Florida; the Chancellor of the Florida College System; the Executive Director of the Commission for Independent Education; the Executive Director of the Independent Colleges and Universities of Florida; and two members representing the business community, one appointed by the President of the Senate and one by the Speaker of the House of Representatives.³

Articulation

Articulation among secondary and postsecondary education institutions and the provision of access to postsecondary education policies are governed by ch. 1007, F.S., and by rules of the State Board of Education and regulations of the Board of Governors.

The intent of the Legislature is to facilitate articulation and seamless integration of the K-20 education system by building and sustaining relationships among K-20 public organizations, between public and private organizations, and between the education system as a whole and Florida's communities. The purpose of building and sustaining these relationships is to provide for the efficient and effective progression and transfer of students within the education system and allow students to proceed toward their educational objectives as rapidly as their circumstances permit.⁴

¹ Section 1004.015(1), F.S.

² Section 1004.015(3), F.S.

³ Section 1004.015(2), F.S.

⁴ Section 1007.01(1), F.S.

Articulated Acceleration Mechanisms

Examination Scores

The Department of Education (DOE) is required to establish minimum scores, maximum credit, and courses for which credit is award for College-Level Examination Program (CLEP) exams, Advanced Placement (AP), Advanced International Certificate of Education (AICE), and International Baccalaureate (IB) examinations. DOE is also required to identify each course in the general education core curriculum of each state university and FCS institutions.⁵

Summer Term Enrollment

Students are provided an exemption from the university requirement that every student must enroll in at least one summer term for students who earns 9 or more credit hours through an acceleration mechanism, such as dual enrollment and advanced placement.⁶ Under BOG regulations all students entering the State University System with less than 60 credit hours must enroll in a minimum of 9 credit hours of coursework during one or more summer sessions. Exceptions are made for students who earn 9 or more credits from one or more of the acceleration mechanism, such as dual enrollment, early admission, advanced placement, and credit by examination.⁷

Workforce Education

Workforce education⁸ programs in Florida are designed to assist individuals in attaining skills necessary for economic self-sufficiency and provide training to meet local and state workforce needs. These programs include both adult general education and career education programs and may be offered by school districts and FCS institutions.⁹ State agency oversight for workforce education is provided by the Division of Career and Adult Education within the Department of Education (DOE).¹⁰ While both school districts and Florida College System (FCS) institutions are authorized to provide workforce education programs, only FCS institutions are permitted to award college credits.¹¹

In 2010, the Florida Legislature directed the Office of Program Policy Analysis and Government Accountability (OPPAGA) to conduct a review of public workforce education programs for the purpose of identifying and analyzing the positive and negative aspects of merging the school district programs with FCS institution programs. OPPAGA found that school districts and colleges locally determine what workforce education programs to provide in their service areas and how to divide responsibility for these programs, resulting in a varied delivery system across the state. However, the entities tend to offer different types of workforce education programs and typically avoid duplicating programs within individual counties. With regard to consolidating workforce education, OPPAGA suggested that such reorganization could produce benefits. It could help provide more consistent policies and practices for workforce education programs, provide better alignment and articulation of postsecondary career education programs, and make it easier for some students to access financial aid. Consolidating adult education under school districts could help their efforts to address dropout prevention and recovery.¹²

⁵ Section 1007.27(2), F.S.

⁶ Section 1007.27(10), F.S.

⁷ Regulation 6.016 Summer Session Enrollment, Board of Governors and Board of Governors, Frequently Asked Questions, <http://www.flbog.org/forstudents/faq/#6> (last visited March 18, 2011).

⁸ Section 1004.02(26), F.S. (providing that “workforce education” means “adult general education or career education and may consist of a continuing workforce education course or a program of study leading to an occupational completion point, a career certificate, an applied technology program, or a career degree.”).

⁹ Sections 1004.02(3) and (26), 1004.92(1), 1004.93, and 1011.80(1) and (2), F.S.

¹⁰ Section 20.15(3)(c), F.S.

¹¹ Section 1011.80(2), F.S.

¹² Office of Program Policy Analysis and Government Accountability, *School Districts and Colleges Share Responsibility for Workforce Education; Duplication is Minimal*, Report No. 10-61 (December 2010).

Florida College System Institution's Mission

In April 2005, the OPPAGA released Report No. 05-20 *Authorizing Community Colleges to Award Baccalaureate Degrees Is One of Several Options to Expand Access to Higher Education*. The report stated that community colleges with baccalaureate programs could be at risk for "mission creep" as the number of community college baccalaureate programs and student enrollment in them increases. Within the higher education community, institutions that offer four-year degrees are often held in higher esteem than institutions that offer two-year degrees. Focusing on four-year degree programs could weaken the community colleges' statutorily mandated focus on associate degree, certificate, and adult education programs. At the time the OPPAGA report was released only three colleges had successfully completed the application and approval process and offered baccalaureate degrees under their own authority.¹³

In 2007, the Pappas Consulting Group presented the Board of Governors with the results of its fall 2006 analysis of the current structure of the university system and made recommendations for future improvements. In the final report, "*Proposing a Blueprint for Higher Education in Florida: Outlining the Way to a Long-term Master Plan for Higher Education in Florida*", the Pappas Group reported that Florida, by far, has the largest number of community colleges that offered baccalaureate programs in the United States and should pay attention to the possible dilution of emphasis on the traditional community college mission.¹⁴

History of Baccalaureate Degree Programs

In 1998-99, the State Board of Community Colleges, the Postsecondary Education Planning Commission (PEPC) [*renamed Council for Education Policy Research and Improvement (CEPRI)*], and the Senate Education Committee identified access to baccalaureate programs as a major issue in Florida, and recognized community colleges as a potential option for addressing that need.¹⁵

In 1999, the Legislature authorized community colleges to seek approval to provide upper division coursework and award baccalaureate degrees with CEPRI approval.¹⁶ In 2001, the Legislature, reestablished St. Petersburg Junior College as St. Petersburg College and authorized St. Petersburg College to offer baccalaureate degrees in applied science, nursing, and education. Four years after first receiving accreditation to offer baccalaureate degrees, the college was also authorized to offer additional baccalaureate degree programs if approved by local stakeholders based on community needs and economic opportunities.¹⁷ Later, additional institutions – Chipola Junior College, Edison Community College, Miami Dade Community College, and Okaloosa-Walton Community College – submitted baccalaureate proposals, with CEPRI serving as primary review.¹⁸

Florida College System (FCS) Institution Baccalaureate Degree Program

Concurrent or Joint-Use Partnership Baccalaureate Degree Programs

FCS institutions are statutorily authorized to offer baccalaureate or higher degree course work on their campuses through concurrent or joint-use partnerships with State University System institutions or independent colleges or universities. Partnerships are contractual in nature and do not require State Board of Education approval. Such partnerships enable students to earn a baccalaureate degree or higher from a four-year postsecondary institution while taking all or most of the course work on the FCS institution's campus or via distance learning. Twenty-seven of Florida's 28 colleges currently offer upper-level courses through concurrent-use or joint-use partnerships. As a result, concurrent-use partnerships have provided access to 409 upper-level baccalaureate programs, 134 masters programs,

¹³ The Office of Program Policy Analysis and Government Accountability, *Authorizing Community Colleges to Award Baccalaureate Degrees Is one of Several Options to Expand Access to Higher Education, Report No. 05-20 (April 2005)*.

¹⁴ Pappas Consulting Group, *Proposing a Blueprint for Higher Education in Florida: Outlining the Way to a long-term Master Plan for Higher Education in Florida, (2007)*.

¹⁵ HB 765 bill analysis (1999).

¹⁶ Section 1007.33, F.S. (formerly s. 240.3836, F.S.)

¹⁷ Section 1007.33(4)(c), F.S. (formerly ss. 240.5278, F.S. & 1004.73, F.S.)

¹⁸ Department of Education, Florida College System, *History of the Need for Baccalaureates Policy Paper (July 2005)*.

5 specialist programs, 11 doctoral programs and 6 professional programs at FCS institutions or shared facilities.¹⁹

Independently offered Baccalaureate Degree Programs

FCS institutions are also authorized to independently offer baccalaureate degree programs with approval by the State Board of Education²⁰ or in the case of St. Petersburg College, when approved by the college's board of trustees.²¹ The Florida College System has continued to expand its baccalaureate program offerings since 2001.

Currently, a total of 121 baccalaureate degree programs have been approved at 19 FCS institutions.²² FCS baccalaureate degree enrollment has increased dramatically from 2,834 in 2006 to 8,155 in 2009, an increase of 188%.²³

Notice of Intent to Offer a Baccalaureate Degree Program

A FCS institution proposing to offer a baccalaureate degree must notify the Division of Florida Colleges (Division) of its intent to propose a degree program at least 100 days before submitting its proposal to the division. The notice must describe the program, workforce demand and unmet need for graduates of the program, region served, and timeframe for implementation. Within 10 days of receipt of the notice, the Division must forward the notice to the chancellor of the state university system, the executive director of the Independent Colleges and Universities of Florida, and the executive director of the Commission for Independent Education. The state universities have 60 days following receipt of the notice to submit an alternative proposal to offer the baccalaureate degree. If the SUS hasn't submitted an alternative proposal within the 60 day period, the SBE must provide regionally accredited private colleges and universities 30 days to submit an alternative proposal.²⁴

Medical Education Program Funding

Florida is expanding its public medical education programs and schools. Currently, six state universities offer medical education programs – five medical schools currently operating at University of Florida, University of South Florida, Florida State University, University of Central Florida, and Florida International University and one public/private partnership between Florida Atlantic University and the University of Miami. With the expansion of medical education to six public universities, program enrollment is expected to increase to 2,716 students in Fiscal year 2016-17.

The state provides funding for undergraduate medical education through appropriations to the State University System. According to OPPAGA, Florida's expansion of medical education programs occurred without the benefit of a consistent model for determining the funding needed to support these programs. Rather, each university has established its own methodology to identify funding needs.

During the 2007 legislative session, the University of Florida and the University of South Florida questioned the level of state support provided for medical education at their institutions. The Legislature in 2007 directed OPPAGA, with the assistance of the Board of Governors, to review funding models used for public medical education programs.²⁵ OPPAGA produced two reports, *Medical Education Funding is Complex; Better Expenditure Data is Needed* (Report No 08-36, June 2008) and *Medical Education Program Funding Model Must Address Institutional Variations and Data Limitations* (Report No. 09-19). The reports addressed trends in medical school funding, funding models for medical education in other states, and medical education costs. The reports also provided a methodology for comparing current and planned funding levels among the state's public medical schools and funding levels from national studies.

¹⁹ Department of Education, Florida College System, Access to Baccalaureate Degrees (July 2010).

²⁰ Section 1007.33, F.S.

²¹ Section 1007.33(4), F.S.

²² Department of Education, Florida Colleges System, http://www.fldoe.org/cc/students/bach_degree.asp (last visited March 14, 2011).

²³ Department of Education, Florida College System, *Baccalaureate Program Trends and Accountability*, 2010-02 (April 2010).

²⁴ Section 1007.33(5), F.S.

²⁵ GAA, Specific Appropriations 167 through 170A (Ch. 2007.072, LOF).

Following those reports, the 2009 Legislature directed the Board of Governors to develop a funding methodology for a consistent base level of student support on a per-student basis for each 4 year doctor of medicine degree program offered by a state university. In January 2010, BOG released a report that identified a new method for reporting state revenues and expenditures associated with medical degrees and certain other university medical education and health-related activities.

Effect of Proposed Changes

The bill requires the Higher Education Coordinating Council (HECC), with input from the State Board of Education and the Board of Governors, to recommend improvement options and implementation plans to:

- Define the missions of public and nonpublic postsecondary education institutions;
- Establish performance outputs and outcomes designed to meet annual and long-term state goals;
- Evaluate Florida's articulation policies and practices;
- Establish a plan that aligns school district and Florida College System workforce development education programs and improve the consistency of workforce education data collection and reporting by colleges and school districts; and
- Recommend a plan for addressing baccalaureate degree authorization and production. The plan shall include:
 - An assessment of the potential need to establish comprehensive undergraduate institutions;
 - Recommendations regarding a threshold for student enrollment in upper division programs that could trigger changes in governance structure; and
 - State funding options and strategies.

The bill requires the Department of Education, in addition to the Board of Governors, to provide administrative support to the HECC. Currently, administrative support is provided only by the Board of Governors.

The bill requires the HECC to submit a report by December 31, 2011, that specifically includes recommendations for legislative consideration during the 2012 Legislative Session.

The bill requires the Department of Education to utilize student performance data in subsequent postsecondary coursework in determining appropriate Advanced Placement (AP), College-Level Examination Program (CLEP), International Baccalaureate (IB), and Advanced International Certificate of Education (AICE) examination scores for the receipt of college credit. The Department of Education is required to annually identify and publish the minimum scores, maximum credit, and course or courses for which credit is to be awarded. Currently, the Department of Education regularly solicits input from postsecondary faculty committees representing both the Florida College System and the State University System in this process. Committees are arranged so that faculty with expertise in each academic discipline area have an opportunity to review each examination and recommend the appropriate examination score and college course for which students should receive credit. The bill requires this process to take place on an annual basis and requires the utilization of student performance data to inform faculty decisions regarding equivalent credit.

The bill repeals the exemption from the state university system summer term enrollment requirement for students who have earned 9 or more credits through acceleration mechanisms.

The bill repeals section 1007.33 (6), F.S., governing the approval process for additional baccalaureate degrees at FCS institutions offering baccalaureate degree programs for 3 or more years. Currently an institution that has been authorized to offer baccalaureate degrees, received Level 2 accreditation from the Southern Association of Colleges and Schools, and has offered baccalaureate degrees for at least 3 years, can request an exemption from the State Board of Education approval process. According to DOE, the FCS institutions that would qualify for this are Chipola College, Miami Dade College, Edison State College, Northwest Florida State College, Daytona State College, Florida State College at Jacksonville, and Indian River State College. Two additional colleges, Broward College and Palm

Beach College would become eligible later in 2012. There are no colleges currently applying for the exemption.²⁶

The bill requires that 4-year doctor of medicine degree programs at state universities receive a uniform base level of state support, as determined annually in the General Appropriations Act. It requires each medical school to report annual expenditures and outcome data to the Board of Governors.

B. SECTION DIRECTORY:

Section 1. Amending s. 1004.015, F.S., requiring the Higher Education Coordinating Council with input from the State Board of Education and Board of Governors to make recommendations relating to the mission of postsecondary education, performance outputs and outcomes, articulation policies, workforce development education, and baccalaureate degree authorization; requiring the council to submit a report.

Section 2. Amending s. 1007.27, F.S., requiring the Department of Education to use student performance data to determine appropriate credit-by-examination scores and courses; deleting an exemption from summer-term enrollment in a public postsecondary education institution for students with accelerated credits.

Section 3. Amending s. 1007.33, F.S., deleting an exemption from provisions governing the approval process for baccalaureate degrees.

Section 4. Creating s. 1011.905, F.S., requiring a uniform per FTE base amount to be determined annually for 4-year doctor of medicine degree program offered by a state university; requiring certain reporting.

Section 5. Providing an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

²⁶ Telephone Conversation with Department of Education Staff (March 18, 2011).

D. FISCAL COMMENTS:

The State Board of Education is required to provide administrative support for the HECC along with the Board of Governors, which may result in additional costs to their administrative budget. The exact costs are indeterminate, but likely insignificant.

Recipients of a Bright Futures Scholarship would be required to pay for classes during the summer term unless funds were appropriated by the Legislature for summer enrollment.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 7219 (2011)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE 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 Committee/Subcommittee hearing bill: Education Committee

2 Representative(s) McKeel offered the following:

3
4 **Amendment (with title amendment)**

5 Between lines 283 and 284, insert:

6 Section 9. Section 1010.77, Florida Statutes, is repealed.

7
8
9 -----
10 **T I T L E A M E N D M E N T**

11 Remove line 33 and insert:

12 Services; repealing s. 1010.77, F.S., relating to Food and
13 Nutrition Services Trust Fund; providing an effective date.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 7219 (2011)

Amendment No. 2

COMMITTEE/SUBCOMMITTEE 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 Committee/Subcommittee hearing bill: Education Committee
2 Representative(s) McKeel offered the following:

3
4 **Amendment (with title amendment)**

5 Remove line 284 and insert:

6 Section 9. This section shall take effect upon this act
7 becoming a law and, within 30 days thereafter, the Department of
8 Education, in consultation with the Department of Agriculture
9 and Consumer Services, shall develop and submit to the United
10 States Department of Agriculture a request for a waiver required
11 to transfer administration of the school food service and
12 nutrition programs from the Department of Education to the
13 Department of Agriculture and Consumer Services. Upon receipt of
14 the United States Department of Agriculture's approval or denial
15 of the request for a waiver, the Department of Education shall
16 immediately notify in writing the President of the Senate, the
17 Speaker of the House of Representatives, and the Governor of the
18 United States Department of Agriculture's decision. The
19 notification shall include a copy of the United States

Amendment No. 2

20 Department of Agriculture's approval or denial of the request
21 for a waiver.

22 Section 10. Except as otherwise expressly provided in this
23 act and except for this section, which shall take effect upon
24 this act becoming a law, this act shall take effect January 1,
25 2012, if the United States Department of Agriculture approves
26 the request for a waiver, pursuant to section 9 of this act, on
27 or before November 1, 2011.

28
29

30
31

32 **T I T L E A M E N D M E N T**

33 Remove line 33 and insert:

34 Services; requiring the Department of Education, in consultation
35 with the Department of Agriculture and Consumer Services, to
36 develop and submit a request for a waiver to the United States
37 Department of Agriculture to transfer administration of the
38 school food service and nutrition programs; requiring
39 notification relating to the outcome of the request for a
40 waiver; providing for contingent effect based upon federal
41 approval of a request for a waiver; providing effective dates.

1 A bill to be entitled
2 An act relating to school food service and nutrition
3 programs; providing a short title; transferring the Food
4 and Nutrition Services Trust Fund in the Department of
5 Education to the Department of Agriculture and Consumer
6 Services; transferring and reassigning functions and
7 responsibilities, including records, personnel, property,
8 and unexpended balances of appropriations and other
9 resources for the administration of the school food
10 service and nutrition programs from the Department of
11 Education to the Department of Agriculture and Consumer
12 Services; creating s. 570.98, F.S.; requiring the
13 Department of Agriculture and Consumer Services to
14 conduct, supervise, and administer all school food service
15 and nutrition programs; requiring the department to
16 cooperate fully with the Federal Government; authorizing
17 the department to act as agent of, or contract with, the
18 Federal Government, other state agencies, or any county or
19 municipal government for the administration of the school
20 food service and nutrition programs; renumbering and
21 amending ss. 1006.06, 1006.0606, and 1010.77, F.S.,
22 relating to school food service programs, the children's
23 summer nutrition program, and the Food and Nutrition
24 Services Trust Fund, respectively; conforming provisions
25 to changes made by the act; deleting obsolete provisions;
26 correcting a cross-reference; amending s. 1003.453, F.S.;
27 requiring each school district to send an updated copy of
28 its wellness policy and physical education policy to the

HB 7219

2011

29 Department of Education and the Department of Agriculture
 30 and Consumer Services; deleting obsolete provisions;
 31 requiring certain information to be accessible from the
 32 website of the Department of Agriculture and Consumer
 33 Services; providing an effective date.

34
 35 Be It Enacted by the Legislature of the State of Florida:

36
 37 Section 1. This act may be cited as the "Healthy Schools
 38 for Healthy Lives Act."

39 Section 2. The Food and Nutrition Services Trust Fund,
 40 FLAIR number 48-2-2315, in the Department of Education is
 41 transferred to the Department of Agriculture and Consumer
 42 Services, FLAIR number 42-2-2315.

43 Section 3. All powers, duties, functions, records,
 44 personnel, property, pending issues and existing contracts,
 45 administrative authority, administrative rules, and unexpended
 46 balances of appropriations, allocations, and other funds for the
 47 administration of the school food service and nutrition programs
 48 are transferred by a type two transfer, as defined in s.
 49 20.06(2), Florida Statutes, from the Department of Education to
 50 the Department of Agriculture and Consumer Services.

51 Section 4. Section 570.98, Florida Statutes, is created to
 52 read:

53 570.98 School food service and nutrition programs.—

54 (1) The department shall conduct, supervise, and
 55 administer all school food service and nutrition programs that

56 | are carried out using federal funds, state funds, or funds from
 57 | any other source.

58 | (2) The department shall cooperate fully with the Federal
 59 | Government and its agencies and instrumentalities so that the
 60 | department may receive the benefit of all federal financial
 61 | allotments and assistance possible to carry out the purposes of
 62 | ss. 570.98-570.983.

63 | (3) The department may act as agent of, or contract with,
 64 | the Federal Government, another state agency, or any county or
 65 | municipal government for the administration of the school food
 66 | service and nutrition programs, including the distribution of
 67 | funds provided by the Federal Government to support the school
 68 | food service and nutrition programs.

69 | Section 5. Section 1006.06, Florida Statutes, is
 70 | renumbered as section 570.981, Florida Statutes, and amended to
 71 | read:

72 | 570.981 ~~1006.06~~ School food service programs.—

73 | (1) In recognition of the demonstrated relationship
 74 | between good nutrition and the capacity of students to develop
 75 | and learn, it is the policy of the state to provide standards
 76 | for school food service and to require district school boards to
 77 | establish and maintain an appropriate private school food
 78 | service program consistent with the nutritional needs of
 79 | students.

80 | (2) The department ~~State Board of Education~~ shall adopt
 81 | rules covering the administration and operation of the school
 82 | food service programs.

83 | (3) Each district school board shall consider the

84 | recommendations of the district school superintendent and adopt
 85 | policies to provide for an appropriate food and nutrition
 86 | program for students consistent with federal law and department
 87 | ~~State Board of Education~~ rule.

88 | (4) The state shall provide the state National School
 89 | Lunch Act matching requirements. The funds provided shall be
 90 | distributed in such a manner as to comply with the requirements
 91 | of the National School Lunch Act.

92 | (5) (a) Each district school board shall implement school
 93 | breakfast programs that make breakfast meals available to all
 94 | students in each elementary school. ~~By the beginning of the~~
 95 | ~~2010-2011 school year,~~ Universal school breakfast programs shall
 96 | be offered in schools in which 80 percent or more of the
 97 | students are eligible for free or reduced-price meals. Each
 98 | school shall, to the maximum extent practicable, make breakfast
 99 | meals available to students at an alternative site location,
 100 | which may include, but need not be limited to, alternative
 101 | breakfast options as described in publications of the Food and
 102 | Nutrition Service of the United States Department of Agriculture
 103 | for the federal School Breakfast Program.

104 | (b) ~~Beginning with the 2009-2010 school year,~~ Each school
 105 | district must annually set prices for breakfast meals at rates
 106 | that, combined with federal reimbursements and state
 107 | allocations, are sufficient to defray costs of school breakfast
 108 | programs without requiring allocations from the district's
 109 | operating funds, except if the district school board approves
 110 | lower rates.

111 | (c) Each district school board is encouraged to provide

112 universal-free school breakfast meals to all students in each
 113 elementary, middle, and high school. ~~By the beginning of the~~
 114 ~~2010-2011 school year,~~ Each district school board shall approve
 115 or disapprove a policy, after receiving public testimony
 116 concerning the proposed policy at two or more regular meetings,
 117 which makes universal-free school breakfast meals available to
 118 all students in each elementary, middle, and high school in
 119 which 80 percent or more of the students are eligible for free
 120 or reduced-price meals.

121 (d) ~~Beginning with the 2009-2010 school year,~~ Each
 122 elementary, middle, and high school shall make a breakfast meal
 123 available if a student arrives at school on the school bus less
 124 than 15 minutes before the first bell rings and shall allow the
 125 student at least 15 minutes to eat the breakfast.

126 (e) Each school district shall annually provide to all
 127 students in each elementary, middle, and high school information
 128 prepared by the district's food service administration regarding
 129 its school breakfast programs. The information shall be
 130 communicated through school announcements and written notice
 131 sent to all parents.

132 (f) A district school board may operate a breakfast
 133 program providing for food preparation at the school site or in
 134 central locations with distribution to designated satellite
 135 schools or any combination thereof.

136 (g) The commissioner shall make every reasonable effort to
 137 ensure that any school designated as a "severe need school"
 138 receives the highest rate of reimbursement to which it is
 139 entitled under 42 U.S.C. s. 1773 for each breakfast meal served.

140 (h) The department shall annually allocate among the
 141 school districts funds provided from the school breakfast
 142 supplement in the General Appropriations Act based on each
 143 district's total number of free and reduced-price breakfast
 144 meals served.

145 (6) The Legislature, recognizing that school children need
 146 nutritious food not only for healthy physical and intellectual
 147 development but also to combat diseases related to poor
 148 nutrition and obesity, establishes the Florida Farm Fresh
 149 Schools Program within the department ~~of Education as the lead~~
 150 ~~agency for the program.~~ The program shall comply with the
 151 regulations of the National School Lunch Program and require:

152 (a) The department ~~of Education to work with the~~
 153 ~~Department of Agriculture and Consumer Services~~ to develop
 154 policies pertaining to school food services which encourage:

155 1. School districts to buy fresh and high-quality foods
 156 grown in this state when feasible.

157 2. Farmers in this state to sell their products to school
 158 districts and schools.

159 3. School districts and schools to demonstrate a
 160 preference for competitively priced organic food products.

161 (b) School districts and schools to make reasonable
 162 efforts to select foods based on a preference for those that
 163 have maximum nutritional content.

164 (c) The department ~~of Education, in collaboration with the~~
 165 ~~Department of Agriculture and Consumer Services,~~ to provide
 166 outreach, guidance, and training to school districts, schools,
 167 school food service directors, parent and teacher organizations,

HB 7219

2011

168 and students about the benefits of fresh food products from
 169 farms in this state.

170 Section 6. Section 1006.0606, Florida Statutes, is
 171 renumbered as section 570.982, Florida Statutes, and amended to
 172 read:

173 570.982 ~~1006.0606~~ Children's summer nutrition program.—

174 (1) This section may be cited as the "Ms. Willie Ann Glenn
 175 Act."

176 (2) Each district school board shall develop a plan ~~by May~~
 177 ~~1, 2006,~~ to sponsor a summer nutrition program ~~beginning the~~
 178 ~~summer of 2006~~ to operate sites in the school district as
 179 follows:

180 (a) Within 5 miles of at least one elementary school at
 181 which 50 percent or more of the students are eligible for free
 182 or reduced-price school meals and for the duration of 35
 183 consecutive days; and

184 (b) Except as operated pursuant to paragraph (a), within
 185 10 miles of each elementary school at which 50 percent or more
 186 of the students are eligible for free or reduced-price school
 187 meals.

188 (3) (a) A district school board ~~boards~~ may be exempt from
 189 sponsoring a summer nutrition program pursuant to this section.
 190 A district school board seeking such exemption must include the
 191 issue on an agenda at a regular or special district school board
 192 meeting that is publicly noticed, provide residents an
 193 opportunity to participate in the discussion, and vote on
 194 whether to be exempt from this section. The district school
 195 board shall notify the commissioner ~~of Education~~ within 10 days

196 after it decides to become exempt from this section.

197 (b) Each year the district school board shall reconsider
 198 its decision to be exempt from the provisions of this section
 199 and shall vote on whether to continue the exemption from
 200 sponsoring a summer nutrition program. The district school board
 201 shall notify the commissioner ~~of Education~~ within 10 days after
 202 each subsequent year's decision to continue the exemption.

203 (c) If a district school board elects to be exempt from
 204 sponsoring a summer nutrition program under this section, the
 205 district school board may encourage not-for-profit entities to
 206 sponsor the program. If a not-for-profit entity chooses to
 207 sponsor the summer nutrition program but fails to perform with
 208 regard to the program, the district school board, the school
 209 district, and the department ~~of Education~~ are not required to
 210 continue the program and shall be held harmless from any
 211 liability arising from the discontinuation of the summer
 212 nutrition program.

213 (4) The superintendent of schools may collaborate with
 214 municipal and county governmental agencies and private, not-for-
 215 profit leaders in implementing the plan. Although schools have
 216 proven to be the optimal site for a summer nutrition program,
 217 any not-for-profit entity may serve as a site or sponsor. By
 218 April 15 of each year, each school district with a summer
 219 nutrition program shall report to the department the district's
 220 summer nutrition program sites in compliance with this section.

221 (5) The department shall provide to each district school
 222 board by February 15 of each year a list of local organizations
 223 that have filed letters of intent to participate in the summer

HB 7219

2011

224 nutrition program in order that a district school board is able
 225 to determine how many sites are needed to serve the children and
 226 where to place each site.

227 Section 7. Section 1010.77, Florida Statutes, is
 228 renumbered as section 570.983, Florida Statutes, and amended to
 229 read:

230 570.983 ~~1010.77~~ Food and Nutrition Services Trust Fund.—
 231 Chapter 99-37 ~~99-34~~, Laws of Florida, re-created the Food and
 232 Nutrition Services Trust Fund to record revenue and
 233 disbursements of Federal Food and Nutrition funds received by
 234 the department ~~of Education~~ as authorized in s. 570.981 ~~1006-06~~.

235 Section 8. Section 1003.453, Florida Statutes, is amended
 236 to read:

237 1003.453 School wellness and physical education policies;
 238 nutrition guidelines.—

239 (1) ~~By September 1, 2006,~~ Each school district shall
 240 submit to the Department of Education a copy of its school
 241 wellness policy as required by the Child Nutrition and WIC
 242 Reauthorization Act of 2004 and a copy of its physical education
 243 policy required under s. 1003.455. Each school district shall
 244 annually review its school wellness policy and physical
 245 education policy and provide a procedure for public input and
 246 revisions. In addition, each school district shall send an
 247 updated copy of its wellness policy and physical education
 248 policy to the department and to the Department of Agriculture
 249 and Consumer Services when a change or revision is made.

250 (2) ~~By December 1, 2006,~~ The department shall post links
 251 to each school district's school wellness policy and physical

252 | education policy on its website so that the policies can be
 253 | accessed and reviewed by the public. Each school district shall
 254 | provide the most current versions of its school wellness policy
 255 | and physical education policy on the district's website.

256 | (3) ~~By December 1, 2006,~~ The department must provide on
 257 | its website links to resources that include information
 258 | regarding:

259 | (a) Classroom instruction on the benefits of exercise and
 260 | healthful eating.

261 | (b) Classroom instruction on the health hazards of using
 262 | tobacco and being exposed to tobacco smoke.

263 | (c) The eight components of a coordinated school health
 264 | program, including health education, physical education, health
 265 | services, and nutrition services.

266 | (d) The core measures for school health and wellness, such
 267 | as the School Health Index.

268 | (e) Access for each student to the nutritional content of
 269 | foods and beverages and to healthful food choices in accordance
 270 | with the dietary guidelines of the United States Department of
 271 | Agriculture. This information shall also be accessible from the
 272 | website of the Department of Agriculture and Consumer Services.

273 | (f) Multiple examples of school wellness policies for
 274 | school districts.

275 | (g) Examples of wellness classes that provide nutrition
 276 | education for teachers and school support staff, including
 277 | encouragement to provide classes that are taught by a licensed
 278 | nutrition professional from the school nutrition department.

279 | (4) School districts are encouraged to provide basic

HB 7219

2011

280 training in first aid, including cardiopulmonary resuscitation,
281 for all students, beginning in grade 6 and every 2 years
282 thereafter. Private and public partnerships for providing
283 training or necessary funding are encouraged.

284 Section 9. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7219 PCB SAC 11-01 School Food Service and Nutrition Programs
SPONSOR(S): State Affairs Committee, McKeel
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1312

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: State Affairs Committee	18 Y, 0 N	Kaiser	Hamby
1) Education Committee		Ourand WCO	Klebacha TK
2) Appropriations Committee			

SUMMARY ANALYSIS

The bill transfers the school food and nutrition program from the Department of Education (DOE) to the Department of Agriculture and Consumer Services (DACS). The transfer includes all powers, duties, functions, records, personnel, property, pending issues and existing contracts, administrative authority, administrative rules, and unexpended balances of appropriations, allocations, and other funds for the administration of the school food and nutrition programs. The bill also transfers the Food and Nutrition Services Trust Fund in the DOE to the DACS.

The National School Lunch Program (NSLP), the School Breakfast Program (SBP), the Summer Food Service Program (SFSP), the Commodity Food Distribution Program, and The Emergency Food Assistance Program (TEFAP) are all federal programs administered by the U.S. Department of Agriculture (USDA) at the national level. At the state level in Florida, the NSLP, SBP, and SFSP are administered by the DOE, while the Commodity Food Distribution Program and TEFAP are administered by the DACS.

The bill authorizes the DACS to conduct, supervise, and administer all school food and nutrition programs that are carried out using federal or state funds or funds from other sources, and to coordinate with the federal government to take advantage of any federal financial allotments and assistance that would benefit the school food and nutrition programs. The DACS may act as an agent of, or contract with, the federal government, another state agency, or any county or municipal government regarding the administration of the school food and nutrition program, including the distribution of funds provided by the federal government in support of the school food and nutrition program.

The bill requires each school district to submit an updated copy of its wellness policy and physical education policy to the DOE and the DACS when a change or revision is made. The DACS, as well as the DOE, provide website links to information regarding the nutritional content of foods and beverages and to healthful food choices in accordance with the dietary guidelines of the USDA.

For the 2010-11 FY, Florida's matching funds included \$8.9 million for the school lunch program; \$7.6 million for the school breakfast program, and \$344,433 for cafeteria inspection fees. The federal reimbursement for the same fiscal period totaled \$804 million.

See FISCAL COMMENTS.

See DRAFTING ISSUES OR OTHER COMMENTS.

The bill has an effective date of July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The National School Lunch Program (NSLP), the School Breakfast Program (SBP), the Summer Food Service Program (SFSP), the Commodity Food Distribution Program, and The Emergency Food Assistance Program (TEFAP) are all federal programs administered by the U.S. Department of Agriculture (USDA) at the national level. At the state level in Florida, the NSLP, SBP, and SFSP are administered by the Department of Education (DOE), while the Commodity Food Distribution Program and TEFAP are administered by the Department of Agriculture and Consumer Services (DACS).

Programs Administered by the DOE

School Lunch Program (SLP)

The national SLP is a federally assisted meal program that provides nutritionally balanced, low-cost or free lunches to more than 31 million children each school day.¹

School districts and independent schools that choose to take part in the SLP receive cash subsidies and donated commodities from the USDA for each meal those schools serve. In return, those schools must serve lunches that meet federal requirements, and offer free or reduced-price lunches to eligible children. School lunches must meet the applicable recommendations of the Dietary Guidelines for Americans, which recommend that no more than 30 percent of an individual's calories come from fat, and less than 10 percent from saturated fat. Regulations also require school lunches to provide one-third of the Recommended Dietary Allowances of protein, Vitamin A, Vitamin C, iron, calcium, and calories. While the SLP must meet federal nutrition requirements, the decision regarding the specific foods to serve and how they are prepared are made by local school food authorities.²

Any child at a participating school may purchase a meal through the SLP. Children from families with incomes at or below 130 percent of the poverty level³ are eligible for free meals. Children from families with incomes between 130 percent and 185 percent of the poverty level are eligible for reduced-price meals.⁴ Children from families with incomes over 185 percent of poverty pay a full-price, though their meals are still subsidized to some extent. Local school food authorities set their own prices for full-price (paid) meals, but must operate their meal services as non-profit programs.⁵

Children whose families participate in the Supplemental Nutrition Assistance Program (SNAP),⁶ Temporary Assistance for Needy Families (TANF), or the Food Distribution Program on Indian Reservations (FDPIR) are categorically eligible for free meals through the SLP. Direct certification is designed to reduce the need for categorically eligible households to complete applications to receive meals through the SLP. This is accomplished by automatically providing documentation showing categorical eligibility for SLP for children coming from households receiving SNAP, TANF, or FDPIR benefits. Currently, states are only mandated to provide direct certification for SNAP beneficiaries, but are permitted to do so for TANF and FDPIR recipients.⁷

¹ Based on information from fiscal year 2009. United States Department of Agriculture, *National School Lunch Program Fact Sheet*, available at, <http://www.fns.usda.gov/cnd/lunch/AboutLunch/NSLPFactSheet.pdf> (last visited April 6, 2011).

² *Id.*

³ For the period July 1, 2010 through June 30, 2011, 130 percent of the poverty level is \$28,665 for a family of four; 185 percent is \$40,793. *Id.*

⁴ Reduced-price meals may not cost more than 40 cents. *Id.*

⁵ *Id.*

⁶ Formerly referred to as the Food Stamp Program.

⁷ United States Department of Agriculture, *Food and Nutrition Services, Direct Certification in the National School Lunch Program: State Implementation Progress Report to Congress*, October 2009, available at, <http://www.fns.usda.gov/ora/menu/published/CNP/FILES/NSLPDirectCertification2009.pdf> (last visited April 8, 2011).

To participate in the school lunch program in Florida, schools must apply through the DOE and complete the necessary requirements for participation. The requirements include:

- Completing the application process.
- Attending "Child Nutrition" training.
- Maintaining documentation and verification of children's eligibility category and counting meals by eligibility category (free, reduced price, and paid meals).
- Maintaining meal production records and inventory records that document the amount and types of food served.
- Utilizing one of the four menu planning options.
- Maintaining records of on-site accountability reviews.
- Maintaining records of all program income and expenditures.⁸

Once approved, the schools receive funding from the DOE for each lunch and breakfast meal served as long as the schools meet established state and federal regulations.⁹ The DOE conducts periodic reviews of the school lunch and breakfast programs to ensure that state and federal regulations are being met. The DOE has authority for the administration and operation of the school food service programs.¹⁰

School Breakfast Program (SBP)

Florida law requires the SBP to be offered in all elementary public and charter schools. The SBP must be offered in schools in which 80 percent or more of the students are eligible for free or reduced-price meals. District school boards are encouraged to provide universal-free school breakfast meals to all students in each elementary, middle, and high school. The schools can choose to make the breakfast meals available at alternate areas on the school campus, such as kiosks near bus ramps.¹¹

School districts set the prices for the breakfast meals annually. Unless the district school board approves lower rates, the cost of the breakfast meals may not exceed the combined federal reimbursements and state allocations.¹²

District school boards may approve or disapprove a policy, after taking public testimony, making universal-free school breakfast meals available to all students in each middle and high school in which 80 percent or more of the students are eligible for free or reduced-price meals. The breakfast meal must be available for students arriving at school on the school bus less than 15 minutes before the first bell rings, in which case the student will be allowed at least 15 minutes to eat the breakfast.¹³

School districts are responsible for disseminating information annually to students regarding the district's school breakfast program through school announcements and written notice provided to all parents.¹⁴

School districts may operate the SBP providing for food preparation at the school site or in central locations with distributions to designated satellite schools or any combination thereof.¹⁵

The Commissioner of Education must make every reasonable effort to ensure that schools designated as "severe need" schools receive the highest rate of reimbursement for which they are entitled for each breakfast meal served.¹⁶ The DOE is responsible for allocating the monies appropriated by the

⁸ Florida Department of Education, *National School Lunch and Breakfast Program: Program Description and Requirements*, available at, <http://www.fldoe.org/FNM/natschoollunch/descriptions.asp> (last visited April 6, 2011).

⁹ The state must adhere to a matching funds requirement in the National School Lunch Act. For 2010-11, the state's matching requirement was \$8.9 million, which came from General Revenue.

¹⁰ Florida Department of Education, *National School Lunch and Breakfast Program*, *supra* note 8.

¹¹ Section 1006.06, F.S.

¹² Section 1006.06(5)(b), F.S..

¹³ Section 1006.06(5)(c)-(d), F.S.

¹⁴ Section 1006.06(5)(e), F.S.

¹⁵ Section 1006.06(5)(f), F.S.

¹⁶ Section 1006.06(5)(g), F.S. A "severe needs" school is a school that served 40 percent or more of its lunches as free and reduced in the second preceding year. 7 C.F.R. 220.9(d)(2).

Legislature each year to the school districts based on each district's total number of free and reduced-price breakfast meals served.¹⁷

Children's Summer Nutrition Program (SNP)

The SNP, also known as the "Ms. Willie Ann Glenn Act," operates through the NSLP or SBP as a way of feeding children, 18 years and under, from low-income areas during the summer months.¹⁸

Florida law directs school districts to develop a plan to sponsor a SNP with operational sites within 5 miles of at least one elementary school with 50 percent or more of the students eligible for free or reduced-price school meals and for a duration of 35 consecutive days. Secondary sites must be within 10 miles of each elementary school with 50 percent or more of the students eligible for free or reduced-price school meals.¹⁹

A district school board may opt out of sponsoring a SNP. To qualify for the exemption, the district must include the issue on an agenda at a regular or special district school board meeting that is publicly noticed, provide residents an opportunity to participate in the discussion and vote on whether to be exempt from sponsoring a SNP. After deciding to become exempt, the district school board must notify the Commissioner of Education within 10 days. The district must revisit the decision to be exempt each year and notify the Commissioner of Education accordingly.²⁰

If a district school board chooses to be exempt from the SNP, the board may encourage not-for-profit entities to sponsor the SNP. Neither the district school board, school district, nor the Commissioner of Education may be held responsible for any liability as a result of a not-for-profit entity failing to complete the requirements of the SNP.²¹

The superintendent of schools may cooperate with municipal and county governmental agencies and private, not-for-profit leaders in identifying an entity and location to sponsor the SNP.²² By February 15 of each year, the DOE must provide each district school board with a list of local organizations that have filed letters of intent to participate in the SNP in order for a district school board to be able to determine how many sites are needed to serve the children and where to place each site.²³ Each school district with a SNP must report where the SNP will be located to the DOE by April 15 of each year.

Seamless Summer Option (SSO)

School districts participating in the SLP or SBP are eligible to apply for the SSO to serve free meals to low-income children, 18 years old and under during summer and other school vacation periods. This option reduces paperwork and administrative burdens. The reimbursement rates are the same as with the SLP and the SBP.²⁴

Special Milk Program (SMP)

The SMP provides milk to children in schools, child care institutions and eligible camps that do not participate in other federal child nutrition meal service programs. The program reimburses schools and institutions for the milk they serve. Schools in the SLP or the SBP may also participate in the SMP to provide milk to children in half-day pre-kindergarten and kindergarten programs where children do not have access to school meal programs.²⁵

¹⁷ Section 1006.06(5)(h), F.S.

¹⁸ Section 1006.0606, F.S.

¹⁹ Section 1006.0606(2), F.S.

²⁰ Section 1006.0606(3)(a)-(b), F.S.

²¹ Section 1006.0606(3)(c), F.S.

²² Section 1006.0606(4), F.S.

²³ Section 1006.0606(5), F.S.

²⁴ United States Department of Agriculture, *National School Lunch Program's Seamless Summer Option Questions and Answers 2009 Edition*, available at, http://www.fns.usda.gov/cnd/Governance/Policy-Memos/2009/SP_27-2009_os.pdf (last visited April 6, 2011).

²⁵ United States Department of Agriculture, *Special Milk Program Fact Sheet*, available at, <http://www.fns.usda.gov/cnd/milk/AboutMilk/SMPFactSheet.pdf> (last visited April 6, 2011).

Fresh Fruit and Vegetable Program (FFVP)

The FFVP provides all children in participating schools with a variety of free fresh fruits and vegetables outside of the breakfast and lunch service. It is an effective and creative way of introducing fresh fruits and vegetables as healthy snack options.²⁶

Florida Farm Fresh Schools Program (FFSP)

The FFSP was created to address the need of school children for not only nutritious food for healthy physical and intellectual development, but also to combat diseases related to poor nutrition and obesity. The FFSP requires the DOE to develop policies pertaining to school food services that encourage school districts to buy fresh and high-quality foods grown in the state, when feasible. The program encourages farmers in the state to sell their products to school districts and schools. The school districts and schools are encouraged to select foods based on maximum nutritional content and to buy organic food products when feasible. The DOE must provide outreach, guidance, and training to the school districts, schools, and various other organizations²⁷ involved in school food services regarding the benefits of fresh food products grown in the state.²⁸

Other

Each school district must submit an updated copy of its wellness policy and physical education policy to the DOE when a change or revision is made. The DOE must provide website links to information regarding the nutritional content of foods and beverages and to healthful food choices in accordance with the dietary guidelines of the USDA.²⁹

DOE Administration of Child Nutrition Programs

The DOE employs 45 staff with an administrative budget of \$6,461,745³⁰ to administer the school and child nutrition programs for the following sponsors:

- 248 SLP sponsors, including 3,578 breakfast sites, 3,651 lunch sites, and 1,655 snack sites;
- 135 SNP and SSO sponsors;
- 18 SMP sponsors; and
- 133 elementary schools that are participating in the 2010-2011 FFVP.³¹

In addition, the DOE:

- Operates and maintains a web-based computer application to process \$745 million of claims reimbursements, sponsor applications, administrative program reviews, and federal reports.
- Provides sponsor training and technical support in child nutrition, food safety, and administrative services for all sponsors.
- Conducts on-site monitoring and administrative reviews of program administration and meal services for all sponsors.
- Evaluates and provides nutrient analysis of breakfast and lunch menus for all sponsors.
- Provides outreach throughout the state to attract potential sponsors for the SNP and increase participation in the SBP.³²

To provide these services, the DOE works with the Florida Atlantic University to administer two grants:

- \$700,000 to deliver on-site training in a variety of areas, including producing and maintaining appropriate food service records, food preparation and safety, preparing and serving fresh fruits and vegetables, and the production of training videos; and
- \$900,000 to observe and evaluate the scope of difficulties related to compliance, provide technical assistance to individual sponsors, provide technical assistance to companies that

²⁶ United States Department of Agriculture, *Fresh Fruit and Vegetable Program (FFVP)*, available at, http://www.fns.usda.gov/cga/FactSheets/FFVP_Quick_Facts.htm (last visited April 6, 2011); Florida Department of Education, *Fresh Fruit and Vegetable Program*, available at, <http://www.fldoe.org/FNM/ffvp/> (last visited April 8, 2011).

²⁷ School food service directors, parent and teacher organizations, and students.

²⁸ Section 1006.06(6), F.S.

²⁹ Section 1003.453(1)-(2), F.S.

³⁰ Based on the 2010-11 fiscal year.

³¹ Department of Education Analysis at 6.

³² *Id.*

contract to deliver food products and services, assist sponsors with completing paperwork and taking the steps necessary to achieve and maintain regulatory compliance related to free and reduced meals, and the maintenance and technical support of DOE's "FUNDamental" financial software, which is used to measure critical indicators of the financial effectiveness of a sponsor's child nutrition program.³³

The DOE has formed several alliances and initiatives to help meet nutrition guideline requirements, combat childhood obesity, and promote interagency participation and coordination.³⁴ The DOE's Office of Healthy Schools also helps to provide nutrition education to school districts throughout the state.³⁵

Programs Administered by the DACS

The Commodity Program Portion of the SLP and the SNP

The DACS administers the Commodity Program portion of the SLP and the SNP.³⁶ The Richard B. Russell National School Lunch Act requires that no less than 12% of the federal support received by schools pursuant to the SLP each year must be in the form of USDA food (commodities).³⁷

Each year, the DACS receives an allocation from the USDA based on the number of meals served the previous year. As the state agency responsible for ordering the commodities for the schools, the DACS provides information to the schools on which foods the USDA intends to acquire, determines from the schools how much, if any, of each of the commodities available they would like to requisition and orders the foods. The USDA is responsible for procuring and purchasing these commodities.³⁸

During school year 2010, the DACS provided over 69 million pounds of USDA food valued at approximately \$55,516,427 to about 193 participating schools (public school districts, private schools, residential child care institutions, etc.) throughout the state. An additional \$4,442,500 in fresh fruits and vegetables was also provided.

In 2011, the DACS will provide over 75 million pounds of USDA food, valued at over \$66 million, in addition to another \$3,077,000 in fresh fruits and vegetables to participating Florida schools.

The DACS developed and maintains the Florida Farm to School Program website to bring schools and farmers together to assess each other's needs and determine how best to meet those needs. As a founding member of the Farm to School Alliance, the DACS participates and provides input at Alliance meetings. For the last three years, the DACS has participated in various panel presentations and exhibitions promoting the consumption of fresh produce at the Florida Small Farms and Alternative Enterprises Conference.

For years, the DACS has been an active participant in the Florida School Nutrition Association annual conference. In addition to conducting workshops on the administration of the USDA foods, the DACS, in conjunction with the Department of Defense, is an exhibitor at the conference, promoting the consumption of fresh produce, in particular Florida fresh fruits and vegetables, in schools. At the 2011 conference, the DACS' chef will be demonstrating ways to entice students to consume more Florida fruits and vegetables.

In keeping with the DACS's mission of providing healthy nutrition from the time children are young, the DACS has developed the Fresh From Florida Kids Program. The program is designed to help parents instill healthy eating habits in their children who are just beginning to eat solid food. Research suggests

³³ *Id.*

³⁴ *Id.* at 6-7.

³⁵ *Id.* at 7.

³⁶ Office of Program Policy Analysis and Government Accountability (OPPAGA), *No changes are necessary to the State's Organization of School Nutrition Programs*, Report No. 09-03, January 2009, available at, <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0903rpt.pdf> (last visited April 6, 2011).

³⁷ 42 U.S.C. 1755(e).

³⁸ Office of Program Policy Analysis and Government Accountability (OPPAGA), *No changes are necessary*, *supra* note 36.

that taste preferences and eating habits are fully developed by the time a child is three years old, so starting early is essential.³⁹

As children get older, the DACS introduces them to good nutrition through Xtreme Cuisine. Xtreme Cuisine Cooking School teaches children about nutrition and introduces them to an array of fresh, nutritious foods available in Florida. The program can be used by teachers, extension agents, health and family services professionals, and many others who work with Florida youth to teach children the nutritional attributes and other pertinent information about Florida agricultural commodities while providing basic cooking skills.⁴⁰

Commodity Food Distribution Program

Through the Schools/Nutrition Commodity Programs, the USDA purchases foods through direct appropriations from Congress, and under surplus-removal and price-support activities. The foods are distributed to state agencies for use by school food authorities participating in the NSLP.⁴¹ In Florida, DACS is the agency responsible for commodity distribution.⁴²

The Emergency Food Assistance Program (TEFAP)

TEFAP is a federal program that helps improve the diets of low-income Americans, regardless of age, by providing them with emergency food and nutrition assistance at no cost. Under TEFAP, commodity foods are made available by the USDA to the states. The states provide the food to eligible recipient agencies that distribute it to the needy through local emergency feeding organizations such as food banks, food pantries, soup kitchens, or other feeding sights.⁴³

In Florida, the recipient agencies are selected by the DACS, every four years, as a result of a competitive procurement process or bid. TEFAP commodities are provided to each of the contracted recipient agencies according to the counties they serve. Each county's share is determined using a formula that bases the allocation on each county's relative share of the state's total number of persons with incomes below the poverty line and the total number of unemployed persons. This formula, which is similar to the one used by the federal government to allocate resources to the states, is adjusted annually.⁴⁴

Office of Program Policy and Government Accountability (OPPAGA), Report No. 09-02⁴⁵

In January 2009, the OPPAGA reviewed the practices of school districts for ways to reduce their food service program costs. In the report, *Best Practices Could Help School Districts Reduce Their Food Service Program Costs*, the OPPAGA found:

- Districts should maximize the use of USDA commodities.
- Districts should ensure that program employees have access to policies and procedures.
- Districts should ensure that the food service staff receives appropriate training.
- Districts should promote their food service program.
- Districts should identify and reduce participation barriers.

³⁹ Florida Department of Agriculture and Consumer Services, *Fresh From Florida Kids*, available at, <http://www.freshfromfloridakids.com/> (last visited April 8, 2011).

⁴⁰ Florida Department of Agriculture and Consumer Services, *Xtreme Cuisine Cooking School*, available at, <http://www.florida-agriculture.com/xtreme.htm> (last visited April 8, 2011).

⁴¹ United States Department of Agriculture, *Schools/CN Commodity Programs*, available at, http://www.fns.usda.gov/fdd/programs/schcnp/schcnp_faqs.htm (last visited April 6, 2011).

⁴² Section 570.072, F.S.

⁴³ United States Department of Agriculture, *TEFAP Frequently Asked Questions*, available at, http://www.fns.usda.gov/fdd/programs/tefap/tefap_faqs.htm (last visited April 6, 2011).

⁴⁴ Florida Department of Agriculture, *The Emergency Food Assistance Program (TEFAP)*, available at, http://www.florida-agriculture.com/foodprograms/emergency_food_program.htm (last visited April 6, 2011).

⁴⁵ Office of program Policy and Government Accountability (OPPAGA), *Best Practices Could Help School Districts Reduce Their Food Service Program Costs*, Report No. 09-02, January 2009, available at, <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0902rpt.pdf> (last visited April 6, 2011).

The OPPAGA reviewed Florida's school nutrition programs in January 2009. In the report, *No Changes Are Necessary to the State's Organization of School Nutrition Programs*, the OPPAGA found:

- The current structure aligns key program activities with the core missions of state agencies.
- There is no compelling reason to change the current structure of Florida's school nutrition programs.
- Changing the structure would not produce identifiable cost savings or other substantial benefits.
- Transferring programs and functions from one agency to another would likely result in short-term disruptions in services to school districts.
- There would need to be procedures in place to protect the privacy of information that needs to be shared in order to determine eligibility for the programs and to ensure that school districts would not have to provide duplicate data to both state agencies.⁴⁷

In the same report, the OPPAGA outlines advantages of consolidating the school nutrition and commodity programs in Florida, including:

- Potential efficiencies;
- Improved coordination;
- Increased program visibility and administrative support; and
- Programs could take advantage of the DACS' food and nutrition mission and expertise.

Waiver Request Requirements

Section 12 of the Richard B. Russell National School Lunch Act (NSLA) requires "state educational agencies" to have an agreement with the USDA, which affirms the administrative responsibilities for these programs.⁴⁸ A state may not transfer the NSLP to a non-educational state agency, such as the DACS, unless the state officially requests a waiver of the law and applicable program regulations and the USDA approves the waiver request.⁴⁹

A waiver request submitted by a state must include specific details in order to be considered. The requirements for a waiver are set forth in section 12(l) of the NSLA.⁵⁰ At a minimum the request must include:

- Identification of the state agency for which the waiver is being sought, including a description of the size and scope of its program.
- A description of the specific statutory or regulatory requirements for which the waiver is being sought.
- A description of the impediments to the efficient operation and administration of the program that caused the waiver to be sought.
- A description of the actions the state has undertaken to remove any state-level barriers, either statutory or regulatory, to achieve the result sought under the waiver (if applicable).
- A description of the state's expectation as to how the waiver will improve services and the expected outcomes if the waiver is granted.
- A description of the process used by the state to provide notice and information to the public regarding the proposed waiver.⁵¹

In addition, the waiver must provide information and assurance that there will be no increase in the federal cost of the program.⁵²

⁴⁶ Office of Program Policy and Government Accountability (OPPAGA), *No changes are necessary*, *supra* note 36.

⁴⁷ For a greater discussion of the privacy issue, see the sub-section entitled Confidentiality.

⁴⁸ 42 U.S.C. 1760(b).

⁴⁹ 42 U.S.C. 1760(l).

⁵⁰ *Id.*

⁵¹ United States Department of Agriculture, Public Law 104-193 Changes to Applications for Waivers in the Child Nutrition Programs, December 2, 1996, *available at*, <http://www.fns.usda.gov/cnd/Care/Regs-Policy/policymemo/1999-1996/1996-12-2.pdf#xml=http://65.216.150.153/teaxis/search/pdfhi.txt?query=waiver+request+and+school+lunch&pr=FNS&prox=page&order=500&rprox=500&rdfreq=500&rwfreq=500&rlead=500&rdepth=0&sufs=0&order=r&mode=&opts=&cq=&sr=&id=4d9cfc1956> (last visited April 6, 2011).

On March 4, 2011, the USDA sent a letter to the DOE and DACS stating that the waiver requirements would have to be met in order for the waiver to be approved and the NSLP, SBP, SMP, and SFSP to be transferred to the DACS.

Type Two Transfer

There are two types of transfers provided by statute for the reorganization of the executive branch.⁵³ A type one transfer involves transferring an entire agency or department to another agency or department to become a unit of that agency or department.⁵⁴

Type two transfers involve merging an existing agency, department, program, activity, or function into another agency or department.⁵⁵ All of the statutory powers, duties, and functions, and records, personnel, property, and unexpended balances of appropriations, allocations, or other funds are transferred as well.⁵⁶ The head of the agency or department to which the agency, department, program, activity, or function is transferred is authorized to establish units or subunits to which the agency or department is assigned, and to assign administrative authority for identifiable programs, activities, or functions.⁵⁷ Finally, the administrative rules in effect immediately before the transfer remain in effect until specifically changed.⁵⁸

Confidentiality

In order to administer the school nutrition programs, the DOE and the Department of Children and Family Services (DCF) need to share sensitive information about the students to determine eligibility based on whether students receive food SNAP benefits, temporary cash assistance (TCA), or Medicaid. Such information includes: name, county of residence, social security number, date of birth, race, and sex. The DOE and DCF currently have a Memorandum of Understanding (MOU) which provides that both parties agree to adhere to the state and federal laws which protect the disclosure of such information.⁵⁹

Effect of Proposed Changes

The bill implements a type two transfer of the school food and nutrition program from the Department of Education (DOE) to the Department of Agriculture and Consumer Services (DACS) and refers to the act as the "Healthy Schools for Healthy Lives Act." The transfer includes all powers, duties, functions, records, personnel, property, pending issues and existing contracts, administrative authority, administrative rules, and unexpended balances of appropriations, allocations, and other funds for the administration of the school food and nutrition programs. The bill also transfers the Food and Nutrition Services Trust Fund⁶⁰ in the DOE to the DACS.⁶¹

The bill authorizes the DACS to conduct, supervise and administer all school food and nutrition programs that are carried out using federal or state funds or funds from other sources, and to cooperate with the federal government to benefit from any federal financial allotments and assistance that would

⁵² 42 U.S.C. 1760(l)(1)(A)(iii).

⁵³ Section 20.06, F.S.

⁵⁴ Section 20.06(1), F.S.

⁵⁵ Section 20.06(2), F.S.

⁵⁶ Section 20.06(2)(a), F.S. Except for those statutory powers, duties, and functions, and records, personnel, property, and unexpended balances of appropriations, allocations, or other funds transferred elsewhere or unless otherwise provided by law. *Id.*

⁵⁷ Section 20.06(2)(b), F.S.

⁵⁸ Section 20.06(2)(c), F.S.

⁵⁹ DOE and DCF, *Memorandum of Understanding*. The MOU is authorized by Section 9(b) of the Richard B. Russell National School Lunch Act and Section II of the SNAP Act. *Id.*; 42 U.S.C. § 1758(b); 7 U.S.C. § 2020(u).

⁶⁰ FLAIR number 48-2-2315, in DOE, is transferred to DACS, FLAIR number 42-2-2315.

⁶¹ Federal law requires that state education agencies administer the school food and nutrition program. However, two states, Texas and New Jersey, have sought and received federal approval to administer their school food and nutrition programs through their agricultural agency. Therefore, Florida would have to apply for, and receive, a waiver before the DACS could take over the administration of the school food and nutrition program. E-mail, United States Department of Agriculture, April 7, 2011.

benefit the school food and nutrition programs. The DACS may act as an agent of, or contract with, the federal government, another state agency, or any county or municipal government regarding the administration of the school food and nutrition program, including the distribution of funds provided by the federal government in support of the school food and nutrition program.

The bill requires each school district to submit an updated copy of its wellness policy and physical education policy to the DOE and the DACS when a change or revision is made. The DACS, as well as the DOE, shall provide website links to information regarding the nutritional content of foods and beverages and to healthful food choices in accordance with the dietary guidelines of the USDA.

And lastly, the bill transfers statutory language regarding the administration of the school food and nutrition program from Chapter 1006, F.S., which falls under the jurisdiction of the DOE, to Chapter 570, F.S., which falls under the jurisdiction of the DACS.

B. SECTION DIRECTORY:

Section 1: Designates the act as the "Healthy Schools for Healthy Lives Act."

Section 2: Transfers the Food and Nutrition Services Trust Fund from the Department of Education (DOE) to the Department of Agriculture and Consumer Services (DACS).

Section 3: Transfers all powers, duties, functions, records, personnel, property, pending issues and existing contracts, administrative authority, administrative rules, and unexpended balances of appropriations, allocations, and other funds for the administration of the school food and nutrition program by a type two transfer from the DOE to the DACS.

Section 4: Creates s. 570.98, F.S.; directs the DACS to conduct, supervise and administer all school food and nutrition programs carried out using federal or state funds, or funds from any other source; and, directs the DACS to cooperate with the federal government and its agencies and instrumentalities to receive benefit of all federal financial allotments and assistance possible to carry out the school food and nutrition program.

Section 5: Transfers and renumbers s. 1006.06, F.S., to s. 570.981, F.S.; changes jurisdiction from the DOE to the DACS; and, removes obsolete dates.

Section 6: Transfers and renumbers s. 1006.0606, F.S., to s. 570.982, F.S.; removes obsolete dates; and, changes jurisdiction from the DOE to the DACS.

Section 7: Transfers and renumbers s. 1010.77, F.S., to s. 570.983, F.S.; changes jurisdiction from the DOE to the DACS.

Section 8: Amends s. 1003.453, F.S.; removes obsolete dates; requires school districts to submit a copy of its school wellness policy to the DACS when a change or revision is made; and, requires the DACS to provide website access to information regarding nutritional content of foods and beverages as well as healthful food choices in accordance with the dietary guidelines of the United States Department of Agriculture.

Section 9: Provides an effective date of July 1, 2011.

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:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Program	FY 2010-11	FY 2011-12
National School Lunch Program State Match General Revenue	\$8.9 million	\$8.9 million
School Breakfast Program State Match General Revenue	\$7.6 million	\$5.6 million
Cafeteria Inspection Fees General Revenue*	\$344,433	\$344,433
USDA Food and Nutrition Services Trust Fund	\$804.3 million	\$942.3 million

*Available remaining balance used to offset a small portion of participating schools' health inspection costs.

In FY 2009-10, the DOE received \$631,410 in indirect earnings as a result participation in the National School Lunch Program. These earnings are used to support management activities that are department-wide in nature and include activities such as purchasing, accounting, human resources, grants management, and legal services. The DACS would receive any earnings that arise as a result of participation in the National School Lunch Program after the transfer.⁶²

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

⁶² The information contained in this section was prepared by the House Agriculture and Natural Resources Appropriations Subcommittee staff. E-mail, Agriculture and Natural Resources Staff, April 6, 2011.

B. RULE-MAKING AUTHORITY:

Rule-making authority regarding the school food and nutrition program is granted to the Department of Agriculture and Consumer Services through the type two transfer.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill currently has an effective date of July 1, 2011. However, the transfer cannot occur until a waiver is granted by the USDA. In order for the USDA to consider granting a waiver, the state must first complete a waiver application. The bill does not currently provide requirements relating to the waiver application process. Accordingly, it may be advisable to amend the bill to specify:

- The agency responsible for applying for the waiver; and
- The date by which the application must be developed and submitted.

Furthermore, because the transfer cannot occur until a waiver is granted, it may also be advisable to amend the bill to make the effective date of the transfer contingent upon the date by which the waiver is approved, if approved.

On April 7, 2011, the USDA sent an e-mail to the DOE regarding the waiver process. The USDA stated that both of the waivers for Texas and New Jersey are non-permanent and contain the following disclaimer:

While we have granted this waiver, we have serious reservations with moving programs that substantially benefit from a close link with the educational establishment in the State to a non-education agency. The NSLP, SBP and SMP are most effective in their long-term impact on students when they are combined with a nutrition education component. The dual functions of providing meals and educating can most readily be accomplished by the TEA with its combined school management and education responsibilities. Given our belief that nutrition education is an integral component of a child's overall education and that programs such as the NSLP and SBP to be truly effective must educate, we are approving this transfer cautiously.

Moreover, the USDA stated that the waiver-processing time depends on several factors, including:

- The completeness of the state agency's initial submission;
- The justification or rationale provided; and
- The ability of the alternate agency to administer the programs.

Finally, the USDA stated that the waiver process can also be delayed if the USDA requires additional information or adjustments to the state agency proposal which would require negotiation.⁶³

An amendment to repeal s. 1010.77, F.S., may be necessary to remove the obsolete reference to the Food and Nutrition Services Trust Fund.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

⁶³ E-mail, United States Department of Agriculture, April 7, 2011.

House Memorial

A memorial to notify the Federal Government of colleges and universities in this state which are authorized to operate educational programs beyond the secondary level.

WHEREAS, On October 29, 2010, the United States Department of Education issued its Final Rule on Program Integrity Issues, 75 Federal Register 66832 et seq., which includes amendments to regulations at 34 Code of Federal Regulations s. 600.9(a)(1)(i)(A) requiring that educational institutions not created by the state be "established by name as an educational institution by a State through a charter, statute, constitutional provision, or other action..." and be "authorized to operate educational programs beyond secondary level, including programs leading to a degree or certificate," and

WHEREAS, the Legislature chose to exempt from the jurisdiction or purview of the Commission for Independent Education "any institution that is under the jurisdiction of the Department of Education, eligible to participate in the William L. Boyd, IV, Florida Resident Access Grant Program and that is a nonprofit independent college or university located and chartered in this state and accredited by the Commission on Colleges of the Southern Association of Colleges and Schools to grant baccalaureate degrees," pursuant to s. 1005.06(1)(c), Florida Statutes, and

WHEREAS, all institutions exempted from the jurisdiction or purview of the Commission for Independent Education through accreditation by the Commission on Colleges of the Southern

29 Association of Colleges and Schools must meet state requirements
 30 regarding fair consumer practices under s.1005.04, Florida
 31 Statutes; meet annual reporting requirements with respect to
 32 crime statistics and physical plant safety under
 33 ss.1005.04(1)(g) and 1013.11, Florida Statutes; and adopt hazing
 34 policies and rules under s. 1006.63, Florida Statutes, and

35 WHEREAS, all institutions that are exempt from the
 36 jurisdiction or purview of the Commission for Independent
 37 Education under s. 1005.06(1)(c), Florida Statutes, may
 38 participate in one or more state-funded student financial aid
 39 programs subject to audit by the Florida Department of
 40 Education, including, but not limited to, the Florida Private
 41 Student Assistance Grant Program pursuant to s. 1009.51, Florida
 42 Statutes, the Florida Bright Futures Scholarship Program
 43 pursuant to s. 1009.53, Florida Statutes, and the William L.
 44 Boyd, IV, Florida Resident Access Grant Program pursuant to s.
 45 1009.89, Florida Statutes, and

46 WHEREAS, the institutions that are eligible to participate
 47 in Florida's student financial aid programs include: Ave Maria
 48 University, Barry University, Beacon College, Bethune-Cookman
 49 University, Clearwater Christian College, Eckerd College, Edward
 50 Waters College, Embry-Riddle Aeronautical University, Flagler
 51 College, Florida College, Florida Hospital College of Health
 52 Sciences, Florida Institute of Technology, Florida Memorial
 53 University, Florida Southern College, Hodges University,
 54 Jacksonville University, Lynn University, Nova Southeastern
 55 University, Palm Beach Atlantic University, Ringling College of
 56 Art and Design, Rollins College, Saint Leo University,

PCS for CS/HM 1445

2011

57 Southeastern University, St. Thomas University, Stetson
 58 University, University of Miami, University of Tampa, Warner
 59 University, Webber International University, Keiser University,
 60 and Everglades University, NOW, THEREFORE,

61

62 Be It Resolved by the Legislature of the State of Florida:

63

64 That the 2011 Florida Legislature respectfully informs the
 65 United States Department of Education that the colleges and
 66 universities named in this memorial are authorized to operate
 67 educational programs beyond the secondary level.


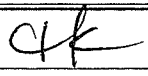
68 BE IT FURTHER RESOLVED that copies of this memorial be
 69 dispatched to each college and university named in this
 70 memorial, to the United States Secretary of Education, to the
 71 President of the United States, to the President of the United
 72 States Senate, to the Speaker of the United States House of
 73 Representatives, and to each member of the Florida delegation to
 74 the United States Congress.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for CS/HM 1445 Colleges and Universities Authorized to Operate Educational Programs Beyond the Secondary Level

SPONSOR(S): Education Committee

TIED BILLS: IDEN./SIM. BILLS: SM 1654

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Education Committee		Graf 	Klebacha 

SUMMARY ANALYSIS

The House Memorial informs the U.S. Department of Education that the thirty-one independent colleges and universities that are listed in the memorial are authorized to operate educational programs beyond the secondary level in Florida.

The Higher Education Act (HEA) was enacted in 1965 to provide greater opportunities for students to achieve higher education. Title IV of the HEA authorizes the federal student aid programs. Pursuant to a new regulation adopted by the United States Department of Education on October 29, 2010, under the provisions of the HEA, an institution applying to participate in a federal program under the HEA must demonstrate by July 1, 2011, that it has the legal authority to offer postsecondary education. In the absence of such legal authority, the institution will not be eligible to participate in the federal student aid programs.

The House Memorial does not amend, create, or repeal any provisions of the Florida Statutes.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Federal Higher Education Act

The Higher Education Act (HEA) was enacted in 1965 to provide greater opportunities for students to achieve higher education.¹ Subsequent reauthorizations and amendments to the HEA have continued to expand this initiative.² Title IV of the HEA authorizes the federal student aid programs which include federal grants, loans, and work-study programs.³

On October 29, 2010, under the provisions of the HEA, the United States Department of Education (USDOE) adopted a new regulation to improve the integrity in the programs authorized under Title IV.⁴ The regulation, among other things, requires that an institution be “established by name as an educational institution by a State through a charter, statute, constitutional provision, or other action issued by an appropriate State agency or State entity to operate educational programs beyond secondary education, including programs leading to a degree or certificate.”⁵

Any institution applying to participate in a federal program under the HEA must demonstrate by July 1, 2011, that it has the legal authority to offer postsecondary education. In the absence of such legal authority, the institution will not be eligible to participate in the federal student aid programs.⁶

Eligibility of Institutions to Offer Postsecondary Education in Florida

A number of postsecondary institutions in Florida already meet the new federal requirement that they be established by name as an educational institution offering postsecondary education. These institutions are established by name either in the Florida Statutes or in a license that is issued by the State. Currently, eleven state universities and twenty-eight institutions within the Florida College System are established by name in law to offer postsecondary education in Florida.⁷ Certain independent postsecondary educational institutions are also authorized by the State to grant postsecondary diplomas and degrees by virtue of obtaining a license from the Commission for Independent Education (CIE).⁸

However, there are thirty-one nonprofit independent colleges and universities providing postsecondary education that are not established by name in the Florida Statutes and are not required to be licensed to operate educational programs beyond secondary education. These independent colleges and universities are exempt from licensure because they meet the following criteria:

- Institution is eligible to participate in the William L. Boyd, IV, Florida Resident Access Grant program (FRAG);⁹

¹ Jodi L. Edelson, *Higher Education To Higher Default: A Re-examination of the Guaranteed Student Loan Program*, 11 ANN. REV. BANKING L. 475, 476, 477 (1992).

² FinAid, *Reauthorization of the Higher Education Act of 1965*, available at, <http://www.finaid.org/educators/reauthorization.phtml> (last visited April 1, 2011).

³ U.S. Department of Education, Federal Student Aid Gateway, *About Federal Student Aid*, available at, <http://federalstudentaid.ed.gov/about/index.html> (last visited April 1, 2011).

⁴ 34 C.F.R. s. 600.9; see also 75 FR 66832 (Oct. 29, 2010).

⁵ 34 C.F.R. s. 600.9(a)(1)(i)(A).

⁶ 75 FR 66832 and 66859 (Oct. 29, 2010).

⁷ Section 1000.21(3) and (6), F.S.

⁸ Section 1005.21(1), F.S. Pursuant to s. 1005.21(2), F.S., the Commission for Independent Education within the Florida Department of Education functions “in matters concerning independent postsecondary educational institutions in consumer protection, program improvement, and licensure for institutions under its purview.”

⁹ Section 1009.89, F.S. The William L. Boyd, IV, Florida Resident Access Grant (FRAG) program provides tuition assistance to Florida undergraduate students attending an eligible private, nonprofit college or university in Florida. One of the thirty-one independent institutions, Keiser University, will become eligible for FRAG during the 2011-12 fiscal year. Telephone interview with staff from the Florida Department of Education (April 1, 2011).

- Institution is a nonprofit independent college or university;
- Institution is located and chartered in this state; and
- Institution is accredited by the Commission on Colleges of the Southern Association of Colleges and Schools (SACS) to grant baccalaureate degrees.¹⁰

Other States

Memorials/resolutions similar to the one offered in CS/HM 1445 are being proposed in the Texas and California State Legislature.¹¹ The two states are similar to Florida in that nonprofit private institutions in Texas and California are exempt from state licensure pursuant to regional accreditation, and are therefore not established by name under their state law.

Effect of Proposed Changes

The memorial names the following thirty-one independent colleges and universities in Florida that are not under the purview of the Commission for Independent Education; are exempt from obtaining licensure, are accredited by the Commission on Colleges of the Southern Association of Colleges and Schools, and are eligible to participate in Florida's student financial aid programs: Ave Maria University, Barry University, Beacon College, Bethune-Cookman University, Clearwater Christian College, Eckerd College, Edward Waters College, Embry-Riddle Aeronautical University, Flagler College, Florida College, Florida Hospital College of Health Sciences, Florida Institute of Technology, Florida Memorial University, Florida Southern College, Hodges University, Jacksonville University, Lynn University, Nova Southeastern University, Palm Beach Atlantic University, Ringling College of Art and Design, Rollins College, Saint Leo University, Southeastern University, St. Thomas University, Stetson University, University of Miami, University of Tampa, Warner University, Webber International University, Keiser University, and Everglades University. By naming these independent colleges and universities in law as authorized to operate educational programs beyond the secondary level in Florida, the memorial meets a requirement of the federal regulation that will allow the institutions to continue to participate in federal student aid programs.¹²

The memorial provides that the Florida Legislature inform the USDOE that the colleges and universities named in the memorial are authorized to operate educational programs beyond the secondary level. The memorial will be dispatched to each college and university named in the memorial, to the United States Secretary of Education, the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

B. SECTION DIRECTORY:

Not Applicable.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

¹⁰ Section 1005.06(1)(c), F.S.

¹¹ Texas House Joint Resolution 130 and draft of California Resolution is on file with House Education Committee staff.

¹² 34 C.F.R. s. 600.9(a)(1)(i)(A).

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.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not Applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.