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# **Education Committee**

**Monday, February 27, 2012**

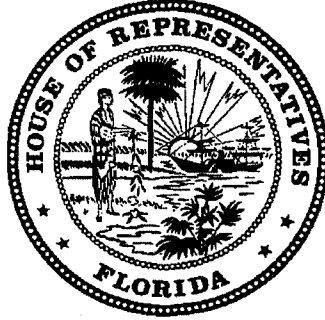
**2:00 pm – 4:00 pm**

**Reed Hall – 102 HOB**

**Meeting Packet**

**Dean Cannon  
Speaker**

**William Proctor  
Chair**



## AGENDA

Education Committee  
Monday, February 27, 2012  
2:00 pm – 4:00 pm  
Reed Hall – 102 HOB

- I. Call to Order/Roll Call
- II. Opening Remarks
- III. Consideration of the following bill(s):
  - CS/CS/HB 859 Florida Tax Credit Scholarship Program by PreK-12 Appropriations Subcommittee, Finance & Tax Committee, Corcoran
  - CS/CS/HB 903 Charter Schools by PreK-12 Appropriations Subcommittee, K-20 Innovation Subcommittee, Adkins
  - CS/CS/HB 1403 High School Athletics by Rules & Calendar Committee, K-20 Competitiveness Subcommittee, Stargel
  - CS/HB 4057 Physical Education in the Public Schools by K-20 Innovation Subcommittee, Metz
  - CS/HB 7059 Acceleration Options in Public Education by PreK-12 Appropriations Subcommittee, K-20 Innovation Subcommittee, Stargel
- IV. Consideration of the following proposed committee bill:
  - PCB EDC 12-03 Postsecondary Education
- V. Closing Remarks and Adjournment



1                                   A bill to be entitled  
2       An act relating to the Florida Tax Credit Scholarship  
3       Program; amending s. 1002.395, F.S.; revising student  
4       eligibility requirements for participation in the  
5       program; increasing the tax credit cap amount  
6       applicable to the program; revising provisions  
7       relating to the reporting of test scores by private  
8       schools participating in the program; providing that a  
9       private school may choose to offer and administer  
10      statewide assessments at the school; revising  
11      Department of Education duties relating to site  
12      visits; requiring the department to provide at no cost  
13      statewide assessments and related materials to a  
14      school that makes such a request; providing conditions  
15      under which statewide assessments may be administered  
16      at a private school; requiring a private school to  
17      follow statutory requirements, State Board of  
18      Education rules, and district testing policies;  
19      requiring the department to publish an accountability  
20      report; requiring a school district to coordinate with  
21      the department to provide statewide assessments and  
22      related materials to a private school upon the  
23      department's request; providing school district  
24      responsibilities; revising the conditions upon which  
25      the Commissioner of Education may base the denial,  
26      suspension, or revocation of a private school's  
27      participation in the program or the suspension of

28 scholarship fund payment; amending s. 1002.20, F.S.;  
 29 conforming provisions; providing an effective date.

30

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

32

33 Section 1. Subsection (3), paragraph (a) of subsection  
 34 (5), paragraph (e) of subsection (7), paragraph (c) of  
 35 subsection (8), paragraphs (j) and (n) of subsection (9),  
 36 subsection (10), and paragraphs (a) and (c) of subsection (11)  
 37 of section 1002.395, Florida Statutes, are amended, and  
 38 paragraph (p) is added to subsection (9) of that section, to  
 39 read:

40 1002.395 Florida Tax Credit Scholarship Program.—

41 (3) PROGRAM; SCHOLARSHIP ELIGIBILITY.—

42 (a) The Florida Tax Credit Scholarship Program is  
 43 established.

44 (b) Contingent upon available funds, ~~÷~~

45 ~~÷~~ a student is eligible for a Florida tax credit  
 46 scholarship under this section if the student meets one or more  
 47 of the following criteria:

48 1. The student qualifies for free or reduced-price school  
 49 lunches under the National School Lunch Act or is on the direct  
 50 certification list and:

51 a. Was counted as a full-time equivalent student during  
 52 the previous state fiscal year for purposes of state per-student  
 53 funding;

54 b. Received a scholarship from an eligible nonprofit  
 55 scholarship-funding organization or from the State of Florida

56 during the previous school year; or

57 c. Is eligible to enter kindergarten through fifth ~~or~~  
 58 ~~first~~ grade. ~~or~~

59 2.4. The student is currently placed, or during the  
 60 previous state fiscal year was placed, in foster care as defined  
 61 in s. 39.01.

62 3.2. The A student continues ~~may continue~~ in the  
 63 scholarship program as long as the student's household income  
 64 level does not exceed 230 percent of the federal poverty level.

65 4.3. The student, who is a first-time tax credit  
 66 scholarship recipient, is a sibling of a student who is  
 67 continuing in the scholarship program and who resides in the  
 68 same household as the student ~~shall also be eligible as a first-~~  
 69 ~~time tax credit scholarship recipient~~ if the sibling meets one  
 70 or more of the criteria specified in subparagraphs ~~subparagraph~~  
 71 1. and 2. and as long as the student's and sibling's household  
 72 income level does not exceed 230 percent of the federal poverty  
 73 level.

74 (c) Household income for purposes of a student who is  
 75 currently in foster care as defined in s. 39.01 shall consist  
 76 only of the income that may be considered in determining whether  
 77 he or she qualifies for free or reduced-price school lunches  
 78 under the National School Lunch Act.

79 (5) SCHOLARSHIP FUNDING TAX CREDITS; LIMITATIONS.—

80 (a)1. The tax credit cap amount is \$229 ~~\$140~~ million in  
 81 the 2012-2013 ~~2010-2011~~ state fiscal year.

82 2. In the 2013-2014 ~~2011-2012~~ state fiscal year and each  
 83 state fiscal year thereafter, the tax credit cap amount is the

84 tax credit cap amount in the prior state fiscal year. However,  
 85 in any state fiscal year when the annual tax credit amount for  
 86 the prior state fiscal year is equal to or greater than 90  
 87 percent of the tax credit cap amount applicable to that state  
 88 fiscal year, the tax credit cap amount shall increase by 25  
 89 percent. The department shall publish on its website information  
 90 identifying the tax credit cap amount when it is increased  
 91 pursuant to this subparagraph.

92 (7) PARENT AND STUDENT RESPONSIBILITIES FOR PROGRAM  
 93 PARTICIPATION.—

94 (e) The parent shall ensure that the student participating  
 95 in the scholarship program takes the norm-referenced assessment  
 96 offered by the private school. The parent may also choose to  
 97 have the student participate in the statewide assessments  
 98 pursuant to s. 1008.22. If the parent requests that the student  
 99 participating in the scholarship program take statewide  
 100 assessments pursuant to s. 1008.22 and the private school has  
 101 not chosen to offer and administer the statewide assessments,  
 102 the parent is responsible for transporting the student to the  
 103 assessment site designated by the school district.

104 (8) PRIVATE SCHOOL ELIGIBILITY AND OBLIGATIONS.—An  
 105 eligible private school may be sectarian or nonsectarian and  
 106 must:

107 (c) Be academically accountable to the parent for meeting  
 108 the educational needs of the student by:

109 1. At a minimum, annually providing to the parent a  
 110 written explanation of the student's progress.

111 2. Annually administering or making provision for students

112 participating in the scholarship program in grades 3 through 10  
 113 to take one of the nationally norm-referenced tests identified  
 114 by the Department of Education or the statewide assessments  
 115 pursuant to s. 1008.22. Students with disabilities for whom  
 116 standardized testing is not appropriate are exempt from this  
 117 requirement. A participating private school must report a  
 118 student's scores to the parent. A participating private school  
 119 must annually report by August 15 the scores of all  
 120 participating students ~~and~~ to the independent research  
 121 organization ~~selected by the Department of Education as~~  
 122 described in paragraph (9) (j).

123 3. Cooperating with the scholarship student whose parent  
 124 chooses to have the student participate in the statewide  
 125 assessments pursuant to s. 1008.22 or, if a private school  
 126 chooses to offer the statewide assessments, administering the  
 127 assessments at the school.

128 a. A participating private school may choose to offer and  
 129 administer the statewide assessments to all students who attend  
 130 the private school in grades 3 through 10.

131 b. A participating private school must submit a request in  
 132 writing to the Department of Education by March 1 of each year  
 133 in order to administer the statewide assessments in the  
 134 subsequent school year.

135  
 136 The inability of a private school to meet the requirements of  
 137 this subsection shall constitute a basis for the ineligibility  
 138 of the private school to participate in the scholarship program  
 139 as determined by the Department of Education.



140 (9) DEPARTMENT OF EDUCATION OBLIGATIONS.—The Department of  
 141 Education shall:

142 (j) Select an independent research organization, which may  
 143 be a public or private entity or university, to which  
 144 participating private schools must report the scores of  
 145 participating students on the nationally norm-referenced tests  
 146 or the statewide assessments administered by the private school  
 147 in grades 3 through 10.

148 1. The independent research organization must annually  
 149 report to the Department of Education on the year-to-year  
 150 learning gains of participating students:

151 a. On a statewide basis. The report shall also include, to  
 152 the extent possible, a comparison of these learning gains to the  
 153 statewide learning gains of public school students with  
 154 socioeconomic backgrounds similar to those of students  
 155 participating in the scholarship program. To minimize costs and  
 156 reduce time required for the independent research organization's  
 157 analysis and evaluation, the Department of Education shall  
 158 conduct analyses of matched students from public school  
 159 assessment data and calculate control group learning gains using  
 160 an agreed-upon methodology outlined in the contract with the  
 161 independent research organization; and

162 b. According to each participating private school in which  
 163 there are at least 30 participating students who have scores for  
 164 tests administered during or after the 2009–2010 school year for  
 165 2 consecutive years at that private school.

166 2. The sharing and reporting of student learning gain data  
 167 under this paragraph must be in accordance with requirements of

168 20 U.S.C. s. 1232g, the Family Educational Rights and Privacy  
 169 Act, and shall be for the sole purpose of creating the annual  
 170 report required by subparagraph 1. All parties must preserve the  
 171 confidentiality of such information as required by law. The  
 172 annual report must not disaggregate data to a level that will  
 173 identify individual participating schools, except as required  
 174 under sub-subparagraph 1.b., or disclose the academic level of  
 175 individual students.

176 3. The annual report required by subparagraph 1. shall be  
 177 published by the Department of Education on its website.

178 (n)1. Conduct ~~random~~ site visits to private schools  
 179 participating in the Florida Tax Credit Scholarship Program. The  
 180 purpose of the site visits is solely to verify the information  
 181 reported by the schools concerning the enrollment and attendance  
 182 of students, the credentials of teachers, background screening  
 183 of teachers, and teachers' fingerprinting results. The  
 184 Department of Education may not make more than seven ~~random~~ site  
 185 visits each year; however, the department may make additional  
 186 site visits at any time to any school that has received a notice  
 187 of noncompliance or a notice of proposed action within the  
 188 previous 2 years ~~and may not make more than one random site~~  
 189 ~~visit each year to the same private school.~~

190 2. Annually, by December 15, report to the Governor, the  
 191 President of the Senate, and the Speaker of the House of  
 192 Representatives the Department of Education's actions with  
 193 respect to implementing accountability in the scholarship  
 194 program under this section and s. 1002.421, any substantiated  
 195 allegations or violations of law or rule by an eligible private

196 school under this program concerning the enrollment and  
 197 attendance of students, the credentials of teachers, background  
 198 screening of teachers, and teachers' fingerprinting results and  
 199 the corrective action taken by the Department of Education.

200 (p) Upon the request of a participating private school,  
 201 provide at no cost to the school the statewide assessments  
 202 administered under s. 1008.22 and any related materials for  
 203 administering the assessments. Students at a private school may  
 204 be assessed using the statewide assessments if the addition of  
 205 those students and the school does not cause the state to exceed  
 206 its contractual caps for the number of students tested and the  
 207 number of testing sites. The state shall provide the same  
 208 materials and support to a private school that it provides to a  
 209 public school. A private school that chooses to administer  
 210 statewide assessments under s. 1008.22 shall follow the  
 211 requirements set forth in ss. 1008.22 and 1008.24, rules adopted  
 212 by the State Board of Education to implement those sections, and  
 213 district-level testing policies established by the district  
 214 school board. The department shall publish an accountability  
 215 report that presents the results of the student assessments at  
 216 private schools that choose to participate in the statewide  
 217 student assessment program.

218 (10) SCHOOL DISTRICT OBLIGATIONS; PARENTAL OPTIONS.-

219 (a) Upon the request of any eligible nonprofit  
 220 scholarship-funding organization, a school district shall inform  
 221 all households within the district receiving free or reduced-  
 222 priced meals under the National School Lunch Act of their  
 223 eligibility to apply for a tax credit scholarship. The form of

224 such notice shall be provided by the eligible nonprofit  
 225 scholarship-funding organization, and the district shall include  
 226 the provided form, if requested by the organization, in any  
 227 normal correspondence with eligible households. If an eligible  
 228 nonprofit scholarship-funding organization requests a special  
 229 communication to be issued to households within the district  
 230 receiving free or reduced-price meals under the National School  
 231 Lunch Act, the organization shall reimburse the district for the  
 232 cost of postage. Such notice is limited to once a year.

233 (b) Upon the request of the Department of Education, a  
 234 school district shall coordinate with the department to provide  
 235 to a participating private school the statewide assessments  
 236 administered under s. 1008.22 and any related materials for  
 237 administering the assessments. A school district is responsible  
 238 for implementing test administrations at a participating private  
 239 school, including the:

- 240 1. Provision of training for private school staff on test
- 241 security and assessment administration procedures;
- 242 2. Distribution of testing materials to a private school;
- 243 3. Retrieval of testing materials from a private school;
- 244 4. Provision of the required format for a private school
- 245 to submit information to the district for test administration
- 246 and enrollment purposes; and
- 247 5. Provision of any required assistance, monitoring, or
- 248 investigation at a private school.

249 (11) COMMISSIONER OF EDUCATION AUTHORITY AND OBLIGATIONS.—

250 (a)1. The Commissioner of Education shall deny, suspend,  
 251 or revoke a private school's participation in the scholarship

252 program if it is determined that the private school has failed  
 253 to comply with the provisions of this section. However, in  
 254 instances in which the noncompliance is correctable within a  
 255 reasonable amount of time and in which the health, safety, or  
 256 welfare of the students is not threatened, the commissioner may  
 257 issue a notice of noncompliance that shall provide the private  
 258 school with a timeframe within which to provide evidence of  
 259 compliance prior to taking action to suspend or revoke the  
 260 private school's participation in the scholarship program.

261 2. The Commissioner of Education may deny, suspend, or  
 262 revoke a private school's participation in the scholarship  
 263 program if the commissioner determines that:

264 a. An owner or operator of a private school has exhibited  
 265 a previous pattern of failure to comply with this section or s.  
 266 1002.421; or

267 b. An owner or operator of the private school is operating  
 268 or has operated an educational institution in this state or  
 269 another state or jurisdiction in a manner contrary to the  
 270 health, safety, or welfare of the public.

271  
 272 In making the ~~this~~ determination under this subparagraph, the  
 273 commissioner may consider factors that include, but are not  
 274 limited to, acts or omissions by an owner or operator that led  
 275 to a previous denial or revocation of participation in an  
 276 education scholarship program; an owner's or operator's failure  
 277 to reimburse the Department of Education or a nonprofit  
 278 scholarship-funding organization for scholarship funds  
 279 improperly received or retained by a school; imposition of a

280 prior criminal sanction, ~~or~~ civil fine, administrative fine,  
 281 license revocation or suspension, or program eligibility  
 282 suspension, termination, or revocation ~~sanction~~ related to an  
 283 owner's or operator's management or operation of an educational  
 284 institution; or other types of criminal proceedings in which the  
 285 owner or operator was found guilty of, regardless of  
 286 adjudication, or entered a plea of nolo contendere or guilty to,  
 287 any offense involving fraud, deceit, dishonesty, or moral  
 288 turpitude.

289 (c) The commissioner may immediately suspend payment of  
 290 scholarship funds if it is determined that there is probable  
 291 cause to believe that there is:

292 1. An imminent threat to the health, safety, and welfare  
 293 of the students;

294 2. A previous pattern of failure to comply with this  
 295 section or s. 1002.421; or

296 ~~3.2.~~ Fraudulent activity on the part of the private  
 297 school. Notwithstanding s. 1002.22, in incidents of alleged  
 298 fraudulent activity pursuant to this section, the Department of  
 299 Education's Office of Inspector General is authorized to release  
 300 personally identifiable records or reports of students to the  
 301 following persons or organizations:

302 a. A court of competent jurisdiction in compliance with an  
 303 order of that court or the attorney of record in accordance with  
 304 a lawfully issued subpoena, consistent with the Family  
 305 Educational Rights and Privacy Act, 20 U.S.C. s. 1232g.

306 b. A person or entity authorized by a court of competent  
 307 jurisdiction in compliance with an order of that court or the

308 attorney of record pursuant to a lawfully issued subpoena,  
 309 consistent with the Family Educational Rights and Privacy Act,  
 310 20 U.S.C. s. 1232g.

311 c. Any person, entity, or authority issuing a subpoena for  
 312 law enforcement purposes when the court or other issuing agency  
 313 has ordered that the existence or the contents of the subpoena  
 314 or the information furnished in response to the subpoena not be  
 315 disclosed, consistent with the Family Educational Rights and  
 316 Privacy Act, 20 U.S.C. s. 1232g, and 34 C.F.R. s. 99.31.

317  
 318 The commissioner's order suspending payment pursuant to this  
 319 paragraph may be appealed pursuant to the same procedures and  
 320 timelines as the notice of proposed action set forth in  
 321 paragraph (b).

322 Section 2. Paragraph (b) of subsection (6) of section  
 323 1002.20, Florida Statutes, is amended to read:

324 1002.20 K-12 student and parent rights.—Parents of public  
 325 school students must receive accurate and timely information  
 326 regarding their child's academic progress and must be informed  
 327 of ways they can help their child to succeed in school. K-12  
 328 students and their parents are afforded numerous statutory  
 329 rights including, but not limited to, the following:

330 (6) EDUCATIONAL CHOICE.—

331 (b) Private school choices.—Parents of public school  
 332 students may seek private school choice options under certain  
 333 programs.

334 1. Under the McKay Scholarships for Students with  
 335 Disabilities Program, the parent of a public school student with

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2012

336 a disability may request and receive a McKay Scholarship for the  
 337 student to attend a private school in accordance with ~~the~~  
 338 ~~provisions of~~ s. 1002.39.

339 2. Under the Florida Tax Credit Scholarship Program, the  
 340 parent of a student who qualifies for free or reduced-price  
 341 school lunch or who is currently placed, or during the previous  
 342 state fiscal year was placed, in foster care as defined in s.  
 343 39.01 may seek a scholarship from an eligible nonprofit  
 344 scholarship-funding organization in accordance with ~~the~~  
 345 ~~provisions of~~ s. 1002.395.

346 Section 3. This act shall take effect upon becoming a law.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 859 Florida Tax Credit Scholarship Program  
**SPONSOR(S):** PreK-12 Appropriations Subcommittee, Finance and Tax Committee, and Corcoran  
**TIED BILLS:** IDEN./SIM. **BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Committee	17 Y, 6 N, As CS	Wilson	Langston
2) PreK-12 Appropriations Subcommittee	10 Y, 4 N, As CS	Seifert	Heflin
3) Education Committee		Valenstein <i>JW</i>	Klebacha <i>JK</i>

### SUMMARY ANALYSIS

The Florida Tax Credit Scholarship Program (program) provides private school scholarships to students from families that meet specified income levels. The program is funded with contributions to eligible nonprofit scholarship-funding organizations (SFOs) from taxpayers who receive a tax credit for use against their liability for corporate income tax; insurance premium tax; severance taxes on oil and gas production; self-accrued sales tax liabilities of direct pay permit holders; or alcoholic beverage taxes on beer, wine, and spirits.

The bill modifies student eligibility requirements by allowing a student to receive a program scholarship if the student qualifies for free or reduced price lunches and is eligible to enter kindergarten through fifth grade. Currently, a student in second through twelfth grade must have spent the prior school year in a public school. The bill removes the prior public requirement for students in second through fifth grade. The bill also removes the requirement that a student currently, or in the previous fiscal year was, placed in foster care meet certain household income levels.

The bill increases the cap on the amount of credits available to the program that may be approved in a fiscal year from \$140 million for FY 2010-11 to \$229 million for FY 2012-13. The cap increased by 25 percent for FY 2011-12 to \$175 million and is currently scheduled to increase by 25 percent for FY 2012-13 to \$218.75 million. The bill increases the cap \$10.25 million above the scheduled increase. The 25 percent increase will continue to occur as annual tax credit amounts meet or exceed 90 percent of the tax credit cap.

The bill authorizes private schools to administer statewide assessments at the school and requires the Department of Education (DOE) and school districts to provide the assessments and support to private schools that choose to administer statewide assessments. Additionally, the DOE is required to annually report the results of the student assessments at private schools that choose to administer statewide assessments.

Currently, DOE may make seven random site visits to participating private schools each year. The bill eliminates the requirement that the visits be random. Additionally, the bill authorizes the DOE to make additional site visits at any time to any school that has received a notice of noncompliance or a notice of proposed action within the previous two years.

The bill authorizes the Commissioner of Education to deny, suspend, or revoke a private school's participation in the program if the commissioner determines that an owner or operator of a private school has exhibited a previous pattern of failure to comply with the law related to the program or private school accountability.

See FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT and DRAFTING ISSUES OR OTHER COMMENTS.

The bill is effective upon becoming law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

##### *History of the Tax Credit*

The Florida Tax Credit Scholarship Program (program) provides private school scholarships to students from families that meet specified income levels.<sup>1</sup> The program is funded with contributions to private nonprofit scholarship-funding organizations (SFOs) from taxpayers who receive a tax credit for use against their liability for corporate income tax; insurance premium tax; severance taxes on oil and gas production; self-accrued sales tax liabilities of direct pay permit holders; or alcoholic beverage taxes on beer, wine, and spirits.<sup>2</sup> The tax credit is equal to 100 percent of the eligible contributions made.<sup>3</sup>

The Legislature initially capped the program at \$50 million in tax credits per state fiscal year,<sup>4</sup> but expanded the cap to \$88 million in 2003.<sup>5</sup> Beginning in FY 2008-2009, the cap was increased by \$30 million to \$118 million.<sup>6</sup> Until 2009, tax credits under the program were only available against the state's corporate income tax liability.<sup>7</sup>

In 2009, the Legislature expanded the revenue sources against which tax credits can be claimed to include the premium tax.<sup>8</sup> The premium tax is imposed on insurance premiums written in Florida and paid by insurance companies. In 2010, the revenue sources against which tax credits can be claimed were further expanded to include severance taxes on oil and gas production;<sup>9</sup> self-accrued sales tax liabilities of direct pay permit holders;<sup>10</sup> and alcoholic beverage taxes on beer, wine, and spirits.<sup>11</sup>

The Legislature also increased the tax credit cap to \$140 million, beginning in FY 2010-11, and authorized the cap to increase by 25 percent whenever credits approved by Department of Revenue (DOR) in the prior fiscal year exceed 90 percent of the tax credit cap for that year, beginning in FY 2011-12.<sup>12</sup> The current tax credit cap amount is \$175 million;<sup>13</sup> however, since the tax credit amount allocated for FY 2011-2012 exceeded 90 percent of the \$175 million credit cap, the tax credit cap amount will increase to \$218,750,000 in FY 2012-2013.<sup>14</sup>

As of November 2011, there were 1,181 schools participating in the program and scholarships were awarded to 37,578 students.<sup>15</sup>

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<sup>1</sup> Section 1002.395(3), F.S.

<sup>2</sup> Section 1002.395(1) and (5), F.S.

<sup>3</sup> Sections 220.1875, and 1002.395(5), F.S.

<sup>4</sup> Chapter 2001-225, L.O.F.

<sup>5</sup> Chapter 2003-391, L.O.F.

<sup>6</sup> Chapter 2008-241, L.O.F.

<sup>7</sup> See ch. 2009-108, L.O.F.

<sup>8</sup> Chapter 2009-108, L.O.F.; a premium tax pursuant to s. 624.509, F.S.

<sup>9</sup> Section 211.0251, F.S.

<sup>10</sup> Section 212.1831, F.S.

<sup>11</sup> Sections 211.0251, 212.1831, and 561.1211, F.S. directs DOR and the Department of Business and Professional Regulation to disregard tax credits accordingly for purposes of the distributions of tax revenue under ss. 211.06, 212.20, 561.12(1)(a) and 564.06(10), F.S., so that only amounts distributed to the General Revenue Fund are reduced.

<sup>12</sup> Chapter 2010-24, L.O.F.

<sup>13</sup> Florida Department of Education, *Florida Tax Credit Scholarship Program, Fast Facts and Program Statistics*, available at [http://www.floridaschoolchoice.org/Information/CTC/files/ctc\\_fast\\_facts.pdf](http://www.floridaschoolchoice.org/Information/CTC/files/ctc_fast_facts.pdf).

<sup>14</sup> Department of Revenue, Tax Information Publication No. 11ADM-03. *Florida Tax Credit Scholarship Program Tax Credit Cap Amount Will Increase*, Aug. 25, 2011, available at <http://dor.myflorida.com/dor/tips/tip11adm-03.html> (last visited Feb. 15, 2012).

<sup>15</sup> Florida Department of Education, *Florida Tax Credit Scholarship Program, November Quarterly Report* (2011), available at [http://www.floridaschoolchoice.org/Information/CTC/quarterly\\_reports/ftc\\_report\\_nov2011.pdf](http://www.floridaschoolchoice.org/Information/CTC/quarterly_reports/ftc_report_nov2011.pdf).

The following table summarizes information related to the tax credits approved by DOR:<sup>16</sup>

Tax Year	Number of Approved Tax Credit Allocation Applications	Number of Taxpayers	Total Amount of Tax Credit Allocations Approved for All Taxpayers	Number of Small Businesses Approved for Tax Credit Allocations	Total Amount of Tax Credit Allocations Approved for Small Businesses <sup>17</sup>
2002-03	77	48	\$47,686,000	4	\$186,000
2003-04	114	56	\$47,579,000	3	\$79,000
2004-05	102	58	\$47,560,000	2	\$60,000
2005-06	126	79	\$80,323,071	2	\$4,000
2006-07	94	65	\$87,123,000	1	\$3,000
2007-08 <sup>18</sup>	106	62	\$85,611,140	0	\$0
2008-09	125	75	\$97,415,847	0	\$0
2009-10	121	83	\$111,773,617 <sup>19</sup>	0	\$0
2010-11	128	100	\$136,321,200	0	\$0
2011-12	134	116	\$172,928,768	0	\$0

### **Scholarship Funding Organizations**

An SFO is a charitable organization exempt from federal income tax<sup>20</sup> that administers the receipt of contributions and scholarship awards.<sup>21</sup> Scholarships must be provided for eligible students on a first-come, first-serve basis, unless the student qualifies for priority consideration. An SFO may not restrict or reserve scholarships for use at a particular private school or for the child of an operator or owner of a private school or SFO.<sup>22</sup> Similarly, a taxpayer making a contribution may not designate a specific child or group of children as the beneficiaries of the scholarship.<sup>23</sup> If the SFO has been in operation for three years and does not have any negative financial findings, the SFO may use up to three percent of the contributions received for reasonable and necessary administrative expenses. No more than one-third of the funds available for administrative expense may be used for expenses related to recruitment of contributions.<sup>24</sup>

### **Private School Participants**

Private schools participating in the program must provide documentation of financial stability and comply with federal antidiscrimination law and all state laws regulating private schools.<sup>25</sup> To be eligible for participation in the program, a private school must demonstrate fiscal soundness, provide academic accountability, and meet reporting requirements of the SFOs and Department of Education (DOE).<sup>26</sup> The inability to meet these requirements will cause DOE to declare the private school ineligible to participate in the program.<sup>27</sup>

<sup>16</sup> Email, Department of Revenue (Jan. 23, 2012).

<sup>17</sup> Until 2006, s. 220.187(3)(a), F.S., provided that five percent of the tax credit was reserved for small businesses as defined under s. 288.703(1), F.S. Chapter 2006-75, L.O.F., reduced the small business cap to one percent. The cap was subsequently repealed by chapter 2008-241, L.O.F.

<sup>18</sup> Effective for tax years beginning Jan. 1, 2006, s. 220.187(5)(d), F.S., permits a taxpayer to rescind all or part of its previously allocated tax credit. When approved, the rescinded allocation can be allocated to another taxpayer.

<sup>19</sup> Of the total amount of the allocation of tax credits, \$21,899,000 was allocated to insurance companies based on 39 approved applications.

<sup>20</sup> Section 1002.395(2)(f), F.S.; s. 501(c)(3) of the Internal Revenue Code

<sup>21</sup> Section 1002.395(6), F.S.

<sup>22</sup> Section 1002.395(6), F.S.

<sup>23</sup> Section 1002.395(2)(e), F.S.

<sup>24</sup> Section 1002.395(6), F.S.

<sup>25</sup> Section 1002.421, F.S.

<sup>26</sup> Section 1002.395(8), F.S.

<sup>27</sup> See s. 1002.395(9), F.S.

## **Student Eligibility**

Under the program, SFOs may provide a scholarship to a student who qualifies for free or reduced-price school lunches under the National School Lunch Act<sup>28</sup> or is on the direct certification list and:<sup>29</sup>

- Was counted as a full-time equivalent student during the previous state fiscal year for purposes of state per-student funding;
- Is eligible to enter kindergarten or the first grade;
- Received a scholarship under the program or from the state the previous school year; or
- Is placed, or during the previous state fiscal year was placed in foster care.<sup>30</sup>

Contingent upon available funds, a student does not lose his or her scholarship due to a change in the economic status of the student's parents unless the parents' economic status exceeds 230 percent of the federal poverty guidelines.<sup>31</sup> A sibling of a scholarship student who continues to participate in the program and resides in the same household as the student is also eligible as a first-time scholarship recipient, as long as the student's and the sibling's household income level does not exceed 230 percent of the federal poverty level.<sup>32</sup>

## **Student Scholarships**

The maximum scholarship award to each individual student is set at a percentage of the unweighted Florida Education Finance Program (FEFP) student funding in the General Appropriations Act. The percentage for FY 2011-12 is 64 percent, or \$4,011 per student.<sup>33</sup> Thereafter, the scholarship amount increases by four percentage points each fiscal year the tax credit amounts meet or exceed 90 percent of the tax credit cap. The percentage will stop increasing upon reaching 80 percent, and from that year forward, the scholarship limit will be 80 percent of the unweighted FEFP funding amount.<sup>34</sup>

The actual scholarship amount a student receives is dependent upon the student's household income level. For students with household income levels above 215 percent, but equal to or less than 230 percent of the federal poverty level, the scholarship amount is 50 percent of the maximum award. The amount increases to 75 percent of the maximum award for students with household income that is more than 200 percent but less than 215 percent of the federal poverty level. For students with a household income of 200 percent of the federal poverty level or below, the full scholarship award is available.

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<sup>28</sup> See s. 1006.06, F.S.; United States Department of Agriculture (USDA), National School Lunch Program Fact Sheet (Oct. 2011), available at <http://www.fns.usda.gov/cnd/lunch/AboutLunch/NSLPFactSheet.pdf>.

<sup>29</sup> Children from households that receive benefits under the supplemental Nutrition Assistance Program (SNAP), formerly the Food Stamp Program, Temporary Assistance to Needy Families (TANF), or the Food Distribution Program on Indian Reservations (FDPIR), and children placed in foster care are deemed "categorically eligible" for free school meals, thereby eliminating the need for households to submit an application for meal benefits. USDA, *Eligibility Manual for School Meals*, at 11-13 (Oct. 2011), available at <http://www.fns.usda.gov/cnd/Guidance/EliMan.pdf>.

<sup>30</sup> Section 1002.395(3), F.S.

<sup>31</sup> Section 1002.395(3)(b)2., F.S.

<sup>32</sup> Section 1002.395(3)(b)3., F.S.

<sup>33</sup> Section 1002.395(12)(a).; Florida Department of Education, *Fast Facts and Program Statistics*, available at, [http://www.floridaschoolchoice.org/Information/CTC/files/ctc\\_fast\\_facts.pdf](http://www.floridaschoolchoice.org/Information/CTC/files/ctc_fast_facts.pdf).

<sup>34</sup> Section 1002.395(12)(a), F.S.

The following table shows the history of the program and the number of scholarships awarded.<sup>35</sup>

	<b>Award Per Student</b>	<b>Student Scholarships</b>	<b>Awarded Scholarships</b>	<b>Maximum Tax Credit Cap</b>	<b>Tax Credits Approved</b>
FY 2001-02	\$3,500			\$50,000,000	
FY 2002-03	\$3,500	15,585	\$50,000,000	\$50,000,000	\$47,686,000
FY 2003-04	\$3,500	11,550	\$40,000,000	\$88,000,000	\$47,579,000
FY 2004-05	\$3,500	10,549	\$36,655,500	\$88,000,000	\$47,560,000
FY 2005-06	\$3,500	15,123	\$46,745,482	\$88,000,000	\$80,323,071
FY 2006-07	\$3,750	17,819	\$59,300,655	\$88,000,000	\$87,123,000
FY 2007-08	\$3,750	21,493	\$73,450,691	\$88,000,000	\$85,611,140
FY 2008-09	\$3,950	24,871	\$88,626,463	\$118,000,000	\$97,415,847
FY 2009-10	\$3,950	28,927	\$106,049,940	\$118,000,000	\$111,773,617

## **Effect of Proposed Changes**

### ***Scholarship Eligibility***

The bill modifies student eligibility requirements by allowing a student to receive a program scholarship if the student qualifies for free or reduced price lunches and is eligible to enter kindergarten through fifth grade. Currently, a student in second through twelfth grade must have spent the prior school year in a public school. The bill removes the prior public requirement for students in second through fifth grade.

Additionally, the bill removes the requirement that a student currently, or in the previous fiscal year was, placed in foster care meet certain household income levels. Foster students are currently categorically eligible for free meals through the National School Lunch Act.<sup>36</sup> Since foster students are categorically eligible, removing this requirement does not limit or expand access to the program for foster students; however, if the federal government ever reclassifies foster students and they are no longer categorically eligible for free meals, the foster students will continue to be eligible for the program.

The bill also authorizes the parent<sup>37</sup> of a public school student, who is currently placed or during the previous fiscal year was placed in foster care, to seek private school choice options under the program, to comport with the changes made by the bill to the eligibility requirements.<sup>38</sup>

### ***Scholarship Funding Tax Credits***

The bill increases the cap on the amount of credits available to the program that may be approved in a fiscal year from \$140 million for FY 2010-11 to \$229 million for FY 2012-13. The cap increased by 25 percent for FY 2011-12 to \$175 million and is currently scheduled to increase by 25 percent for FY 2012-13 to \$218.75 million.<sup>39</sup> The bill increases the cap \$10.25 million above the scheduled increase. The 25 percent increase will continue to occur as annual tax credit amounts meet or exceed 90 percent of the tax credit cap.

<sup>35</sup> Florida Department of Education, *Fast Facts and Program Statistics*, available at [http://www.floridaschoolchoice.org/Information/CTC/files/ctc\\_fast\\_facts.pdf](http://www.floridaschoolchoice.org/Information/CTC/files/ctc_fast_facts.pdf). The data for FY 2011-2012 will not be available until July 2012.

<sup>36</sup> USDA, *Eligibility Manual for School Meals*, at 13 (Oct. 2011), available at <http://www.fns.usda.gov/cnd/Guidance/EliMan.pdf>.

<sup>37</sup> Parent is defined as either or both parents of a student, any guardian of a student, any person in a parental relationship to a student, or any person exercising supervisory authority over a student in place of a parent. Section 1000.21(5), F.S.

<sup>38</sup> Foster care is defined in s. 39.01, F.S.

<sup>39</sup> Section 1002.395(5)(a)2., F.S., requires the cap to increase by 25 percent whenever tax credits approved in the prior fiscal year are equal to or greater than 90 percent of the tax credit cap amount of that year.

## **Statewide Assessments**

Currently, students participating in the program are required to take a nationally norm-referenced assessment. A parent may also choose to have the student participate in the statewide assessments<sup>40</sup> administered in public schools. If a parent chooses to have the student participate in a statewide assessment, the parent is responsible for transporting the student to the assessment site. The bill authorizes private schools to administer statewide assessments at the school. However, if the private school does not choose to administer statewide assessments, parents that choose to have their students take the statewide assessments must continue to provide transportation to the assessment site.

The bill authorizes a private school that administers the statewide assessments to choose to offer and administer the assessments to all students who attend the private school in grades 3 through 10. This provides the private school flexibility in determining the population of students that will be administered the assessments.

If a private school chooses to administer the statewide assessments, the school must submit a request in writing to the DOE by March 1 of each year in order to administer the statewide assessments in the next school year. Additionally, the private school must annually report by August 15<sup>th</sup> the scores of all participating students on the norm-referenced assessment or the statewide assessment to the independent research organization selected by DOE. Private schools are currently required to report this data; the bill simply provides a deadline by which the data must be reported and includes statewide assessment data.

Upon request by a private school participating in the program, the DOE must provide the statewide assessments and any related materials for administering the assessments to the schools at no cost. The students may be assessed using the statewide assessments, provided the addition of students at participating private schools does not cause the state to exceed its contractual caps for the number of students tested and the number of testing sites. By providing a limitation on the number of students to be assessed by the statewide assessments, the bill limits the cost of administering the assessments. The bill also requires the state to provide the same materials and support to a private school as it provides to a public school. Likewise, it subjects the private schools that choose to administer the statewide assessments to the same requirements as public schools regarding test administration and security.

The bill requires the DOE to publish an accountability report that presents the results of the student assessments at private schools that choose to administer statewide assessments. Currently, the DOE reports various test results for public schools; however, the results are only reported when there is a sufficient sample size to be statistically reliable and protect the identities of the student, pursuant to the Family Educational Rights and Privacy Act (FERPA).<sup>41</sup> Consequently, DOE would only be able to publish those results if doing so would not violate FERPA.

Upon request of the DOE, a school district must coordinate with the DOE to provide the statewide assessments and related materials for administering the assessments to participating private schools. A school district is responsible for implementing test administrations at a participating private school. A school district must provide training for private school staff on test security and assessment administration procedures; distribute testing materials; retrieve testing materials; provide the required format for the private school to submit information to the district for test administration and enrollment purposes;<sup>42</sup> and provide any required assistance, monitoring, or investigation at a private school. The bill expands the duties and responsibilities of a school district related to statewide assessments which may require a school district to hire additional personnel to provide the necessary materials and support for administering statewide assessments.

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<sup>40</sup> Statewide assessments include FCAT, FCAT 2.0, and end-of-course assessments. Section 1008.22, F.S.

<sup>41</sup> 20 U.S.C. s. 1232g; 34 C.F.R. part 99.

<sup>42</sup> The information submitted to a school district is used to label the assessments before distributed to students. Telephone interview with Department of Education staff (Feb. 14, 2012).

## **Program Oversight**

Currently, DOE may make seven random site visits to participating private schools each year. The bill eliminates the requirement that the visits be random. Additionally, the bill authorizes the DOE to make additional site visits at any time to any school that has received a notice of noncompliance or a notice of proposed action within the previous two years. By authorizing additional site visits to schools in noncompliance, the bill provides the DOE the opportunity to verify information provided by these schools which may help the DOE determine if further action is necessary.

The bill authorizes the Commissioner of Education to deny, suspend, or revoke a private school's participation in the program if the commissioner determines that an owner or operator of a private school has exhibited a previous pattern of failure to comply with the law related to the program or private school accountability.<sup>43</sup> Currently, the commissioner may deny, suspend, or revoke a school's participation in the program if the commission determines that an owner or operator is operating or has operated an educational institution in this state or another state or jurisdiction in a manner contrary to the health, safety, or welfare of the public. Currently, the commissioner, in making his or her determination may consider a variety of factors. The bill expands the factors that may be considered to include an owner's or operator's failure to reimburse a nonprofit scholarship-funding organization for scholarship funds improperly received or retained by a school; the revocation or suspension of a license; and the suspension, termination, or revocation of program eligibility. The bill also clarifies the commissioner may consider the imposition of a prior criminal sanction, civil fine, or administrative fine and provides additional guidance to the commissioner in determining if a private school's participation in the program should be denied, suspended, or revoked.

### **B. SECTION DIRECTORY:**

**Section 1.** Amends s. 1002.395, F.S., relating to the Florida Tax Credit Scholarship Program; to revise student eligibility requirements for participation in the program; to increase the tax credit cap amount applicable to the program; to revise provisions relating to the reporting of test scores by private schools participating in the program; to provide that a private school may choose to offer and administer statewide assessments at the school; to revise Department of Education duties relating to site visits; to require the department to provide at no cost statewide assessments and related materials to a school that makes such a request; to provide conditions under which statewide assessments may be administered at a private school; to require a private school to follow applicable laws, rules, and policies related to testing; to require the department to publish an accountability report; to require a school district to coordinate with the department to provide statewide assessments and related materials to a private statewide assessments and related materials to a private statewide assessments and related materials to a private school upon the department's request; to provide school district responsibilities; to revise the conditions upon which the Commissioner of Education may base the denial, suspension, or revocation of a private school's participation in the program or the suspension of scholarship fund payment.

**Section 2.** Amends s. 1002.20, F.S., relating to K-12 student and parent rights; to conform provisions to changes made by the bill.

**Section 3.** Provides an effective date of upon becoming law.

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<sup>43</sup> Section 1002.421, F.S.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference (REC) has not estimated the impact on this bill. However, staff estimates this bill will have a -\$10.3 million cash impact in FY 2012-13 (-\$25.3 million recurring).

2. Expenditures:

The requirement that DOE, upon request of a participating private school, provide at no cost statewide assessments and related materials for administering the assessments may result in additional expenditure requirements for DOE.

The tax credit program is expected to result in expenditure savings as fewer students will require funding within the FEFP. Staff has estimated the FEFP savings under the provisions of the bill. As shown in Table 2 below the estimates indicate a continued total savings at slightly higher levels than under current law as fewer students will require funding within the FEFP as the program is expanded. The estimated total FEFP savings are expected to continue to exceed the total revenue impacts attributable to increased tax credits through FY 2015-16. Table 3 below shows estimated differences in FEFP savings, revenue reductions, and net savings under the bill compared to current law.

**Table 1. Program Impacts under the Current Law (Baseline)**

(\$Millions)	FY 2012-13	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
FEFP Savings	197.6	275.3	329.3	390.3	464.2
Revenue Impact	-175.0	-218.8	-273.4	-341.8	-427.2
Net Savings	22.6	56.5	55.8	48.5	37.0

**Table 2. Program Impacts under the Proposed Bill**

(Millions)	FY 2012-13	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
FEFP Savings	197.6	285.2	341.9	405.2	482.0
Revenue Impact	-175.0	-229	-286.3	-357.8	-447.3
Net Savings	22.6	56.2	55.6	47.4	34.7

**Table 3. Program Impacts: Proposed vs. Current.**

(\$Millions)	FY 2012-13	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
FEFP Savings		4.3	5.9	6.3	6.6
Revenue Impact		-10.3	-12.8	-16.0	-20.0
Net Savings		-0.3	-0.2	-1.1	-2.3

See *also* FISCAL COMMENTS.



## B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

### 1. Revenues:

None.

### 2. Expenditures:

The bill expands the duties and responsibilities of a school district related to private schools administering statewide assessments which may require a school district to hire additional personnel to provide the necessary materials and support to private schools.

## C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The tax credit cap increase will allow more taxpayers to make eligible contributions to SFOs and therefore more taxpayers to receive a dollar for dollar reduction in their state tax liabilities.

## D. FISCAL COMMENTS:

A recent report has discussed the difficulty in communicating to Legislators the full budgetary implications of changes to the Florida Tax Credit Scholarship Program.<sup>44</sup> The report points out that conventions and practices in the Revenue Estimating Conference (REC) and the budgeting process result in estimates of recurring revenue losses (mostly in future years) for which the expected offsetting expenditure savings are not recognized when the budget is formulated. Consequently, policymakers often see only the revenue losses. The report suggests that REC and/or budgeting conventions and practices could be changed solely with respect to this particular program, given the unique characteristic that "future revenue impacts will create offsetting budget savings that are at least equal to, and in every case to date, greater than, the revenue impacts."<sup>45</sup>

The 2010-2011 school year cost per student for the Florida Comprehensive Assessment Test (FCAT) was \$30.87.<sup>46</sup> If all of the scholarship students currently enrolled in private schools participated in the FCAT, the estimated cost of tests would be \$1,066,559 (\$30.87 per test x 34,550 students). As the number of scholarship participants increase each year, the testing costs would also increase. Because there is no way to estimate the number of students that would choose to participate, the total cost for the additional testing, training, and security is indeterminate at this time.

## 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.

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<sup>44</sup> Capital Analytics, *The Need to Tailor Revenue Conventions to the Unique Characteristics of the Tax Credit Scholarship Program*, Alan Johansen, Jan. 11, 2012.

<sup>45</sup> *Id.*

<sup>46</sup> Florida Department of Education, *Assessment and School Performance Frequently Asked Questions*, available at <http://www.fldoe.org/faq/default.asp?Dept=179&ID=977> (last visited Feb. 15, 2012).

### C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill removes the income level requirements for students placed in foster care; however, the bill does not remove language regarding the calculation of household income for students in foster care. It is suggested that lines 74 through 78 be deleted.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 26, 2012, the Finance & Tax committee adopted a strike-all amendment that:

- Modified eligibility requirements for the program. If students meet the requirements related to household income, they will be eligible to receive scholarship funding if they are also eligible to enter kindergarten through fifth grade (instead of kindergarten through first grade under current law).
- Increased the cap on the amount of tax credits available to the program that may be approved in a fiscal year from \$175 million to \$229 million for FY 2012-13. For FY 2013-14 and thereafter, the cap will increase by 25 percent whenever tax credits approved in the prior fiscal year are equal to or greater than 90 percent of the tax credit cap amount for that year.
- Provided certain responsibilities and obligations of parents and students, private schools, the Department of Education, school districts, and the Commissioner of Education regarding the program, including a requirement that the Department of Education, upon request of a participating private school, provide at no cost certain statewide assessments and related materials for administering the assessments.
- Clarified that the parents of a public school student may seek private school choice options under the program if a student is currently placed, or during the previous state fiscal year was placed, in foster care as provided by law.

On February 14, 2012, the PreK-12 Appropriations Subcommittee adopted one amendment that:

- Maintained the cost of the FCAT assessment by limiting the number of students tested and the number of testing sites to the state contractual cap.
- Clarified the test security of administering assessments by listing the provisions for which a school district is responsible and a private school is responsible.



1                                   A bill to be entitled  
 2           An act relating to charter schools; amending s.  
 3           1002.33, F.S.; authorizing a charter school operated  
 4           by a Florida College System institution to serve  
 5           students in kindergarten through grade 12 if certain  
 6           criteria are met; requiring a sponsor to not renew or  
 7           terminate the charter of certain low-performing  
 8           charter schools; requiring charter schools to maintain  
 9           an Internet website that enables the public to obtain  
 10          information regarding the school, its personnel, and  
 11          its programs; requiring that information regarding any  
 12          entity that owns, operates, or manages the school be  
 13          posted on the website; providing requirements for the  
 14          reimbursement of federal funds to a charter school by  
 15          its sponsor; requiring charter school expenditures to  
 16          comply with rules and regulations to be eligible for  
 17          reimbursement; requiring approval of the use of funds;  
 18          amending s. 1002.331, F.S., relating to high-  
 19          performing charter schools; requiring the Commissioner  
 20          of Education to annually review a high-performing  
 21          charter school's eligibility for high-performing  
 22          status; requiring declassification of high-performing  
 23          charter schools that fail to maintain eligibility;  
 24          amending s. 1002.332, F.S., relating to high-  
 25          performing charter school systems; requiring the  
 26          commissioner to annually review a high-performing  
 27          charter school system's eligibility for high-  
 28          performing status; requiring declassification of high-

29 performing charter school systems that fail to  
 30 maintain eligibility; providing an effective date.

31

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

33

34 Section 1. Paragraph (b) of subsection (5), paragraph (a)  
 35 of subsection (8), and paragraph (c) of subsection (17) of  
 36 section 1002.33, Florida Statutes, are amended, and paragraph  
 37 (q) is added to subsection (9) of that section, to read:

38 1002.33 Charter schools.—

39 (5) SPONSOR; DUTIES.—

40 (b) Sponsor duties.—

41 1.a. The sponsor shall monitor and review the charter  
 42 school in its progress toward the goals established in the  
 43 charter.

44 b. The sponsor shall monitor the revenues and expenditures  
 45 of the charter school and perform the duties provided in s.  
 46 1002.345.

47 c. The sponsor may approve a charter for a charter school  
 48 before the applicant has identified space, equipment, or  
 49 personnel, if the applicant indicates approval is necessary for  
 50 it to raise working funds.

51 d. The sponsor's policies shall not apply to a charter  
 52 school unless mutually agreed to by both the sponsor and the  
 53 charter school.

54 e. The sponsor shall ensure that the charter is innovative  
 55 and consistent with the state education goals established by s.  
 56 1000.03(5).

57 f. The sponsor shall ensure that the charter school  
 58 participates in the state's education accountability system. If  
 59 a charter school falls short of performance measures included in  
 60 the approved charter, the sponsor shall report such shortcomings  
 61 to the Department of Education.

62 g. The sponsor shall not be liable for civil damages under  
 63 state law for personal injury, property damage, or death  
 64 resulting from an act or omission of an officer, employee,  
 65 agent, or governing body of the charter school.

66 h. The sponsor shall not be liable for civil damages under  
 67 state law for any employment actions taken by an officer,  
 68 employee, agent, or governing body of the charter school.

69 i. The sponsor's duties to monitor the charter school  
 70 shall not constitute the basis for a private cause of action.

71 j. The sponsor shall not impose additional reporting  
 72 requirements on a charter school without providing reasonable  
 73 and specific justification in writing to the charter school.

74 2. Immunity for the sponsor of a charter school under  
 75 subparagraph 1. applies only with respect to acts or omissions  
 76 not under the sponsor's direct authority as described in this  
 77 section.

78 3. This paragraph does not waive a district school board's  
 79 sovereign immunity.

80 4. A Florida College System institution may work with the  
 81 school district or school districts in its designated service  
 82 area to develop charter schools that offer secondary education.  
 83 These charter schools must include an option for students to  
 84 receive an associate degree upon high school graduation. If a

85 Florida College System institution operates an approved teacher  
 86 preparation program under s. 1004.04 or s. 1004.85, the  
 87 institution may operate no more than one charter school that  
 88 serves students in kindergarten through grade 12. District  
 89 school boards shall cooperate with and assist the Florida  
 90 College System institution on the charter application. Florida  
 91 College System institution applications for charter schools are  
 92 not subject to the time deadlines outlined in subsection (6) and  
 93 may be approved by the district school board at any time during  
 94 the year. Florida College System institutions may not report FTE  
 95 for any students who receive FTE funding through the Florida  
 96 Education Finance Program.

97 (8) CAUSES FOR NONRENEWAL OR TERMINATION OF CHARTER.—

98 (a) The sponsor may choose not to renew or may terminate  
 99 the charter for any of the following grounds:

100 1. Failure to participate in the state's education  
 101 accountability system created in s. 1008.31, as required in this  
 102 section, or failure to meet the requirements for student  
 103 performance stated in the charter.

104 2. Failure to meet generally accepted standards of fiscal  
 105 management.

106 3. Violation of law.

107 4. Other good cause shown.

108  
 109 Notwithstanding paragraph (9) (o), the sponsor may not renew the  
 110 charter if the charter school has received a grade of "F"  
 111 pursuant to s. 1008.34 for 2 years within the 3-year period  
 112 prior to renewal. The sponsor shall terminate the charter if the

113 charter school has received a grade of "F" pursuant to s.  
 114 1008.34 for 2 years within a 3-year period.

115 (9) CHARTER SCHOOL REQUIREMENTS.—

116 (g) Each charter school shall maintain an Internet website  
 117 that enables the public to obtain information regarding the  
 118 school, its personnel, and its programs. The website shall  
 119 include information or online links to information regarding any  
 120 entity that owns, operates, or manages the school, including any  
 121 nonprofit or for-profit entity; the names of all governing  
 122 officers and administrative personnel of the entity; and any  
 123 fees the school pays to the entity. The information or online  
 124 links must be prominently displayed and easily accessible to  
 125 visitors of the website.

126 (17) FUNDING.—Students enrolled in a charter school,  
 127 regardless of the sponsorship, shall be funded as if they are in  
 128 a basic program or a special program, the same as students  
 129 enrolled in other public schools in the school district. Funding  
 130 for a charter lab school shall be as provided in s. 1002.32.

131 (c) If the district school board is providing programs or  
 132 services to students funded by federal funds, any eligible  
 133 students enrolled in charter schools in the school district  
 134 shall be provided federal funds for the same level of service  
 135 provided students in the schools operated by the district school  
 136 board. Unless otherwise mutually agreed to by the charter school  
 137 and its sponsor, and consistent with state and federal rules and  
 138 regulations governing the use and disbursement of federal funds,  
 139 all federal funds available to the sponsor for the benefit of  
 140 the charter school, the charter school's students, or the



141 charter school's students as public school students in the  
 142 school district, including, but not limited to, Title I, Title  
 143 II, and IDEA funds, shall be reimbursed to the charter school on  
 144 a monthly basis. All invoices for such funds shall be provided  
 145 by the charter school to the sponsor at least 30 days before the  
 146 monthly date of reimbursement set by the sponsor. In order to be  
 147 reimbursed, any expenditure made by the charter school must  
 148 comply with all applicable state and federal rules and  
 149 regulations, including, but not limited to, applicable OMB  
 150 Circulars, Education Department General Administrative  
 151 Regulations, and program-specific statutes, rules, and  
 152 regulations. No such funds may be made available to the charter  
 153 school until a plan has been submitted to the sponsor for  
 154 approval of the use of such funds in accordance with applicable  
 155 federal requirements. The sponsor shall have 30 days to review  
 156 and approve any plan submitted pursuant to this paragraph.  
 157 Pursuant to provisions of 20 U.S.C. 8061 s. 10306, all charter  
 158 schools shall receive all federal funding for which the school  
 159 is otherwise eligible, including Title I funding, not later than  
 160 5 months after the charter school first opens and within 5  
 161 months after any subsequent expansion of enrollment.

162 Section 2. Subsections (4) and (5) of section 1002.331,  
 163 Florida Statutes, are amended to read:

164 1002.331 High-performing charter schools.—

165 (4) A high-performing charter school may not increase  
 166 enrollment or expand grade levels following any school year in  
 167 which it receives a school grade of "C" or below. If the charter  
 168 school receives a school grade of "C" or below in any 2 years

169 during the term of the charter awarded under subsection (2), the  
 170 term of the charter may be modified by the sponsor ~~and the~~  
 171 ~~charter school loses its high-performing charter school status~~  
 172 ~~until it regains that status under subsection (1).~~

173 (5) The Commissioner of Education, upon request by a  
 174 charter school, shall verify that the charter school meets the  
 175 criteria in subsection (1) and provide a letter to the charter  
 176 school and the sponsor stating that the charter school is a  
 177 high-performing charter school pursuant to this section. The  
 178 commissioner shall annually determine if a high-performing  
 179 charter school continues to meet the criteria in subsection (1).  
 180 A high-performing charter school shall maintain its high-  
 181 performing status unless the commissioner determines that the  
 182 charter school no longer meets the criteria in subsection (1),  
 183 at which time the commissioner shall send a letter providing  
 184 notification of its declassification as a high-performing  
 185 charter school.

186 Section 3. Paragraph (a) of subsection (2) of section  
 187 1002.332, Florida Statutes, is amended to read:

188 1002.332 High-performing charter school system.—

189 (2) (a) The Commissioner of Education, upon request by an  
 190 entity, shall verify that the entity meets the criteria in  
 191 subsection (1) for the prior school year and provide a letter to  
 192 the entity stating that it is a high-performing charter school  
 193 system. The commissioner shall annually determine if a high-  
 194 performing charter school system continues to meet the criteria  
 195 in subsection (1). A high-performing charter school system shall  
 196 maintain its high-performing status unless the commissioner

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197 | determines that the charter school system no longer meets the  
198 | criteria in subsection (1), at which time the commissioner shall  
199 | send a letter providing notification of its declassification as  
200 | a high-performing charter school system.

201 | Section 4. This act shall take effect July 1, 2012.

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 903 Charter Schools

**SPONSOR(S):** PreK-12 Appropriations Subcommittee; K-20 Innovation Subcommittee; and Adkins

**TIED BILLS:** IDEN./SIM. **BILLS:** SB 1852

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

### SUMMARY ANALYSIS

The bill increases the accountability of charter schools by:

- Requiring the Commissioner of Education to annually determine a high-performing charter school's, or high-performing charter school system's, continued eligibility for "high-performing" status. A high-performing charter school or charter school system that fails to meet eligibility criteria will lose its classification as "high-performing."
- Prohibiting a sponsor from renewing a charter school's charter if the school has received two school grades of "F" within the three year period prior to renewal. In addition, the bill requires the sponsor to terminate a charter if the school receives two school grades of "F" in any three-year period.
- Requiring each charter school to maintain a website with information or online links to information regarding any entity that owns, operates, or manages the school and any management fees the school pays to such entity.

The bill also:

- Authorizes Florida College System institutions with approved teacher preparation programs to establish one charter school which serves students in kindergarten through grade 12.
- Requires a sponsor to provide federal funds to charter schools on a reimbursement basis, if certain requirements are met. A charter school and its sponsor may mutually agree to another arrangement regarding federal funds.

The bill takes effect July 1, 2012.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Charter Schools**

Charter schools<sup>1</sup> are nonsectarian, public schools that operate under a performance contract with a sponsor. This performance contract is known as a “charter.”<sup>2</sup> The charter exempts the school from many regulations applicable to traditional public schools to encourage the use of innovative learning methods.<sup>3</sup> One of the guiding principles of charter schools is to meet high standards of student achievement and increase parental choice and student learning opportunities.<sup>4</sup>

A charter school may be sponsored by a district school board or, in the case of a charter lab school, by a state university.<sup>5</sup> Each charter school is administered by a governing board.<sup>6</sup> State universities, Florida College System (FCS) institutions, municipalities, and private, nonprofit s. 501(c)(3) of the Internal Revenue Code status organizations<sup>7</sup> may operate a charter school.<sup>8</sup>

#### **Florida College System Institution Charter Schools**

##### **Present Situation**

Florida College System (FCS) institutions are statutorily authorized to, in cooperation with the school board or boards within the institution’s service area, develop charter schools that offer secondary education<sup>9</sup> and allow students to obtain an associate degree<sup>10</sup> upon graduation from high school.<sup>11</sup> Students have full access to all college facilities, activities, and services.<sup>12</sup> There are seven FCS institution charter schools operating in Florida:

- Northwest Florida State College (NFSC): NFSC Collegiate High School in Okaloosa County;
- St. Petersburg College: St. Petersburg Collegiate High School in Pinellas County;
- Polk State College (PSC): PSC Lakeland Collegiate High School and PSC Chain of Lakes Collegiate High School in Polk County;
- Indian River State College: Clark Advanced Learning Center in Martin County; and

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<sup>1</sup> In the 2011-12 school year, there are 525 charter schools operating in 44 of Florida’s 67 school districts and at two state universities. Charter schools currently serve 178,892 students. Florida Department of Education, *Charter Schools Funding Report*, at 1 (Jan. 1, 2012)[hereinafter *Funding Report*].

<sup>2</sup> Section 1002.33(7), F.S.

<sup>3</sup> Section 1002.33(2) and (16), F.S.

<sup>4</sup> Section 1002.33(2), F.S.

<sup>5</sup> Section 1002.33(5)(a), F.S.

<sup>6</sup> Section 1002.33(9)(h)-(j), F.S.

<sup>7</sup> The internal revenue code defines a 501(c)(3) status organization as a private, nonprofit organization that is organized exclusively for religious, scientific, literary, or educational purposes or for the purpose of promoting amateur sports or for preventing cruelty to animals or children. These organizations are exempt from federal income taxes. 26 U.S.C. s. 501(c)(3).

<sup>8</sup> Section 1002.33(5)(b)4., (12)(i), and (15)(b)-(c), F.S.

<sup>9</sup> Under Florida law, the term “secondary school” is synonymous with “high school” (grades 9 through 12). Section 1003.01(2), F.S. (definition of “school”). Generally speaking, elementary schools serve students in kindergarten through grade 5, middle schools serve students in grades 6 through 8, and high schools serve students in grades 9 through 12. Section 1003.01(2), F.S. High school grade levels served by FCS institution charter schools vary. For example, St. Petersburg Collegiate High School serves students in grades 10 through 12. St. Petersburg Collegiate High School, *Admissions*, <http://www.spcollege.edu/spchs/Admission.html> (last visited Feb. 2, 2012). In contrast, Edison State College’s two collegiate high schools serve students in grades 9 through 12. *See, e.g.*, Edison Collegiate High School, *Admissions*, <http://echs.edison.edu/about/admission-process/> (last visited Feb. 2, 2012).

<sup>10</sup> Associate degrees include the associate in arts, associate in science, and associate in applied science degrees. *See* rule 6A-14.030(1)-(3), F.A.C.

<sup>11</sup> Section 1002.33(5)(b)4., F.S.

<sup>12</sup> Section 1002.33(5)(b)4., F.S.

- Edison State College: Edison Collegiate High School in Charlotte County and Edison Collegiate High School in Lee County.<sup>13</sup>

FCS institution charter schools may not serve students in the elementary or middle grades.<sup>14</sup>

### Effect of Proposed Changes

Currently, FCS institution charter schools may only serve students in the secondary grades. The bill authorizes FCS institutions with approved teacher preparation programs to establish one charter school which serves students in kindergarten through grade 12. This will enable FCS institutions to use these charter schools as teaching labs for prospective teachers enrolled in their teacher preparation programs.

## **High-Performing Charter Schools and Charter School Systems**

### Present Situation

Legislation enacted in 2011 established criteria for identifying charter schools and charter school systems with a track record of exemplary academic performance and financial stability. A high-performing charter school is a charter school that during each of the three previous years:

- Received at least two school grades of “A” and no grade below “B;”
- Received an unqualified opinion<sup>15</sup> on each annual financial audit; and
- Has not received an annual financial audit that reveals a financial emergency condition.<sup>16</sup>

A high-performing charter school system is a system of charter schools operated by a municipality or other public entity that is authorized by law to operate a charter school; a private, nonprofit, s. 501(c)(3) of the Internal Revenue Code status corporation; or a private for-profit education management corporation that:

- Includes at least three high-performing charter schools in Florida;
- Has at least 50 percent of its charter schools designated as “high-performing” with no charter school receiving a school grade of “D” or “F;” and
- Has not received an annual financial audit that revealed a financial emergency condition for any charter school operated by the entity in Florida.

In order to receive “high-performing” status, a charter school or charter school system must request verification by the Commissioner of Education that the school meets the eligibility requirements.<sup>17</sup>

Among other advantages,<sup>18</sup> a high-performing charter school may, at its option, receive a 15-year charter. The law provides for removal of a charter school’s “high-performing” status if it receives a

<sup>13</sup> Review of FCS institution websites (Jan. 26, 2012).

<sup>14</sup> Section 1002.33(5)(b)4., F.S.

<sup>15</sup> An unqualified audit opinion means that the charter school’s financial statements are materially correct. Telephone interview with Florida Auditor General staff (March 24, 2011).

<sup>16</sup> Section 1002.331(1), F.S.; ss. 1 and 2, ch. 2011-232, L.O.F. A financial emergency condition includes: failure to pay short-term loans, make bond debt service or pay long-term debt payments due to lack of funds; failure to pay uncontested creditor claims within 90 days; failure to pay withheld employee income taxes; failure for one pay period to pay wages, salaries, and retirement benefits owed; or a fund balance or total net assets deficit. Section 218.503(1), F.S. A charter school in the workplace satisfies audit requirements for “high-performing” status if the auditor finds that sufficient monetary resources are available to cover any reported deficiency or if the deficiency does not result in a deteriorating financial condition. Section 1002.331(1)(c), F.S. A “deteriorating financial condition” is a circumstance that significantly impairs the ability of a charter school to generate enough revenues to meet its expenditures without causing the occurrence of a financial emergency condition. Section 1002.345(1)(a)3., F.S.

<sup>17</sup> Section 1002.332(1), F.S.

<sup>18</sup> Additional high-performing charter school advantages include expansion of enrollment by 15 percent annually, expansion of grade levels served, and replication of its school model in any district in the state, if specified requirements are met. Section 1002.331, F.S.

school grade of “C” in any two years during the term of the 15-year charter.<sup>19</sup> The law does not provide a process for annually reviewing a charter school’s, or charter school system’s, continued eligibility for “high-performing” status. Nor does it specify a process for removing the status if a school or system is no longer eligible.<sup>20</sup>

### Effect of Proposed Changes

The bill requires the commissioner to annually determine a charter school’s, or charter school system’s, continued eligibility for “high-performing” status. A high-performing charter school or charter school system may maintain its “high-performing” status, unless the commissioner determines that the charter school or system no longer meets eligibility criteria. If a high-performing charter school or system fails to meet eligibility criteria, the commissioner must notify the school or system of its declassification as “high-performing.” These changes establish explicit standards for reviewing continued eligibility for “high-performing” status and for declassifying high-performing charter schools and systems that fail to meet eligibility criteria.

### Charter School Accountability

#### Present Situation

Charter schools are subject to the same academic accountability requirements applicable to traditional public schools.<sup>21</sup> Charter school students must participate in statewide assessments.<sup>22</sup> Like other public schools, charter schools receive school grades.<sup>23</sup>

Charter schools that struggle academically are subject to Florida’s system of school improvement and intervention. State law provides two separate processes for providing intervention and support to low-performing charter schools. The charter school statute prescribes certain interventions to improve student performance at charter schools graded “D” or “F.”<sup>24</sup> Charter schools are also subject to differentiated accountability.<sup>25</sup>

The charter school statute requires the director and a representative of the governing board of a charter school graded “D” to annually appear before the sponsor to address academic deficiencies. The sponsor must communicate what services will be provided to help the school address deficiencies. The governing board must work with the sponsor to improve the school’s academic performance.<sup>26</sup>

The sponsor of a charter school graded “D” for two consecutive years or “F” must require the governing board to implement a school improvement plan to improve student performance the following year.<sup>27</sup> If poor performance persists, the sponsor must place the school on probation and require it to take one of the following corrective actions:

- Contract for educational services of the school;
- Reorganize the school, make necessary staffing changes, and implement a plan that addresses the causes of inadequate progress; or
- Reconstitute the school.

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<sup>19</sup> Section 1002.331(4), F.S.

<sup>20</sup> See ss. 1002.331 and 1002.332, F.S.

<sup>21</sup> Section 1002.33(16)(a)2., F.S.

<sup>22</sup> Section 1008.22(3), F.S. Statewide assessments include the Florida Comprehensive Assessment Test (FCAT) and state standardized end-of-course examinations. Section 1008.22(3)(c), F.S.

<sup>23</sup> Sections 1002.33(7)(a)4. and (16)(a)2., 1008.33, and 1008.34(3), F.S.; 20 U.S.C. s. 6311(2)(B), (C), and (K). Charter schools with less than 30 students do not receive school grades because at least 30 students are required in order to obtain a valid sample size for school grading purposes. See rule 6A-1.09981(4)(a)-(b), F.A.C. A charter alternative school receives a school improvement rating in lieu of a school grade. Section 1008.341, F.S.

<sup>24</sup> See s. 1002.33(9)(n)-(p), F.S.

<sup>25</sup> Sections 1002.33(7)(a)4. and (16)(a)2., 1008.33, and 1008.34(3), F.S.; 20 U.S.C. s. 6311(2)(B), (C), and (K).

<sup>26</sup> Section 1002.33(9)(n), F.S.

<sup>27</sup> Section 1002.33(9)(o), F.S.

The school must continue with corrective action until student performance improves.<sup>28</sup> The director and a representative of a charter school that is required to implement a school improvement plan or placed on probation must annually appear before its sponsor to report the progress of the corrective strategies being implemented by the school.<sup>29</sup> If poor performance persists, the sponsor may terminate the school's charter.<sup>30</sup>

Unlike the interventions for charter schools graded "D" or "F," differentiated accountability interventions are based upon progress towards AYP, the statewide assessment components for school grading, and the level and rate of change in student performance in reading and mathematics.<sup>31</sup> Under differentiated accountability, a school is placed in one of six categories, five of which require intervention. A school's categorization determines the type and intensity of the intervention and whether the intervention is directed by the school, school district, or Florida Department of Education (DOE). Schools placed in the lowest performing categories are subject to the most intensive interventions and may be restructured if initial interventions fail to improve student performance at the school.<sup>32</sup>

In addition to these accountability requirements, a charter school's charter may be terminated or not renewed by the sponsor for any of the following reasons:

- Failure to participate in the state's education accountability system or meet the requirements for student performance stated in the charter;
- Failure to meet generally accepted standards of financial management;
- A violation of law; or
- Other good cause shown.<sup>33</sup>

The sponsor must provide a charter school with a formal hearing regarding termination or nonrenewal of its charter, if requested by a charter school's governing board. The sponsor may choose to provide either a direct hearing or a hearing before an administrative law judge. A final order on termination or nonrenewal is appealable to the District Court of Appeals.<sup>34</sup>

### Effect of Proposed Changes

Currently, sponsors may terminate or not renew the charters of failing charter schools; however, this authority is discretionary and is not always exercised when school improvement interventions do not improve the school's performance. The bill prohibits a sponsor from renewing a charter school's charter if the school has received two grades of "F" within the three year period prior to renewal. In addition, the bill requires the sponsor to terminate a charter school's charter if the school receives two grades of "F" in any three-year period. In such cases, students attending the charter school would be reassigned to new schools based upon the school district's enrollment policies. This provision ensures that failing charter schools are closed by the sponsor if school improvement interventions do not result in improved student academic performance.

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<sup>28</sup> Section 1002.33(9)(o)2., F.S.

<sup>29</sup> Section 1002.33(9)(p), F.S.

<sup>30</sup> Section 1002.33(8) and (9)(o)3., F.S.

<sup>31</sup> Section 1008.33(3)(b), F.S.; rule 6A-1.099811(2)-(3), F.A.C.

<sup>32</sup> Section 1008.33(3)(b), (4), and (5)(a), F.S.; rule 6A-1.099811(3), F.A.C. On February 9, 2012, Florida's federal Elementary and Secondary Education Act (ESEA) waiver request was approved by the U.S. Secretary of Education. The ESEA waiver makes significant changes to Florida's differentiated accountability system. Categorization of schools and use of AYP status as a basis for school interventions will be eliminated. Instead, schools will be identified for school interventions based solely upon school grades. Florida Department of Education, *ESEA Flexibility Request*, at 75-76 (Nov. 14, 2011); see also Staff of the Florida House of Representatives, *Legislative Bill Analysis for HB 7127 (2012)*(explanation of proposed changes to school accountability requirements).

<sup>33</sup> Section 1002.33(8)(a), F.S. A sponsor may immediately terminate a charter school's charter if circumstances indicate that continued operation of the school is a danger to student health, safety, and welfare. Section 1002.33(8)(d), F.S.

<sup>34</sup> Section 1002.33(8)(b)-(c), F.S.



## Public Information Regarding Charter Schools

### Present Situation

State law requires dissemination of information to the public regarding charter school performance. DOE must annually provide a statewide analysis and comparison of charter school students and traditional public school students. The comparison is based upon the academic performance of charter school students as measured by the statewide assessment program and information reported in each school's annual progress report.<sup>35</sup>

Charter schools with less than 30 students do not receive school grades because at least 30 students are required in order to obtain a valid sample size for school grading purposes.<sup>36</sup> DOE must report student assessment data to these charter schools, which in turn must report the data to parents of students attending the charter school, parents of children on the charter school's waiting list, the district in which the charter school is located, and the governing board of the charter school.<sup>37</sup> The charter school must post both student performance and comparison data on its internet website and also provide notice to the public at large.<sup>38</sup>

Legislation enacted in 2011 required each charter school's governing board to appoint a representative to facilitate parental involvement, assist stakeholders, and resolve disputes. The representative must reside in the school district where the charter school is located and a separate representative must be appointed for each charter school it operates in the district. Each governing board must hold at least two open public meetings in the district per school year. The charter school principal and appointed representative must be physically present at these meetings.<sup>39</sup>

A charter school's governing board may contract with a private, for-profit management company to provide management services on its behalf. Management companies provide, among other things, curriculum development, administrative, business, compliance, personnel, and student recruiting services.<sup>40</sup> The law does not require charter schools to maintain an internet website or post on a website information regarding entities that own, operate, or manage the charter school.

### Effect of Proposed Changes

The bill requires each charter school to maintain an internet website that enables the public to obtain information regarding the school, its personnel, and its programs. The website must include information or online links to information regarding any entity who owns, operates, or manages the school, including any nonprofit or for-profit entity; the names of all governing officers and administrative personnel of the entity; and any management fees the school pays to the entity. The information or online links must be prominently displayed and easily accessible to visitors of the website. This change will provide greater transparency regarding for-profit management companies or other entities that manage a charter school's operations. Members of the public will also be able to access information regarding the fees a charter school pays to a management company.

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<sup>35</sup> Section 1002.33(23), F.S.

<sup>36</sup> See rule 6A-1.09981(4)(a)-(b), F.A.C.

<sup>37</sup> Section 1002.33(21)(b), F.S. Student performance data reporting requirements for ungraded and unrated charter schools apply only to schools with at least 10 students who are tested on statewide assessments. *Id.*

<sup>38</sup> Section 1002.33(21)(b), F.S. Reporting of data must comply with federal law governing education records privacy. *Id.*, see 20 U.S.C. s. 1232g.

<sup>39</sup> Chapter 2011-232, L.O.F.; s. 1002.33(7)(d), F.S. A sponsor may not require that governing board members reside in the district if the governing board complies with these requirements. Section 1002.33(7)(d), F.S.

<sup>40</sup> Florida Department of Education, *Charter Schools – FAQs*,

[https://www.floridaschoolchoice.org/information/charter\\_schools/faqs.asp](https://www.floridaschoolchoice.org/information/charter_schools/faqs.asp) (last visited Jan. 26, 2012).

## Federal Funding of Charter Schools

### Present Situation

Charter schools, like traditional public schools, receive federal education funding through such programs as the Individuals with Disabilities Education Act (IDEA),<sup>41</sup> Title I programs for disadvantaged students,<sup>42</sup> and Title II programs for improving teacher quality.<sup>43</sup> Typically, federal education programs are structured so that funding flows from the federal government to a state educational agency,<sup>44</sup> which then awards subgrants to local education agencies (LEA) within the state.<sup>45</sup> School districts are the LEA for district public schools, including charter schools. Federal education funds are received by the school district, which then distributes to the charter school its proportionate share of funding.<sup>46</sup>

Each federal education program has unique policy goals and expenditure, record keeping, and annual financial and performance accountability reporting requirements.<sup>47</sup> Federal regulations provide penalties for grantees and subgrantees<sup>48</sup> that fail to comply with grant requirements. These penalties include withholding, suspension, or termination of grant funds or designation as a “high risk” grantee.<sup>49</sup>

Federal law requires school districts to ensure that charter schools receiving federal funds comply with federal grant requirements.<sup>50</sup> School districts typically address issues related to a charter school’s compliance with federal grant requirements in the charter.<sup>51</sup> In addition, Florida law provides several mechanisms which enable sponsors to provide financial oversight of charter schools. Charter schools must submit annual financial reports,<sup>52</sup> provide for an annual financial audit,<sup>53</sup> and submit to the sponsor monthly financial statements.<sup>54</sup> Among other things, a charter school’s annual financial audit must include violations of law, contract provisions, or grant agreements.<sup>55</sup>

According to the DOE, school districts distribute federal funds directly to charter schools, provide in-kind services in lieu of funds, or use a combination of both methods. School districts use a variety of methods to distribute federal funds directly to charter schools, including directly advancing funds, reimbursing expenditures, or making purchases on behalf of charter schools.<sup>56</sup>

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<sup>41</sup> 20 U.S.C. s. 1411(e).

<sup>42</sup> 20 U.S.C. s. 6301 et. seq.

<sup>43</sup> 20 U.S.C. ss. 6601-6641; s. 1002.33(17)(c)-(d), F.S.

<sup>44</sup> The Florida Department of Education is Florida’s state educational agency for federal funding purposes. *See* 20 U.S.C. s. 1412(a).

<sup>45</sup> *See* 20 U.S.C. ss. 1412(a) and 1413(a).

<sup>46</sup> Section 1002.33(17)(c), F.S.

<sup>47</sup> 34 C.F.R. ss. 76.702, 80.36, 80.32, 80.33, and 80.42 (fiscal, procurement, and inventory management records); 34 C.F.R. s. 80.41 (financial reports include status, cash transaction, and capital outlay reports).

<sup>48</sup> 34 C.F.R. s. 80.3. Federal regulations governing administration of federal education grant programs define “grantee” to mean the government to which a grant is awarded and which is accountable for the use of the funds provided, i.e. DOE. Subgrantee means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided, i.e., school districts. *Id.*

<sup>49</sup> 34 C.F.R. s. 80.43 (noncompliance with grant terms); 34 C.F.R. s. 80.12 (high-risk grantees). Special conditions are placed upon “high risk” grantees, including payment of grant funds on a reimbursement basis; withholding of authority to proceed to subsequent grant phases until performance expectations are met; or requiring additional financial reports, project monitoring, and technical or management assistance. 34 C.F.R. s. 80.12. Grant recipients who commit fraud may be debarred or suspended from participation in all federally funded programs. 34 C.F.R. s. 80.43(d); Exec. Order No. 12549, 34 C.F.R. s. 80.35.

<sup>50</sup> 34 C.F.R. s. 80.3; 34 C.F.R. s. 300.209(b).

<sup>51</sup> Telephone interview with Florida Department of Education, Charter Schools Director (Feb. 1, 2012).

<sup>52</sup> Section 1002.33(9)(g), F.S.

<sup>53</sup> Sections 218.39(1)(e) and (f) and 1002.33(9)(j)1. and 2., F.S.

<sup>54</sup> Section 1002.33(9)(g), F.S. High-performing charter schools may submit quarterly, rather than monthly, financial statements.

Section 1002.331(2)(c), F.S.

<sup>55</sup> Section 10.856(2)(b)2.c., Rules of the Auditor General.

<sup>56</sup> *Funding Report*, *supra* note 1, at 21-22.

## Effect of Proposes Changes

The bill requires a sponsor to monthly reimburse a charter school for expenditures of federal funds, unless another method of disbursing federal funds is mutually agreed to by the charter school and sponsor. The charter school must provide invoices evidencing expenditures to the sponsor at least 30 days before the monthly reimbursement date set by the sponsor. Charter schools that choose to receive federal funds on a reimbursement basis must comply with applicable state and federal requirements governing use of federal funds. In order to receive federal funds on a reimbursement basis, a charter school must submit to the sponsor for approval a plan outlining the charter school's use of federal funds. This change provides charter schools with greater autonomy regarding purchases made with federal funds, while enabling the sponsor to oversee the charter school's compliance with state and federal requirements governing use of such funds. See Fiscal Comments.

### B. SECTION DIRECTORY:

**Section 1.** Amends s. 1002.33, F.S., relating to charter schools; to authorize a charter school operated by a FCS institution to serve students in kindergarten through grade 12 if certain criteria are met; to require a sponsor to terminate or not renew the charter of certain low-performing charter schools; to require charter schools to maintain an internet website; to require posting of information regarding any entity who owns, operates, or manages the school on the website; and to require that federal education funding be reimbursed to a charter school, unless otherwise mutually agreed to by the charter school and sponsor.

**Section 2.** Amends s. 1002.331, F.S., relating to high-performing charter schools; to require the commissioner to annually review a high-performing charter school's eligibility for high-performing status; and to require declassification of charter schools that fail to maintain eligibility.

**Section 3.** Amends s. 1002.332, F.S., relating to high-performing charter school systems; to require the commissioner to annually review a high-performing charter school system's eligibility for high-performing status; and to require declassification of charter school systems that fail to maintain eligibility.

**Section 4.** Provides an effective date of July 1, 2012.

## 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:

See Fiscal Comments.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

#### D. FISCAL COMMENTS:

The bill does not require a charter school to receive federal funds on a reimbursement basis if the school and sponsor mutually agree to a different arrangement.

Charter schools that do not currently have a website might incur costs associated with website design and online hosting.

### 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

On January 31, 2012, the K-20 Innovation Subcommittee reported the proposed committee substitute (PCS) for HB 903 favorably as a committee substitute. The PCS added provisions that:

- Required the Commissioner of Education to annually determine a high-performing charter school's, or high-performing charter school system's, continued eligibility for "high-performing" status. A high-performing charter school or charter school system that fails to meet eligibility criteria will lose its classification as "high-performing."
- Prohibited a sponsor from renewing a charter school's charter if the school has received two school grades of "F" within the three year period prior to renewal. In addition, the PCS required the sponsor to terminate a charter if the school receives two school grades of "F" in any three-year period.
- Required each charter school to maintain a website with information or online links to information regarding any entity which owns, operates, or manages the school and any management fees the school pays to such entity.
- Authorized Florida College System institutions with approved teacher preparation programs to establish one charter school which serves students in kindergarten through grade 12.

The PCS removed provisions that:

- Authorized school districts to proportionately share discretionary millage for capital outlay funds with charter schools on a per-student basis, for capital outlay purposes.
- Required recalculation of a school district's Florida Education Finance Program (FEFP) funding if it does not share discretionary millage for capital outlay funds with charter schools.
- Required a school district to distribute recalculated FEFP funds to each charter school in the district in an amount equal to the amount the charter school would have received if the district shared discretionary millage for capital outlay funds.
- Increased the annual number of new charter schools that may be created by a high-performing charter school from one to three.

- Restated that high-performing charter schools within a high-performing charter school system may receive the same benefits as individual high-performing charter schools, e.g., increase enrollment and expand grade levels.

On February 14, 2012, the PreK-12 Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute (CS). The CS required a sponsor to provide federal funds to charter schools on a reimbursement basis, rather than by direct advances, unless the school and sponsor agree to a different arrangement. The CS also added provisions requiring a charter school to comply with state and federal laws regarding administration of federal funds and submit to the sponsor for approval a plan outlining its use of such funds.



1                                   A bill to be entitled  
 2           An act relating to high school athletics; amending s.  
 3           1002.20, F.S.; conforming provisions; amending s.  
 4           1006.15, F.S.; authorizing students attending certain  
 5           private schools to participate in public school  
 6           athletic programs if the private school does not offer  
 7           the particular sport offered at the public school;  
 8           including guidelines relating to student transfers;  
 9           requiring certain private schools that have students  
 10          participating in public school athletic programs to  
 11          make all student records available upon request;  
 12          increasing the private school enrollment limitation  
 13          for participation in public school athletic programs;  
 14          authorizing students to participate through private  
 15          member schools as well as public schools according to  
 16          Florida High School Athletic Association (FHSAA)  
 17          bylaws; amending s. 1006.20, F.S.; authorizing high  
 18          schools, including charter schools, virtual schools,  
 19          and home education cooperatives, to become members of  
 20          the FHSAA; requiring the FHSAA to adopt bylaws to  
 21          allow a student who obtains an approved transfer to  
 22          participate in athletics; authorizing certain  
 23          penalties for a recruiting violation; requiring the  
 24          FHSAA to adopt bylaws to regulate investigators and  
 25          sanction coaches who commit major violations;  
 26          specifying sanctions and procedures; requiring the  
 27          FHSAA to adopt bylaws regulating the process of  
 28          determinations of eligibility; authorizing the FHSAA

29 | to adopt bylaws providing certain procedural  
 30 | safeguards; prohibiting FHSAA bylaws from  
 31 | prospectively limiting the competition of certain  
 32 | student athletes and from unfairly punishing student  
 33 | athletes for violations perpetrated by a teammate,  
 34 | coach, or administrator; providing requirements for  
 35 | the forfeiture of contests under certain conditions;  
 36 | requiring an expedited appeals process on  
 37 | determinations of ineligibility; authorizing a school  
 38 | or student athlete filing an appeal to present  
 39 | information and evidence; providing procedural  
 40 | requirements for the presentation of evidence on  
 41 | appeal; providing requirements for de novo decisions  
 42 | on appeal; deleting provisions relating to rule  
 43 | adoption; amending s. 1012.468, F.S.; providing  
 44 | background screening exceptions for certain  
 45 | investigators for the FHSAA; providing an effective  
 46 | date.

47 |  
 48 | Be It Enacted by the Legislature of the State of Florida:  
 49 |

50 | Section 1. Paragraph (a) of subsection (17) of section  
 51 | 1002.20, Florida Statutes, is amended to read:

52 | 1002.20 K-12 student and parent rights.—Parents of public  
 53 | school students must receive accurate and timely information  
 54 | regarding their child's academic progress and must be informed  
 55 | of ways they can help their child to succeed in school. K-12  
 56 | students and their parents are afforded numerous statutory



57 | rights including, but not limited to, the following:

58 |       (17) ATHLETICS; PUBLIC HIGH SCHOOL.—

59 |       (a) Eligibility.—Eligibility requirements for all students  
60 | participating in high school athletic competition must allow a  
61 | student to be eligible in the school in which he or she first  
62 | enrolls each school year, the school in which the student ~~or~~  
63 | makes himself or herself a candidate for an athletic team by  
64 | engaging in practice before enrolling, or the school to which  
65 | the student has transferred with approval of the district school  
66 | board, in accordance with the provisions of s. 1006.20(2)(a).

67 |       Section 2. Paragraphs (a), (e), and (g) of subsection (8)  
68 | of section 1006.15, Florida Statutes, are amended, and paragraph  
69 | (h) is added to that subsection, to read:

70 |       1006.15 Student standards for participation in  
71 | interscholastic and intrascholastic extracurricular student  
72 | activities; regulation.—

73 |       (8) (a) The Florida High School Athletic Association  
74 | (FHSAA), in cooperation with each district school board, shall  
75 | facilitate a program in which a middle school or high school  
76 | student who attends a private school shall be eligible to  
77 | participate in an interscholastic or intrascholastic sport at a  
78 | public high school, a public middle school, or a 6-12 public  
79 | school that is zoned for the physical address at which the  
80 | student resides if:

81 |       1. The private school in which the student is enrolled is  
82 | not a member of the FHSAA and does not offer the particular  
83 | interscholastic sport that is offered at the public school ~~an~~  
84 | ~~interscholastic or intrascholastic athletic program.~~

85 2. The private school student meets the guidelines for the  
 86 conduct of the program established by the FHSAA's board of  
 87 directors and the district school board. At a minimum, such  
 88 guidelines shall provide:

89 a. The ~~A~~ deadline for each sport by which the private  
 90 school student's parents must register with the public school in  
 91 writing their intent for their child to participate at that  
 92 school in the sport, which shall be the date the bylaws  
 93 authorize for the beginning of practice for the sport.

94 b. Requirements for a private school student to  
 95 participate, including, but not limited to, meeting the same  
 96 standards of eligibility, acceptance, behavior, educational  
 97 progress, and performance which apply to other students  
 98 participating in interscholastic or intrascholastic sports at a  
 99 public school or FHSAA member private school.

100 c. Requirements governing student transfers and  
 101 eligibility for students who transfer between member schools,  
 102 which shall be applied similarly to a private school student  
 103 participating under this section who changes the member school  
 104 in which he or she desires to participate.

105 (e) Any non-FHSAA member private school that has a student  
 106 who wishes to participate in this program must make all student  
 107 records, including, but not limited to, academic, ~~financial,~~  
 108 disciplinary, and attendance records, available upon request of  
 109 the FHSAA.

110 (g) Only students who are enrolled in non-FHSAA member  
 111 private schools consisting of 250 ~~125~~ students or fewer are  
 112 eligible to participate in the program in any given academic

113 year.

114 (h) According to FHSAA bylaws, a student participating  
 115 under this section may participate through private member  
 116 schools as well as public schools if the private member school  
 117 desires to accommodate the student from a nonmember private  
 118 school.

119 Section 3. Section 1006.20, Florida Statutes, is amended  
 120 to read:

121 1006.20 Athletics in public K-12 schools.—

122 (1) GOVERNING NONPROFIT ORGANIZATION.—The Florida High  
 123 School Athletic Association (FHSAA) is designated as the  
 124 governing nonprofit organization of athletics in Florida public  
 125 schools. If the FHSAA ~~Florida High School Athletic Association~~  
 126 fails to meet the provisions of this section, the commissioner  
 127 shall designate a nonprofit organization to govern athletics  
 128 with the approval of the State Board of Education. The FHSAA  
 129 ~~organization~~ is not ~~to be~~ a state agency as defined in s.  
 130 120.52. The FHSAA ~~organization~~ shall be subject to the  
 131 provisions of s. 1006.19. A private school that wishes to engage  
 132 in high school athletic competition with a public high school  
 133 may become a member of the FHSAA ~~organization~~. Any high school  
 134 in the state, including charter schools, virtual schools, and  
 135 home education cooperatives, may become a member of the FHSAA  
 136 and participate in the activities of the FHSAA. However,  
 137 membership in the FHSAA is not mandatory for any school. The  
 138 bylaws of the FHSAA ~~organization~~ are ~~to be~~ the rules by which  
 139 high school athletic programs in its member schools, and the  
 140 students who participate in them, are governed, unless otherwise

141 specifically provided by statute. For the purposes of this  
 142 section, "high school" includes grades 6 through 12.

143 (2) ADOPTION OF BYLAWS.—

144 (a) The FHSAA ~~organization~~ shall adopt bylaws that, unless  
 145 specifically provided by statute, establish eligibility  
 146 requirements for all students who participate in high school  
 147 athletic competition in its member schools. The bylaws governing  
 148 residence and transfer shall allow the student to be eligible in  
 149 the school in which he or she first enrolls each school year, ~~or~~  
 150 the school in which the student makes himself or herself a  
 151 candidate for an athletic team by engaging in a practice prior  
 152 to enrolling in the any-member school. The bylaws shall also  
 153 allow the student to be eligible in the school to which the  
 154 student has transferred during the school year with the approval  
 155 of the district school board in the case of transfer to a public  
 156 school or with the approval of the governing body in the case of  
 157 a transfer to a private school. The student shall be eligible in  
 158 that school so long as he or she remains enrolled in that  
 159 school. Subsequent eligibility shall be determined and enforced  
 160 through the FHSAA's ~~organization's~~ bylaws.

161 (b) The FHSAA ~~organization~~ shall adopt bylaws that  
 162 specifically prohibit the recruiting of students for athletic  
 163 purposes. The bylaws shall prescribe penalties and an appeals  
 164 process for athletic recruiting violations. If it is determined  
 165 that a school has recruited a student, the FHSAA may require the  
 166 school to participate in a higher classification for the sport  
 167 in which the recruited student competes in addition to any other  
 168 appropriate fine and sanction imposed on the school, its

169 coaches, or adult representatives who violate recruiting rules.  
 170 A student may not be declared ineligible based on violation of  
 171 recruiting rules unless the student or parent has falsified any  
 172 enrollment or eligibility document or accepted any benefit or  
 173 any promise of benefit if such benefit is not generally  
 174 available to the school's students or family members or is based  
 175 in any way on athletic interest, potential, or performance.

176 (c) The FHSAA ~~organization~~ shall adopt bylaws that require  
 177 all students participating in interscholastic athletic  
 178 competition or who are candidates for an interscholastic  
 179 athletic team to satisfactorily pass a medical evaluation each  
 180 year prior to participating in interscholastic athletic  
 181 competition or engaging in any practice, tryout, workout, or  
 182 other physical activity associated with the student's candidacy  
 183 for an interscholastic athletic team. Such medical evaluation  
 184 may ~~can only~~ be administered only by a practitioner licensed  
 185 ~~under the provisions of~~ chapter 458, chapter 459, chapter 460,  
 186 or s. 464.012, and in good standing with the practitioner's  
 187 regulatory board. The bylaws shall establish requirements for  
 188 eliciting a student's medical history and performing the medical  
 189 evaluation required under this paragraph, which shall include a  
 190 physical assessment of the student's physical capabilities to  
 191 participate in interscholastic athletic competition as contained  
 192 in a uniform preparticipation physical evaluation and history  
 193 form. The evaluation form shall incorporate the recommendations  
 194 of the American Heart Association for participation  
 195 cardiovascular screening and shall provide a place for the  
 196 signature of the practitioner performing the evaluation with an

197 attestation that each examination procedure listed on the form  
 198 was performed by the practitioner or by someone under the direct  
 199 supervision of the practitioner. The form shall also contain a  
 200 place for the practitioner to indicate if a referral to another  
 201 practitioner was made in lieu of completion of a certain  
 202 examination procedure. The form shall provide a place for the  
 203 practitioner to whom the student was referred to complete the  
 204 remaining sections and attest to that portion of the  
 205 examination. The preparticipation physical evaluation form shall  
 206 advise students to complete a cardiovascular assessment and  
 207 shall include information concerning alternative cardiovascular  
 208 evaluation and diagnostic tests. Results of such medical  
 209 evaluation must be provided to the school. No student shall be  
 210 eligible to participate in any interscholastic athletic  
 211 competition or engage in any practice, tryout, workout, or other  
 212 physical activity associated with the student's candidacy for an  
 213 interscholastic athletic team until the results of the medical  
 214 evaluation have been received and approved by the school.

215 (d) Notwithstanding the provisions of paragraph (c), a  
 216 student may participate in interscholastic athletic competition  
 217 or be a candidate for an interscholastic athletic team if the  
 218 parent of the student objects in writing to the student  
 219 undergoing a medical evaluation because such evaluation is  
 220 contrary to his or her religious tenets or practices. However,  
 221 in such case, there shall be no liability on the part of any  
 222 person or entity in a position to otherwise rely on the results  
 223 of such medical evaluation for any damages resulting from the  
 224 student's injury or death arising directly from the student's

225 participation in interscholastic athletics where an undisclosed  
 226 medical condition that would have been revealed in the medical  
 227 evaluation is a proximate cause of the injury or death.

228 (e) The FHSAA shall adopt bylaws that regulate persons who  
 229 conduct investigations on behalf of the FHSAA. The bylaws shall  
 230 include provisions that require an investigator to:

231 1. Undergo level 2 background screening under s. 435.04,  
 232 establishing that the investigator has not committed any  
 233 disqualifying offense listed in s. 435.04, unless the  
 234 investigator can provide proof of compliance with level 2  
 235 screening standards submitted within the previous 5 years to  
 236 meet any professional licensure requirements, provided:

237 a. The investigator has not had a break in service from a  
 238 position that requires level 2 screening for more than 90 days;  
 239 and

240 b. The investigator submits, under penalty of perjury, an  
 241 affidavit verifying that the investigator has not committed any  
 242 disqualifying offense listed in s. 435.04 and is in full  
 243 compliance with this paragraph.

244 2. Be appointed as an investigator by the executive  
 245 director.

246 3. Carry a photo identification card that shows the FHSAA  
 247 name, logo, and the investigator's official title.

248 4. Adhere to the following guidelines:

249 a. Investigate only those alleged violations assigned by  
 250 the executive director or the board of directors.

251 b. Conduct interviews on Monday through Friday between the  
 252 hours of 9 a.m. and 7 p.m. only, unless previously agreed to by

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253 the interviewee.

254 c. Allow the parent of any student being interviewed to be  
255 present during the interview.

256 d. Search residences or other private areas only with the  
257 permission of the executive director and the written consent of  
258 the student's parent and only with a parent or a representative  
259 of the parent present.

260 (f) The FHSAA shall adopt bylaws that establish sanctions  
261 for coaches who have committed major violations of the FHSAA's  
262 bylaws and policies.

263 1. Major violations include, but are not limited to,  
264 knowingly allowing an ineligible student to participate in a  
265 contest representing a member school in an interscholastic  
266 contest or committing a violation of the FHSAA's recruiting or  
267 sportsmanship policies.

268 2. Sanctions placed upon an individual coach may include,  
269 but are not limited to, prohibiting or suspending the coach from  
270 coaching, participating in, or attending any athletic activity  
271 sponsored, recognized, or sanctioned by the FHSAA and the member  
272 school for which the coach committed the violation. If a coach  
273 is sanctioned by the FHSAA and the coach transfers to another  
274 member school, those sanctions remain in full force and effect  
275 during the term of the sanction.

276 3. If a member school is assessed a financial penalty as a  
277 result of a coach committing a major violation, the coach shall  
278 reimburse the member school before being allowed to coach,  
279 participate in, or attend any athletic activity sponsored,  
280 recognized, or sanctioned by the FHSAA and a member school.



281           4. The FHSAA shall establish a due process procedure for  
 282 coaches sanctioned under this paragraph, consistent with the  
 283 appeals procedures set forth in subsection (7).

284           (g) The FHSAA shall adopt bylaws regulating the process of  
 285 FHSAA determinations of eligibility. Such bylaws shall provide  
 286 that:

287           1. Ineligibility must be established by clear and  
 288 convincing evidence;

289           2. Student athletes, parents, and schools must have notice  
 290 of the initiation of any investigation or other inquiry into  
 291 eligibility and may present, to the investigator and to the  
 292 individual making the eligibility determination, any information  
 293 or evidence that is credible, persuasive, and of a kind  
 294 reasonably prudent persons rely upon in the conduct of serious  
 295 affairs;

296           3. An investigator may not determine matters of  
 297 eligibility but must submit information and evidence to the  
 298 executive director or a person designated by the executive  
 299 director or by the board of directors for an unbiased and  
 300 objective determination of eligibility; and

301           4. A determination of ineligibility must be made in  
 302 writing, setting forth the findings of fact and specific  
 303 violation upon which the decision is based.

304           (h) In lieu of bylaws adopted under paragraph (g), the  
 305 FHSAA may adopt bylaws providing as a minimum the procedural  
 306 safeguards of ss. 120.569 and 120.57, making appropriate  
 307 provision for appointment of unbiased and qualified hearing  
 308 officers.

309        (i) The FHSAA bylaws may not limit the competition of  
 310 student athletes prospectively for rule violations of their  
 311 school or its coaches or their adult representatives. The FHSAA  
 312 bylaws may not unfairly punish student athletes for eligibility  
 313 or recruiting violations perpetrated by a teammate, coach, or  
 314 administrator. Contests may not be forfeited for inadvertent  
 315 eligibility violations unless the coach or a school  
 316 administrator had reason to know of the violation. Contests may  
 317 not be forfeited for other eligibility violations or recruiting  
 318 violations in excess of the number of contests that the coaches  
 319 and adult representatives responsible for the violations are  
 320 prospectively suspended.

321            (3) GOVERNING STRUCTURE OF THE ORGANIZATION.—

322            (a) The FHSAA ~~organization~~ shall operate as a  
 323 representative democracy in which the sovereign authority is  
 324 within its member schools. Except as provided in this section,  
 325 the FHSAA ~~organization~~ shall govern its affairs through its  
 326 bylaws.

327            (b) Each member school, on its annual application for  
 328 membership, shall name its official representative to the FHSAA  
 329 ~~organization~~. This representative must be either the school  
 330 principal or his or her designee. That designee must either be  
 331 an assistant principal or athletic director housed within that  
 332 same school.

333            (c) The FHSAA's ~~organization's~~ membership shall be divided  
 334 along existing county lines into four contiguous and compact  
 335 administrative regions, each containing an equal or nearly equal  
 336 number of member schools to ensure equitable representation on

337 the FHSAA's ~~organization's~~ board of directors, representative  
 338 assembly, and appeals committees ~~committee on appeals~~.

339 (4) BOARD OF DIRECTORS.—

340 (a) The executive authority of the FHSAA ~~organization~~  
 341 shall be vested in its board of directors. Any entity that  
 342 appoints members to the board of directors shall examine the  
 343 ethnic and demographic composition of the board when selecting  
 344 candidates for appointment and shall, to the greatest extent  
 345 possible, make appointments that reflect state demographic and  
 346 population trends. The board of directors shall be composed of  
 347 16 persons, as follows:

348 1. Four public member school representatives, one elected  
 349 from among its public school representative members within each  
 350 of the four administrative regions.

351 2. Four nonpublic member school representatives, one  
 352 elected from among its nonpublic school representative members  
 353 within each of the four administrative regions.

354 3. Three representatives appointed by the commissioner,  
 355 one appointed from the two northernmost administrative regions  
 356 and one appointed from the two southernmost administrative  
 357 regions. The third representative shall be appointed to balance  
 358 the board for diversity or state population trends, or both.

359 4. Two district school superintendents, one elected from  
 360 the two northernmost administrative regions by the members in  
 361 those regions and one elected from the two southernmost  
 362 administrative regions by the members in those regions.

363 5. Two district school board members, one elected from the  
 364 two northernmost administrative regions by the members in those

365 regions and one elected from the two southernmost administrative  
 366 regions by the members in those regions.

367 6. The commissioner or his or her designee from the  
 368 department executive staff.

369 (b) A quorum of the board of directors shall consist of  
 370 nine members.

371 (c) The board of directors shall elect a president and a  
 372 vice president from among its members. These officers shall also  
 373 serve as officers of the FHSAA ~~organization~~.

374 (d) Members of the board of directors shall serve terms of  
 375 3 years and are eligible to succeed themselves only once. A  
 376 member of the board of directors, other than the commissioner or  
 377 his or her designee, may serve a maximum of 6 consecutive years.  
 378 The FHSAA's ~~organization's~~ bylaws shall establish a rotation of  
 379 terms to ensure that a majority of the members' terms do not  
 380 expire concurrently.

381 (e) The authority and duties of the board of directors,  
 382 acting as a body and in accordance with the FHSAA's  
 383 ~~organization's~~ bylaws, are as follows:

384 1. To act as the incorporated FHSAA's ~~organization's~~ board  
 385 of directors and to fulfill its obligations as required by the  
 386 FHSAA's ~~organization's~~ charter and articles of incorporation.

387 2. To establish such guidelines, regulations, policies,  
 388 and procedures as are authorized by the bylaws.

389 3. To employ ~~provide~~ an FHSAA executive director  
 390 ~~organization commissioner~~, who shall have the authority to waive  
 391 the bylaws of the FHSAA ~~organization~~ in order to comply with  
 392 statutory changes.

393 4. To levy annual dues and other fees and to set the  
 394 percentage of contest receipts to be collected by the FHSAA  
 395 ~~organization~~.

396 5. To approve the budget of the FHSAA ~~organization~~.

397 6. To organize and conduct statewide interscholastic  
 398 competitions, which may or may not lead to state championships,  
 399 and to establish the terms and conditions for these  
 400 competitions.

401 7. To act as an administrative board in the interpretation  
 402 of, and final decision on, all questions and appeals arising  
 403 from the directing of interscholastic athletics of member  
 404 schools.

405 (5) REPRESENTATIVE ASSEMBLY.—

406 (a) The legislative authority of the FHSAA ~~organization~~ is  
 407 vested in its representative assembly.

408 (b) The representative assembly shall be composed of the  
 409 following:

410 1. An equal number of member school representatives from  
 411 each of the four administrative regions.

412 2. Four district school superintendents, one elected from  
 413 each of the four administrative regions by the district school  
 414 superintendents in their respective administrative regions.

415 3. Four district school board members, one elected from  
 416 each of the four administrative regions by the district school  
 417 board members in their respective administrative regions.

418 4. The commissioner or his or her designee from the  
 419 department executive staff.

420 (c) The FHSAA's ~~organization's~~ bylaws shall establish the

421 number of member school representatives to serve in the  
 422 representative assembly from each of the four administrative  
 423 regions and shall establish the method for their selection.

424 (d) No member of the board of directors other than the  
 425 commissioner or his or her designee can serve in the  
 426 representative assembly.

427 (e) The representative assembly shall elect a chairperson  
 428 and a vice chairperson from among its members.

429 (f) Elected members of the representative assembly shall  
 430 serve terms of 2 years and are eligible to succeed themselves  
 431 for two additional terms. An elected member, other than the  
 432 commissioner or his or her designee, may serve a maximum of 6  
 433 consecutive years in the representative assembly.

434 (g) A quorum of the representative assembly consists of  
 435 one more than half of its members.

436 (h) The authority of the representative assembly is  
 437 limited to its sole duty, which is to consider, adopt, or reject  
 438 any proposed amendments to the FHSAA's ~~organization's~~ bylaws.

439 (i) The representative assembly shall meet as a body  
 440 annually. A two-thirds majority of the votes cast by members  
 441 present is required for passage of any proposal.

442 (6) PUBLIC LIAISON ADVISORY COMMITTEE.—

443 (a) The FHSAA ~~organization~~ shall establish, sustain, fund,  
 444 and provide staff support to a public liaison advisory committee  
 445 composed of the following:

- 446 1. The commissioner or his or her designee.
- 447 2. A member public school principal.
- 448 3. A member private school principal.

449 4. A member school principal who is a member of a racial  
450 minority.

451 5. An active athletic director.

452 6. An active coach, who is employed full time by a member  
453 school.

454 7. A student athlete.

455 8. A district school superintendent.

456 9. A district school board member.

457 10. A member of the Florida House of Representatives.

458 11. A member of the Florida Senate.

459 12. A parent of a high school student.

460 13. A member of a home education association.

461 14. A representative of the business community.

462 15. A representative of the news media.

463 (b) No member of the board of directors, committee on  
464 appeals, or representative assembly is eligible to serve on the  
465 public liaison advisory committee.

466 (c) The public liaison advisory committee shall elect a  
467 chairperson and vice chairperson from among its members.

468 (d) The authority and duties of the public liaison  
469 advisory committee are as follows:

470 1. To act as a conduit through which the general public  
471 may have input into the decisionmaking process of the FHSAA  
472 ~~organization~~ and to assist the FHSAA ~~organization~~ in the  
473 development of procedures regarding the receipt of public input  
474 and disposition of complaints related to high school athletic  
475 and competition programs.

476 2. To conduct public hearings annually in each of the four

477 administrative regions during which interested parties may  
 478 address issues regarding the effectiveness of the rules,  
 479 operation, and management of the FHSAA ~~organization~~.

480 3. To conduct an annual evaluation of the FHSAA  
 481 ~~organization~~ as a whole and present a report of its findings,  
 482 conclusion, and recommendations to the board of directors, to  
 483 the commissioner, and to the respective education committees of  
 484 the Florida Senate and the Florida House of Representatives. The  
 485 recommendations must delineate policies and procedures that will  
 486 improve the implementation and oversight of high school athletic  
 487 programs by the FHSAA ~~organization~~.

488 (e) The public liaison advisory committee shall meet four  
 489 times annually. Additional meetings may be called by the  
 490 committee chairperson, the FHSAA ~~organization~~ president, or the  
 491 FHSAA executive director ~~organization commissioner~~.

492 (7) APPEALS.—

493 (a) The FHSAA ~~organization~~ shall establish a procedure of  
 494 due process which ensures each student the opportunity to appeal  
 495 an unfavorable ruling with regard to his or her eligibility to  
 496 compete. Unless a major infraction as defined by the FHSAA  
 497 bylaws, the initial appeal shall be made to a committee on  
 498 appeals within the administrative region in which the student  
 499 lives. The FHSAA's ~~organization's~~ bylaws shall establish the  
 500 number, size, and composition of each ~~the~~ committee on appeals.

501 (b) No member of the board of directors is eligible to  
 502 serve on a ~~the~~ committee on appeals.

503 (c) Members of a ~~the~~ committee on appeals shall serve  
 504 terms of 3 years and are eligible to succeed themselves only



505 once. A member of a ~~the~~ committee on appeals may serve a maximum  
 506 of 6 consecutive years. The FHSAA's ~~organization's~~ bylaws shall  
 507 establish a rotation of terms to ensure that a majority of the  
 508 members' terms do not expire concurrently.

509 (d) The authority and duties of a ~~the~~ committee on appeals  
 510 shall be to consider requests by member schools seeking  
 511 exceptions to bylaws and regulations, to hear undue hardship  
 512 eligibility cases filed by member schools on behalf of student  
 513 athletes, and to hear appeals filed by member schools or student  
 514 athletes.

515 (e) A student athlete or member school that receives an  
 516 unfavorable ruling from a committee on appeals shall be entitled  
 517 to appeal that decision to the board of directors at its next  
 518 regularly scheduled meeting or called meeting. The board of  
 519 directors shall have the authority to uphold, reverse, or amend  
 520 the decision of the committee on appeals. In all such cases, the  
 521 decision of the board of directors shall be final.

522 (f) The FHSAA shall expedite the appeals process on  
 523 determinations of ineligibility so that disposition of the  
 524 appeal can be made before the end of the applicable sports  
 525 season, if possible.

526 (g) In any appeal from a decision on eligibility made by  
 527 the executive director or a designee, a school or student  
 528 athlete filing the appeal must be permitted to present  
 529 information and evidence in support of his or her position if  
 530 the evidence was not available at the time of the initial  
 531 determination or if the determination was not made by an  
 532 unbiased objective person using a process allowing full due

533 process rights to be heard and to present evidence. If evidence  
 534 is presented on appeal, a de novo decision must be made by the  
 535 committee or board hearing the appeal, or the determination may  
 536 be suspended and the matter remanded for a new determination  
 537 based on all the evidence. If a de novo decision is made on  
 538 appeal, the decision must be made in writing, setting forth the  
 539 findings of fact and specific violation upon which the decision  
 540 is based. If a de novo decision is not required, the decision  
 541 appealed must be set aside if the decision on ineligibility was  
 542 not based on clear and convincing evidence. Any further appeal  
 543 shall be considered on a record that includes all evidence  
 544 presented.

545 (8) AMENDMENT OF BYLAWS.—Each member school  
 546 representative, the board of directors acting as a whole or as  
 547 members acting individually, any advisory committee acting as a  
 548 whole to be established by the FHSAA organization, and the  
 549 FHSAA's executive director organization's commissioner are  
 550 empowered to propose amendments to the bylaws. Any other  
 551 individual may propose an amendment by securing the sponsorship  
 552 of any of the aforementioned individuals or bodies. All proposed  
 553 amendments must be submitted directly to the representative  
 554 assembly for its consideration. The representative assembly,  
 555 while empowered to adopt, reject, or revise proposed amendments,  
 556 may not, in and of itself, as a body be allowed to propose any  
 557 amendment for its own consideration.

558 ~~(9) RULES ADOPTION. The bylaws of the organization shall~~  
 559 ~~require member schools to adopt rules for sports, which have~~  
 560 ~~been established by a nationally recognized sanctioning body,~~

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2012

561 ~~unless waived by at least a two-thirds vote of the board of~~  
 562 ~~directors.~~

563 Section 4. Paragraph (g) is added to subsection (2) of  
 564 section 1012.468, Florida Statutes, to read:

565 1012.468 Exceptions to certain fingerprinting and criminal  
 566 history checks.—

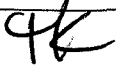
567 (2) A district school board shall exempt from the  
 568 screening requirements set forth in ss. 1012.465 and 1012.467  
 569 the following noninstructional contractors:

570 (g) An investigator for the Florida High School Athletic  
 571 Association (FHSAA) who meets the requirements under s.  
 572 1006.20(2)(e).

573 Section 5. This act shall take effect July 1, 2012.

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 1403 High School Athletics  
**SPONSOR(S):** Rules & Calendar Committee and K-20 Competitiveness Subcommittee, Stargel  
**TIED BILLS:** IDEN./SIM. BILLS: SB 1704

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) K-20 Competitiveness Subcommittee	11 Y, 4 N, As CS	Fudge	Ahearn
2) Rules & Calendar Committee	13 Y, 4 N, As CS	Rubottom	Birtman
3) Education Committee		Fudge	Klebacha 

### SUMMARY ANALYSIS

The bill adds significant new provisions to the statutes governing the Florida High School Athletic Association (FHSAA). The bill creates new due process requirements, particularly in determining matters of eligibility; requires sanctions on coaches for recruiting violations; mandates acceptance to membership in the FHSAA of charter schools, virtual schools, and home education cooperatives wishing to join; and increases the opportunity for students who attend a private school that is not a member of the FHSAA to participate in sports at public or FHSAA-member private schools. Currently, participation is limited to students enrolled in non-FHSAA member private schools with 125 or fewer students that do not offer a sports program.

The bill increases the enrollment cap to 250 or fewer students allows students from these private schools to participate in sports at a public school if the non-member private school does not offer the specific sport offered at the public school. The bill eliminates the requirement that any non-FHSAA member private school be required to provide to the FHSAA the financial records regarding students who wish to participate in public school interscholastic sports.

The bill allows a student who has transferred from one public school in the district to another during the school year, pursuant to approval by the district school board, to remain eligible for athletic competition at FHSAA member schools, and allows a public school student athlete who transfers to a private school to participate in any sport offered by the private school. The bill permits student transfers during the school year without loss of eligibility. The bill reforms recruiting sanctions and investigations by requiring that the FHSAA bylaws:

- Provide that a school may be required to pay a fine and participate in a higher competitive division for the sport in which a recruited student competes;
- Establish sanctions for coaches who have committed major violations such as allowing an ineligible student to participate in a contest representing a member school or violating the FHSAA's recruiting or sportsmanship policies;
- Require coaches to reimburse a member school assessed a financial penalty due to the coach's violation of FHSAA policies;
- Prevent unfair punishment of students for the violations of adults;
- Prevent ineligibility for violating recruiting rules unless the student or parent falsifies documents or accepts a prohibited inducement; and
- Regulate investigators and establish guidelines investigators must follow when conducting investigations.

The bill imposes clear due process requirements on the FHSAA, particularly for determinations of student athlete eligibility. In addition to due process requirements, the bill requires sanctions against coaches and restricts sanctions against students for certain violations of recruiting rules and policies.

See FISCAL COMMENTS.

The bill is effective July 1, 2012.

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

STORAGE NAME: h1403d.EDC.docx

DATE: 2/23/2012

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Florida High School Athletic Association (FHSAA)**

Founded in 1920,<sup>1</sup> the Florida High School Athletic Association (FHSAA) is a non-profit organization that governs interscholastic athletics in Florida's schools from grades 6 through 12. In 1997, the Florida Legislature enacted s. 1006.20, F.S., which regulates the FHSAA's organizational structure and governing authority. The FHSAA may adopt bylaws governing athletic participation of member schools and individual student athletes, unless otherwise specifically provided by state statutes.<sup>2</sup>

The FHSAA's sixteen member Board of Directors ("board") is the organization's primary executive governing body. Seats on the board are statutorily designated for members representing public schools, nonpublic schools, school superintendents, school board members, and each administrative region. The Commissioner of Education, or the commissioner's designee, also sits on the board. Among other things, the board is responsible for organizing, establishing the rules for, and conducting statewide interscholastic athletic competitions, including those competitions that lead to state championships. The board is also required to appoint the FHSAA's Executive Director.<sup>3</sup>

#### **Recruiting**

In January 2006, the FHSAA revised its student athlete residency and transfer bylaws. The bylaws prohibited student athletes who transfer to another school from participating in varsity athletics for one calendar year. The student athlete would be permitted to participate in junior varsity athletics during this time. After one calendar year, the student athlete would be deemed to have established residency at the new school and permitted to participate in varsity athletics.<sup>4</sup>

Several stakeholders voiced concerns that the 2006 residency and transfer bylaws would inhibit parental school choice. The House PreK-12 Committee held a meeting in 2006 to investigate those concerns.<sup>5</sup> As a result of the meeting, legislation was enacted<sup>6</sup> that:

- Held the residency and transfer bylaws in abeyance until July 1, 2007;
- Established a Student Athlete Recruiting Task Force; and
- Directed the Office of Program Policy Analysis and Government Accountability (OPPAGA) to independently review secondary school recruiting violations among FHSAA member schools.<sup>7</sup>

The Student Athlete Recruiting Task Force was directed to study student athlete recruiting and review the FHSAA's 2006 residency and transfer bylaws and "make recommendations that preserve the parental right to school choice while protecting the integrity of Florida's interscholastic athletic programs."<sup>8</sup> The legislation also required that the task force be comprised of proponents and opponents of the new bylaws and required the Governor to appoint the chair. The task force recommended that the FHSAA:

- Clarify the definition of recruiting;

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<sup>1</sup> Florida High School Athletic Association, *About the FHSAA*, available at <http://www.fhsaa.org/about> (last visited Feb. 1, 2012).

<sup>2</sup> Section 1006.20(1), F.S.

<sup>3</sup> Section 1006.20(4), F.S.

<sup>4</sup> Staff of the Florida House of Representatives, *Legislative Bill Analysis for HB 7119* (2006).

<sup>5</sup> Hearing before the House PreK-12 Committee, February 7, 2006.

<sup>6</sup> Chapter 2006-14, L.O.F.

<sup>7</sup> *Id.*; see also Office of Program Policy Analysis and Government Accountability, *Public and Private High Schools Had About the Same Number of Student Athlete Recruiting Violations*, Report No. 06-65 (Oct. 2006), available at <http://www.oppaga.state.fl.us/reports/pdf/0665rpt.pdf>.

<sup>8</sup> Chapter 2006-14, L.O.F.

- Require parents, students, and others to sign affidavits that explain what recruiting is and certify that they have not engaged in recruiting;
- Hire trained investigators to investigate recruiting violations;
- Modify penalties so that coaches who are found guilty of recruiting not be allowed to coach in any event, competition, game, or match between the FHSAA member schools;
- Adopt progressively more rigorous sanctions for multiple violations; and
- Withdraw its proposed bylaw on residency and transfer.<sup>9</sup>

After the Task Force report was issued, the FHSAA did amend its proposed bylaws. Those changes included affidavits and the organization began to utilize trained investigators. The FHSAA implemented, through administrative policy a very broad definition of recruiting and refused to adopt tough recruiting sanctions on coaches. While the calendar year prohibition on varsity eligibility of all transfers was reduced to the remainder of the current school year,<sup>10</sup> the bylaws retained the bias against student transfer, making many students ineligible when no recruitment is evidenced and exempting coaches from sanctions for recruiting. The only exceptions to ineligibility after transfer are when the student is reassigned by their school board or the student makes a full and complete residence move.<sup>11</sup> Such move requires that no member of the student's household has remained at the former residence, regardless of child custody orders, domestic violence or other reason for the change in residence. The only exceptions to that strict rule are the death or imprisonment of a household member, the student being placed under a court-ordered guardianship,<sup>12</sup> or the marriage of the student.<sup>13</sup>

Any student who has a prior player/coach relationship with the school coach, whether at a prior school (within one year of a coach's move<sup>14</sup>) or through many American Legion, AAU or church league teams,<sup>15</sup> is ineligible for one calendar year if the student transfers to the coach's school regardless of the reason for the transfer. This includes new ninth graders at all private schools, charter schools, or any public school where the student has a right to enroll excepting the student's residence zoned school.

Students who change schools after beginning ninth grade now have to file an affidavit, under penalty of perjury, that they have not been recruited or accepted any impermissible benefit, while coaches carry no equivalent responsibility. In a case of true recruiting, the student who signs such an affidavit can risk criminal sanction if the student tells the truth to a FHSAA investigator, while a coach or booster can lie, without risk of criminal sanction. Moreover, when recruitment has been determined, the student is declared ineligible for one year, regardless of whether the student has any intent to violate the rules.

## **Interscholastic Athletics**

### Present Situation

Eligible home school and charter school students may participate in interscholastic extracurricular activities at assigned public schools or public schools to which students could attend pursuant to district controlled open-enrollment policies.<sup>16</sup> A student from a charter school may be eligible to participate in interscholastic extracurricular activities at the public school if such activity is not offered by that charter

<sup>9</sup> Student Athlete Recruiting Task Force, *Final Report*, at 25-30 (Dec. 2006).

<sup>10</sup> Bylaw 9.3.1, *FHSAA Handbook*.

<sup>11</sup> Bylaw 9.3.2.

<sup>12</sup> Bylaw 9.3.2.2.

<sup>13</sup> Bylaw 9.3.2.3.

<sup>14</sup> Bylaw 9.2.5.

<sup>15</sup> Bylaw 9.3.5.2.

<sup>16</sup> Sections 1002.41(4) and 1006.15(3)(c) and (d), F.S. "Interscholastic activities" are limited to high school athletic competitions. Section 1006.20(1), F.S. The Florida High School Athletic Association defines interscholastic contest as "any competition between organized teams of different schools in a sport recognized or sanctioned" by the FHSAA. Florida High School Athletic Association, *Interscholastic Contests*, available at <http://www.fhsaa.org/about> (last visited March 17, 2011). "Extracurricular" activities include any school-authorized or education-related activity occurring during or outside the regular instructional school day. Section 1006.15(2), F.S.

school.<sup>17</sup> Both home school and charter school students must register with the public school their intent to participate in interscholastic extracurricular activities and are subject to the same eligibility requirements as other public school students.<sup>18</sup>

To be eligible to participate in interscholastic extracurricular activities, a student must maintain a 2.0 grade point average (GPA) in the semester prior to participation or a 2.0 cumulative GPA in specified high school courses. If a student's cumulative GPA falls below 2.0 in the specified courses, the student must execute an academic performance contract with the district school board, the FHSAA, and the student's parents. At a minimum, the contract must require the student to attend summer school to improve his or her GPA.<sup>19</sup> A student must also maintain good conduct to remain eligible to participate in interscholastic extracurricular activities. The district school board policy governs the eligibility of a student to participate in these activities if he or she is found to have committed a felony or delinquent act.<sup>20</sup>

A student attending a private middle school or high school may participate in interscholastic or intrascholastic sports at a public school that is zoned for the physical address at which the student resides if the private school where the student is enrolled is not a member of the FHSAA and does not offer an interscholastic or intrascholastic athletic program. Students attending a non-FHSAA member private school with enrollment of 125 or fewer students may participate in a public school athletic program.<sup>21</sup> A private school with a student who wishes to participate in a public school athletic program must make all student records, including, but not limited to, academic, financial, disciplinary, and attendance records, available upon request of the FHSAA.<sup>22</sup>

### Effect of Proposed Changes

Currently, participation in public school interscholastic or intrascholastic sports by private school students is limited to students from non-FHSAA member private schools that have 125 or fewer students in any given year and that do not offer an interscholastic or intrascholastic program. The bill increases the number of private school students who may participate in interscholastic or intrascholastic sports by increasing the enrollment cap for non-FHSAA member private schools from 125 to 250 students. However, schools with more than 125 students more often become members of the FHSAA.<sup>23</sup>

In addition, the bill allows students attending non-FHSAA member private schools to participate in public school interscholastic sports, even though the private school offers an interscholastic program, if the specific sport offered at the public school is not available at the non-FHSAA member private school. The bill requires that private FHSAA member schools be authorized to accept such participants on the same basis as public schools when a private member school chooses to offer such participation to the students of non-FHSAA member schools. However, because the FHSAA bylaws state that a student can attend only one school at a time for purposes of interscholastic athletic eligibility,<sup>24</sup> students attending public schools and member private schools would be unable to enjoy the same right to access a particular sport that the bill extends to students at non-member private schools.

The bill also removes the requirement that a non-FHSAA member private school must make a student's financial records available to the FHSAA if the student wishes to participate in public school interscholastic sports.

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<sup>17</sup> Section 1006.15(3)(d), F.S.

<sup>18</sup> Section 1006.15(3), F.S.

<sup>19</sup> Sections 1006.15(3)(a)1. and 2. and 1003.43(1), F.S.

<sup>20</sup> Section 1006.15(3)(a)4., F.S.

<sup>21</sup> Section 1006.20(8), F.S.

<sup>22</sup> Section 1006.15(8)(e), F.S.

<sup>23</sup> Telephone interview with staff, Florida High School Athletic Association (March 18, 2011).

<sup>24</sup> Section 9.2.1.1 of Bylaw 9.2.1, *FHSAA Handbook*, available at

[http://www.fhsaa.org/sites/default/files/attachments/2010/09/16/node-235/complete\\_handbook\\_276pgs.pdf](http://www.fhsaa.org/sites/default/files/attachments/2010/09/16/node-235/complete_handbook_276pgs.pdf).

## FHSAA bylaws

### Present Situation

The FHSAA must adopt bylaws that, unless specifically provided by statute, address athletic participation of member schools and individual student athletes.<sup>25</sup> The FHSAA must adopt bylaws that address student eligibility, residence, transfer, and recruitment.<sup>26</sup> Private schools that wish to engage in high school athletic competition are authorized to become FHSAA member schools. The FHSAA bylaws "are to be the rules by which high school athletic programs, and the students who participate in them, are governed."<sup>27</sup>

The FHSAA's bylaws require member schools to comply with all bylaws, policies, and procedures.<sup>28</sup> Each member school must, as a condition of membership in the FHSAA, annually adopt the bylaws as the rules governing its interscholastic athletic programs.<sup>29</sup> The adoption of the bylaws acts as a contract between the FHSAA and the member school.<sup>30</sup> Member schools that violate the bylaws are subject to any disciplinary action determined to be appropriate by the FHSAA.<sup>31</sup> In this context, FHSAA bylaws define a member school to include not just the institution, but also "its administration, faculty, athletic staff, student athletes, student body, and any other individual or group engaged in activities representing, supporting or promoting the athletic interests of the school."<sup>32</sup> The FHSAA policies which implement the organization's bylaws bring "third parties" communicating with a student under scrutiny for recruiting even if they do not act on behalf of the school or its agents.<sup>33</sup>

The FHSAA must also adopt bylaws prohibiting the recruitment of student athletes and establishing penalties and an appeals process for recruiting violations. The law does not prescribe the types of penalties that must be established or identify persons who must be penalized for such violations.<sup>34</sup>

The FHSAA's bylaws prohibit recruitment of student athletes. The details of the FHSAA's recruiting policy are set forth in an administrative policy adopted by its board of directors.<sup>35</sup> The recruiting policy defines recruiting<sup>36</sup> and the individuals, including coaches, who may not engage in recruiting behavior;<sup>37</sup> prohibits student athlete receipt of impermissible benefits;<sup>38</sup> and establishes penalties for member schools and student athletes involved in recruiting.<sup>39</sup> "Athletic recruiting is any effort by a school employee, athletic department staff member, or representative of a school's athletic interests to pressure, urge, or entice a student to attend that school for athletic reasons."<sup>40</sup> The FHSAA official definition of recruiting tends to bring all communication about participation, even among students themselves, under the scrutiny of recruiting restrictions. The policies also prohibit "impermissible

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<sup>25</sup> Section 1006.20(1), F.S.; *see also* Florida High School Athletic Association, *About the FHSAA*, available at <http://www.fhsaa.org/about> (last visited Jan. 27, 2012).

<sup>26</sup> Section 1006.20(2), F.S.

<sup>27</sup> Section 1006.20(1), F.S. Senior high schools, middle/junior high schools, combination schools, or home education cooperatives may be members of FHSAA. Section 3.1.1 of Bylaw 3.1, *FHSAA Handbook* Member senior high schools, middle/junior high schools, and combination schools may include traditional public schools, charter schools, private schools, and university lab schools. Section 3.2.2 of Bylaw 3.2, *FHSAA Handbook*.

<sup>28</sup> Bylaw 2.6, (compliance with rules) and s. 3.3.1(d) of Bylaw 3.3, *FHSAA Handbook* (conditions of membership), and ss. 3.51 and 3.52 of Bylaw 3.5 (obligations of membership).

<sup>29</sup> Section 3.3.1(d) of Bylaw 3.3, *FHSAA Handbook*.

<sup>30</sup> *Sult v. Gilbert*, 148 Fla. 31, 35 (1941).

<sup>31</sup> *Sult*, 148 Fla. at 35; Bylaw 2.6, *FHSAA Handbook*.

<sup>32</sup> Section 3.2.1 of Bylaw 3.2, *FHSAA Handbook*.

<sup>33</sup> Section 36.3.1 of Policy 36, *FHSAA Handbook*.

<sup>34</sup> Section 1006.20(2)(b), F.S.

<sup>35</sup> Bylaw 6.3, *FHSAA Handbook*; Policy 36, *FHSAA Handbook*. The law authorizes the FHSAA board of directors to adopt administrative policies, as authorized by the bylaws. Section 1006.20(4)(e)2., F.S. The administrative policy on recruiting is incorporated by reference by the bylaw. Bylaw 6.3, *FHSAA Handbook*.

<sup>36</sup> Section 36.3.2 of Policy 36, *FHSAA Handbook*.

<sup>37</sup> Sections 36.1.2. and 36.2.1.1 of Policy 36, *FHSAA Handbook*.

<sup>38</sup> Section 36.4 of Policy 36, *FHSAA Handbook*.

<sup>39</sup> Section 36.8 of Policy 36, *FHSAA Handbook*.

<sup>40</sup> Section 36.2.1 of Policy 36, *FHSAA Handbook*.



benefits," defined as an "arrangement, assistance or benefit that is not generally available to other students in the school or their families or that is based in any way on athletic ability."<sup>41</sup>

Recruiting is also declared to be an "act of unsportsmanlike conduct."<sup>42</sup> However, the FHSAA's penalties for recruiting are not consistent with those for other forms of unsportsmanlike conduct. FHSAA bylaws classify ejection from contests, violations of the alcohol and tobacco use policy, and recruiting as "unsportsmanlike conduct."<sup>43</sup> Coaches who are ejected from contests or who violate the alcohol and tobacco use policy are subject to suspension.<sup>44</sup> Coaches who commit recruiting violations are not subject to suspension or other direct penalty. Only member schools and student athletes are penalized for recruiting.<sup>45</sup>

A member school may be penalized for recruiting actions taken by its employees, boosters, or other individuals closely associated with the school. Member schools are subject to the following penalties:

- Mandatory forfeiture of games or championships won in which the recruited athlete participated;
- Public reprimand;
- A minimum fine of \$2,500;
- Probation;
- Disqualification from participation in the sport in which the violation occurred; or
- Expulsion or restricted membership in FHSAA for a period of one or more years.<sup>46</sup>

Student athletes who transfer schools after beginning ninth grade are required to sign an affidavit that they have not been recruited to participate. Student athletes who are recruited or found to have accepted impermissible benefits are ineligible for athletic competition for a period of one or more years.<sup>47</sup> All games played must be forfeited because of the ineligibility. Apart from waiver requests, which require admission of ineligibility, there is no allowance in the eligibility provision for the severity of the student's recruitment offense, which could involve nothing more than deciding to participate based on the encouragement of fellow students involving no impermissible benefit and no deceit.

The head coach of each varsity sport offered by a member school must certify that he or she has reviewed the FHSAA's recruiting policy, agree to comply with the policy, and agree to review the policy with the coaching staff and players.<sup>48</sup> Although the recruiting policy prohibits coaches from engaging in recruiting, the policy does not subject coaches found guilty of recruiting to suspension or other penalty although the FHSAA has the authority to do so.<sup>49</sup>

### Effect of Proposed Changes

The bill expressly states that any high school<sup>50</sup> in the state, including charter schools and virtual schools or home education cooperatives may become a member of the FHSAA and participate in the activities of the FHSAA.

The bill requires the FHSAA to adopt bylaws that regulate persons who conduct investigations on behalf of the FHSAA. The bylaws must include provisions that:

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<sup>41</sup> Section 36.4.2 of Policy 36, *FHSAA Handbook*. The section lists specific examples; the quotation comes from a catch-all provision in subsection 36.4.2.14.

<sup>42</sup> Section 6.3.1 of Bylaw 6.3, *FHSAA Handbook*.

<sup>43</sup> Section 6.3.1 of Bylaw 6.3., FHSAA; s. 30.3.1 of Policy 30, FHSAA; s. 31.1 of Policy 31, FHSAA.

<sup>44</sup> Section 30.3.1 of Policy 30, FHSAA; s. 31.1 of Policy 31, FHSAA.

<sup>45</sup> Section 36.8 of Policy 36, FHSAA.

<sup>46</sup> Section 36.8 of Policy 36, *FHSAA Handbook*.

<sup>47</sup> *Id.*

<sup>48</sup> Section 36.7.1 of Policy 36.7, *FHSAA Handbook*.

<sup>49</sup> Sections 36.1.2. and 36.2.1.1 of Policy 36 and s. 36.8 of Policy 36, *FHSAA Handbook*.

<sup>50</sup> High school is defined for purposes of FHSAA law, as grades 6 through 12. Section 1006.20(1), F.S.

- Require the investigator to undergo level 2 background screening pursuant to s. 435.04, F.S.,<sup>51</sup> unless the investigator:
  - Proves that within the previous 5 years, he or she already successfully underwent a level 2 screening as part of some professional licensure requirement, having been engaged in such profession without a break in licensed service for more than 90 days, and
  - Submits an affidavit of compliance with the provisions of chs. 435 and 1006, F.S.
- An investigator must carry photo identification showing he or she FHSAA credentials.
- In conducting investigations, an investigator:
  - Must be appointed by the Executive Director.
  - May only investigate matters assigned by the Executive Director.
  - May only conduct interviews on weekdays between the hours of 9 a.m. and 7 p.m. unless otherwise agreed to by the interviewee.
  - Must allow the parent of any student to be present during an interview.
  - May only search residences or other private areas upon the written consent of the student's parents and in the presence of the parent or a representative.
- An investigator may not be the individual who makes the actual determination that a violation has occurred.

The FHSAA must also adopt bylaws that establish sanctions for coaches who have committed major violations of the FHSAA's bylaws or policies. Major violations include, but are not limited to, knowingly allowing an ineligible student to participate in a contest representing a member school in an interscholastic contest or violations of the FHSAA's recruiting or sportsmanship policies. The bill also prescribes particular sanctions that may be placed upon coaches and that such sanctions remain in full force and effect during the term of the sanction even if the coach transfers to another member school.

A coach from a FHSAA member school must reimburse the member school assessed a financial penalty as a result of the coach's major violation before the coach is allowed to coach, participate, or attend any athletic activity sponsored by, recognized, or sanctioned by the FHSAA or another member school. The FHSAA must establish a due process procedure for sanctioned coaches consistent with the FHSAA's current appeals procedure.

## **Student Eligibility**

### *Present Situation*

The FHSAA must adopt bylaws that establish eligibility requirements for all students who participate in high school athletics at member schools. The bylaws governing residence and transfer must allow the student to be eligible in the school in which he or she first enrolls each school year or makes himself or herself a candidate for an athletic team by engaging in practice prior to enrolling in the school.<sup>52</sup>

The FHSAA bylaws governing student transfer generally allow a student to transfer to another school and remain eligible for athletics if the student moves to a new attendance area with a parent or guardian with whom the student has resided for one full calendar year. Subject to certain exceptions, a student transfer that is not accompanied by a corresponding "full and complete move"<sup>53</sup> of the parent's residence renders the student ineligible until the following school year.<sup>54</sup> The definition of full and complete move excludes from participation many children of divorce when their custodial parent moves

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<sup>51</sup> A Level 2 screening consists of a fingerprint-based search of FDLE and the Federal Bureau of Investigation databases for state and national criminal arrest records. Any person undergoing a Level 2 screening must not have been found guilty of any of the offenses listed in s. 435.04, F.S.

<sup>52</sup> Section 1006.20(2), F.S.

<sup>53</sup> A "full and complete move" occurs when the former residence is no longer occupied by the student, all personal belongings are moved from the former residence, mail is received at the new residence, all utilities are transferred to the new residence, and driver's license, voter registration, and other forms of legal identification are changed to the new residence. Section 9.3.2.1.1 of Bylaw 9.3, *FHSAA Handbook*.

<sup>54</sup> Article 9.3, *2011-12 FHSAA Handbook*.

but one or more other family members continue to reside at the former residence. This is especially common in a weak housing market. If there is any athletic motivation for the move, the FHSAA does not recognize the validity of the move. Zero tolerance forfeiture is mandated for all eligibility violations, including those that are inadvertent and unknown to the coaches or administrators.

The FHSAA has a waiver policy that requires the school to pay the cost of the proceeding if the waiver is not granted. According to testimony from the FHSAA Executive Director, the costs assessed average approximately \$240.00 per appeal. The testimony indicated that approximately 2/3 of waiver requests are granted, but that may indicate that the rules are too restrictive.<sup>55</sup>

The Rules & Calendar Committee received anecdotal reports of students being denied the opportunity to participate in competitive athletics because the coach: 1) moved to the same school selected by the student athlete when their former school closed, and 2) coached a non-school league sport for eighth grade athletes, and two athletes chose to attend the private school where the coach was employed. In both cases, the ineligibility hinged solely on the past participation of the player with the coach and did not involve any evidence of choosing the school for the coach or of any actual recruitment. These examples appear consistent with the actual bylaws and policies which limit eligibility of some students engaged in good faith behavior without sanctioning the coaches or schools involved.<sup>56</sup>

### Effect of Proposed Changes

The bill requires the FHSAA residence and transfer bylaws to allow a student to be eligible in the school to which the student has transferred pursuant to approval by the district school board, thereby restricting the authority of the FHSAA to determine whether a “full and complete” move has occurred. The bylaws must also allow a public school student to transfer to a private school during the school year. However, if it is determined that a school has recruited a transfer student, the FHSAA may require the school to participate in a higher competitive division for the sport in which the student competes and pay any appropriate fine.

### **Due Process**

#### Present Situation

The bylaws of the FHSAA purport to provide due process to students, coaches, and schools in the investigation, determination, and punishment of violations.<sup>57</sup> A copy of the relevant bylaws are reproduced in Appendix A. Notable in the bylaws is a complete lack of process for an opportunity to present evidence to an unbiased individual or group making an initial determination of ineligibility or other violation of rules. Findings must be disclosed to the school or person alleged to have committed a violation.<sup>58</sup> When a member school accuses another school of using an ineligible player or violating other rules, a full written statement of the facts must be submitted to the Executive Director. The Executive Director must provide the accused party with a copy of the accusation and determine if the allegations warrant an investigation.<sup>59</sup> No other procedures are required for making the determination that a violation has occurred.

When a student is determined ineligible by the student’s school or the Executive Director, the principal may appeal and must do so at the request of the student.<sup>60</sup> The student athlete, however, may not

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<sup>55</sup> Meeting of the Rules & Calendar Committee, Feb. 20, 2012, available at <http://myfloridahouse.gov/VideoPlayer.aspx?value=TzUOK8q38MCamoZGpVxK6U6qFLYhfZSc2KILVDPP17YfsuBTk9146qiFfv9k6SKAXORaxkQOekNXXuAL8Ish5aviuI37rSYIE3psAiWT1rVa070zOCp99w64bNgY0L5%2fivjx5vDCw0minreiLMgMow%63d%63d>.

<sup>56</sup> *Id.*

<sup>57</sup> All procedures are found in Chapter 10 of the Bylaws, *FHSAA Handbook*. See Appendix A.

<sup>58</sup> Bylaw 10.1.1, *FHSAA Handbook*.

<sup>59</sup> Bylaw 10.3.1, *FHSAA Handbook*.

<sup>60</sup> Bylaw 10.4.1, *FHSAA Handbook*.

individually appeal an eligibility determination. Any violator of other rules, whether student, coach administrator or school, is entitled to appeal when "found to be in violation of the rules".<sup>61</sup>

Beyond the right to appeal the determinations or findings made in a manner that the bylaws do not prescribe, a school may file an "undue hardship waiver on behalf of a student."<sup>62</sup> However, to seek a waiver, the student and school must accept the status of ineligibility and cannot both appeal a ruling and seek a waiver in the alternative.<sup>63</sup> The process to obtain a waiver is repeatedly called an "appeal", and the appeal process that governs requires the appellant or waiver applicant to pay the organization's cost if the appeal or waiver is denied.<sup>64</sup>

The bylaws do not set forth the burden of proof or evidentiary requirements for initial determinations of ineligibility or other violations. The bylaws supply inconsistent provisions for evidence and burdens of proof in appeals proceedings. In one place the burden is on the appellant or applicant for waiver who must provide a brief statement of the facts supported by "any relevant documentary evidence available."<sup>65</sup> Another provision states that an appeals committee "may set aside findings of fact . . . only if the school shows that . . . the finding of the FHSAA staff is clearly not supported by evidence that is credible, persuasive and of a kind on which reasonably prudent persons rely in the conduct of serious affairs."<sup>66</sup> Thus, the provision of evidence by the appellant may not even be considered if the FHSAA staff relied on reasonable evidence. The burden of proof on appeal is not "probably unsupported by the evidence" but "clearly not supported" (similar to a clear and convincing standard).<sup>67</sup> Finally, the appeals committee "can act only on the basis of the record in the case [consisting] of the notice of inquiry and/or allegations to the school, the report of the investigator and the written response by the school. The committee cannot consider information that was not available to the FHSAA staff when issuing its finding."<sup>68</sup> Thus, the high burden of proof on appeal can only be established on the record included in the investigator's report or a "written response" that the bylaws do not at any point invite or guarantee.

If incomplete or inaccurate information is supplied by an appellant or waiver applicant, "sanctions provided by these bylaws shall apply."<sup>69</sup> This implies that the appeal or waiver request can be denied based on a mistake regardless of how meritorious the appeal or request. Similarly, when the Executive Director makes a determination of eligibility when requested by a school, a later determination that incomplete or inaccurate information was provided subjects the school to a retraction of the eligibility determination and to "such penalties as deemed appropriate" regardless of whether the inaccuracy or incompleteness would have affected the ruling.<sup>70</sup>

The bylaws allow, but do not require, a stay of any determination and reference of the matter "back to the FHSAA staff for review" when relevant new information is introduced in an appeal proceeding.<sup>71</sup> Thus, it is possible to have all relevant evidence considered, but there is no guaranteed right to such consideration at any point in the process.

The bylaws provide for two types of appeals: appeals of "secondary cases" are heard by one of four sectional committees,<sup>72</sup> and appeals of "major cases" are reviewed by a statewide "Infractions Appeals Committee."<sup>73</sup> The bylaws do not define or distinguish "secondary" and "major" cases. Appeals from either type of panel may be made to the FHSAA Board of Directors.<sup>74</sup>

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<sup>61</sup> Bylaws 10.4.2, and 10.4.3, *FHSAA Handbook*.

<sup>62</sup> Bylaw 10.4.4, *FHSAA Handbook*.

<sup>63</sup> Bylaw 10.4.4.2, *FHSAA Handbook*.

<sup>64</sup> Bylaw 10.5.1, *FHSAA Handbook*.

<sup>65</sup> Bylaw 10.5.2, *FHSAA Handbook*.

<sup>66</sup> Bylaw 10.6.5.2.1(a), *FHSAA Handbook*.

<sup>67</sup> *Id.*

<sup>68</sup> Bylaw 10.6.5.2.3, *FHSAA Handbook*.

<sup>69</sup> Bylaw 10.5.3, *FHSAA Handbook*.

<sup>70</sup> Bylaw 10.5.4, *FHSAA Handbook*.

<sup>71</sup> Bylaw 10.6.5.2.3.1, *FHSAA Handbook*.

<sup>72</sup> Bylaw 10.6.5.1.1, *FHSAA Handbook*.

<sup>73</sup> Bylaw 10.6.5.1.2, *FHSAA Handbook*.

<sup>74</sup> Bylaw 10.6.5.3, *FHSAA Handbook*.

The bylaws do provide more procedure for the appeals but lack certain safeguards. In some cases, a student can be required to appear at an appeal, but the bylaws do not state how that is communicated to the student or to how much notice the student is entitled. A student, whose eligibility is under review, or any person found to have committed an infraction, as well as any school involved, may appear at an appeal. However, when a student appears, the school must send a representative, implying a burden of travel cost to the appeals hearing in most cases. When a student is required to appear, an attorney may not appear in lieu of the student, although a student is granted a right to counsel.<sup>75</sup>

Any appeal must be "filed [in a case of the Executive Director's findings] so that it is received in the office of the FHSAA within ten business days of the receipt of the finding or notification of the imposition of penalty"<sup>76</sup> or within ten days of receipt "of the FHSAA staff's decision in secondary cases, or . . . of the infractions report in major cases."<sup>77</sup> Any delay waives the appeal right. The "received in the office" aspect of appeal petitions appears more difficult to comply with than many similar legal proceedings. There does not appear to be any requirement that the organization note the time of receipt or even acknowledge receipt of the appeal.

[See further discussion below under: III. Comments, A. Constitutional Issues, 2. Other]

### Effect of Proposed Changes

The bill provides due process protections in the form of a right to notice of an investigation and a right to present evidence to an unbiased decision maker, either the Executive Director or an individual designated by the Executive Director. The bill also requires the provision of a *de novo* proceeding on appeal in an eligibility matter if new evidence is introduced or a full and fair hearing was not available on the initial determination. The *de novo* proceeding can be avoided if the appeals committee remands the case for a full and fair determination based on all the evidence.

The bill allows the FHSAA to choose the due process provided for enforcement proceedings in Florida's Administrative Procedures Act<sup>78</sup> in lieu of the due process requirements set forth in the bill.

The bill provides that ineligibility must be proven by clear and convincing evidence. It provides that contests may not be forfeited for ineligible athletes unless the coach or school had reason to know of the ineligibility and that contests forfeited for ineligible players may not exceed the number of contests that responsible coaches or other adults are prospectively suspended. In addition, the bill prohibits prospective suspension of any student's right to participate for a recruiting violation unless the student or parent falsified documents or accepted a benefit or offer of benefit that is currently defined by the FHSAA as an impermissible benefit.

The bill focuses sanctions for recruiting violations on coaches and responsible adults and not chiefly on students.

## B. SECTION DIRECTORY:

**Section 1.** Amends s. 1006.15, F.S., relating to student standards for participating in interscholastic and intrascholastic extracurricular student activities; to authorize students attending certain private schools to participate in public school athletic programs if the private school does not offer the specific sport.

**Section 2.** Amends s. 1006.20, F.S., relating to athletics in public K-12 schools; to require the FHSAA to adopt bylaws governing transfer of students, penalties for recruiting violations, sanction of coaches, regulation of investigators, and new due process requirements.

<sup>75</sup> Bylaws 10.6.3, 10.6.3.1, and 10.6.3.2, *FHSAA Handbook*.

<sup>76</sup> Bylaw 10.6.4, *FHSAA Handbook*.

<sup>77</sup> Bylaw 10.6.5.1, *FHSAA Handbook*.

<sup>78</sup> Sections 120.569 and 120.57, F.S.

**Section 3.** Amends s. 1012.468, F.S., relating to exceptions to certain fingerprinting and criminal history checks; to provide background screening exception for certain investigators of the FHSAA.

**Section 4.** Provides an effective date of July 1, 2012.

## 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:

Investigators who conduct investigations on behalf of the FHSAA are not currently required to undergo background screenings. Unless the FHSAA chooses to pay for background screening, FHSAA investigators will experience increased costs because the bill requires all investigators to undergo background screening if not screened for active professional licensure purposes within the previous 5 years. The cost of a state and federal criminal history check is \$43.25.

### D. FISCAL COMMENTS:

The administrative workload associated with the maintenance of student records for eligibility, compliance, and program participation is indeterminate; however, it is not expected to have a significant fiscal impact on the school districts or the FHSAA.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

If the process set forth in the bylaws was a legal process adopted by a governmental entity for enforcing laws, ordinances, or rules, it likely would not satisfy the minimal constitutional requirements of due process. These requirements include notice, an opportunity to be heard, the right of persons and organizations to confront witnesses against them, and access to an unbiased decision maker. FHSAA representatives emphasize that athletic participation is a privilege and not a property right. While that may prevent courts from interfering on the basis of constitutional claims of students or coaches, it does not excuse the problems created by an arbitrary and unfair process that does in fact regulate the access of student-athletes to the enjoyment of statutory rights to participate in interscholastic athletics.

and of professional coaches to pursue their chosen profession, most often in positions of public employment at public schools.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 31, 2012, the K-20 Competitiveness Subcommittee reported proposed committee substitute for HB 1403 favorably as a committee substitute. The committee substitute differs from HB 1403 in that the committee substitute:

- Removed the establishment of a governing body for private schools athletics;
- Provided an exemption for investigators from the background screening requirement if certain conditions are met;
- Exempted investigators from the noninstructional personnel background screening requirement;
- Removed the ability of coaches to coach or volunteer for other organizations; and
- Removed the provisions specifying the allocation of fines collected by the FHSAA.

On February 20, 2012, the Rules & Calendar Committee reported CS/HB 1403 favorably with a committee substitute. The strike-all amendment included the substance of the CS by the previous committee, but clarified transfer rights for private school students, midyear transfers, added to the regulation of investigators and adjusted the limitations of sanctions on students. The amendment also added significant due process requirements.

## **Compliance and Enforcement**

### **10.1 PENALTIES**

**10.1.1 General Principles.** The Executive Director shall have the authority to investigate all alleged violations of this Association's Bylaws, as well as regulations, guidelines, policies or procedures established by the Board of Directors. All findings shall be disclosed to the school or person alleged to have committed a violation. The Executive Director shall have full authority to invoke one or more of the following penalties against the violating school or person:

- (a) **REPRIMAND**—An official letter of censure to the concerned party in regard to the offense committed which warns against further violations. This letter will be kept on file for future reference.
- (b) **FINE**—A monetary payment.
- (c) **FORFEIT**—The forfeiture of an interscholastic athletic contest.
- (d) **PROBATION**—Types of probation that may be imposed are as follows:
  - 1) **Administrative Probation**—The school is reprimanded, fined and served notice that it is in a period of warning for a minimum of one calendar year. Additional violations during this time will result in increased penalties which may include expulsion.
  - 2) **Restrictive Probation**—The school faces the same penalties as administrative probation, with the additional consequence of restriction from participation in championship competition in one or more sports, or other restrictions deemed appropriate by the Executive Director, for one or more calendar years.
  - 3) **Suspension Probation**—The school faces the same penalties as administrative probation, with the additional consequence of suspension from one or more sports for one or more calendar years.
- (e) **EXPULSION**—Involuntary termination of a school's membership in the Association for one or more calendar years. Any member school that competes with a currently expelled school may subject itself to expulsion from the Association for one calendar year.

**10.1.1.1 Restricted Membership.** The Board of Directors, instead of expulsion, may restrict one, more or all the membership privileges of the school. The school remains a member even if all of its membership privileges are restricted.

**10.1.2 Reimbursement of Expenses.** A member school found to have committed a violation shall pay to this Association any expenses incurred related to such violation, including, but not limited to, the costs of the investigation, attorney's fees and legal costs, and all other related costs.

**10.1.3 Court Injunctions.** If a member school or student, in violation of or noncompliance with any provisions of this Association's rules, competes based on an injunction or restraining order which is later voluntarily vacated, stayed or reversed, or it is determined that injunctive relief is not or was not justified, they will still be subject to the penalties listed in 10.1.1.

### **10.2 FORFEITURE OF CONTEST**

**10.2.1 General Principle.** If an ineligible student is inadvertently or intentionally permitted to participate in an interscholastic athletic contest, forfeiture of the game and honors shall be automatic and mandatory.

**10.2.1.1 Team or Individual Sports.** In team sports, the contest and honors shall be forfeited. In individual sports, the points won by the ineligible student, individually or as the member of a relay team shall be forfeited.

**10.2.1.2 Procedures.** If an ineligible student is allowed to participate in an athletic contest, the principal shall notify the Executive Director the dates of the competition and provide copies of the letters of forfeiture to the opposing school(s) the student participated against.



**10.2.1.3 Intentional Use of Ineligible Students.** The Executive Director shall have full authority to invoke additional penalties against a member school that in his/her determination intentionally permits an ineligible student to participate.

### **10.3 PROTEST PROCEDURE**

**10.3.1 Protesting Actions of Another School.** Any member school filing a protest over the eligibility of a student or the actions of a member school shall submit to the Executive Director in writing a full statement of the facts signed by the principal. The Executive Director shall provide the accused party or parties with a copy of the accusation and determine if the allegations warrant an investigation.

**10.3.2 Protesting Actions of Contest Officials.** The decisions of contest officials shall be final and not subject to review. Member schools should file reports with the Executive Director of unsatisfactory performance by contest officials which may be due to alleged lack of knowledge of the rules, errors in judgment or improper conduct.

### **10.4 DUE PROCESS**

**10.4.1 Eligibility Appeals.** When a student is determined to be ineligible by a member school and/or is ruled ineligible by the Executive Director, the member school principal may appeal the ruling of the Executive Director if he/she or the student takes issue with it, and must do so at the student's request.

**10.4.2 Rules Violations Appeals.** Any student athlete, coach or member school who is found to be in violation of the rules of this Association may appeal the finding of the Executive Director if he/she takes issue with it, or may appeal the penalty imposed if he/she believes it to be too severe, and must do so at the student's request.

**10.4.3 Disputes Between Member Schools Appeals.** A member school principal may appeal the findings by the Executive Director which arise from a dispute between one or more member schools.

**10.4.4 Undue Hardship Waivers.** A member school principal may file a request for undue hardship waiver on behalf of the student when enforcement of the provision(s) which render(s) the student ineligible works an undue hardship upon the student, and must do so at the student's request.

**10.4.4.1 Basic Principle.** The eligibility rules of this Association are designed to promote academic achievement and to encourage students to advance with their graduating class. Unless a student exerts every reasonable effort to make up credit not earned, such effort including attendance at summer school or other alternative programs, an undue hardship request seeking a waiver of the limit of eligibility shall not be granted.

**10.4.4.2 Criteria for an Undue Hardship Waiver Determination.** By seeking an undue hardship waiver, the student and the member school accept the fact that the student is ineligible under the FHSAA Bylaws but are asking for a grant of waiver of those Bylaws. For the purpose of determining whether to grant or deny an undue hardship waiver the Sectional Appeals Committees and the Board of Directions shall be guided by the following criteria, other criteria contained in these Bylaws and FHSAA Policies, and their respective experience related to high school athletics.

**10.4.4.2.1 Insufficient Grounds for Undue Hardship Waiver.** The fact that a student is retained in a lower grade shall not be sufficient grounds for granting an undue hardship waiver if the student fails to pass the required number of courses, or is voluntarily withdrawn from school, or repeats a lower grade to gain physical, social or emotional maturity

**10.4.4.2.2 Potentially Sufficient Grounds for Undue Hardship Waiver.** The fact that a student is unable or desires to participate in interscholastic athletics shall not, in and of itself, be grounds for granting an undue hardship waiver request. The fact that a student is retained in a lower grade because he/she misses school for a prolonged period of time due to serious injury or illness, which must be supported by a physician's record indicating that the absence was directly and solely related to such injury or illness, or events which were beyond the control of the student and/or the parent or guardian which causes the student to miss

school for a prolonged period of time causing the student to repeat a grade, may be grounds for granting an undue hardship waiver request.

**10.4.5 Waiver of Bylaws Due to Special Circumstances.** The principal of a member school or his/her designee may request a waiver of any Bylaw or other regulation, guideline, policy or procedure of this Association not directly related to student eligibility when special circumstances, in the opinion of the person or entity making the appeal, call for a relief from or a modification to the effects of the rule.

**10.4.6 Appeals of Executive Director's Findings.** The principal of a member school or his/her designee, or any other individual, who is found to be in violation of the rules of this Association by the Executive Director, whether or not such finding results in the imposition of penalty, may appeal the finding of the Executive Director if he/she takes issue with it, or may appeal the penalty imposed, if any, if he/she, while not disagreeing with the finding, believes the penalty to be too severe.

**10.4.7 No Appeal or Waiver of Florida Statutes.** The Sectional Appeals Committee, the Infraction Appeals Committee and the Board of Directors do not have the authority to waive a provision of the Florida Statutes including but not limited to:

- (a) Mandatory GPA requirements;
- (b) Definition of a grading period as being one semester;
- (c) Mandatory grading scale;
- (d) Authority of school districts to establish codes of conduct by which students must abide to be eligible to participate in interscholastic competition;
- (e) Home Education guidelines;
- (f) Charter School guidelines.

## **10.5 GENERAL PRINCIPLES FOR APPEALS AND REQUESTS FOR WAIVER**

**10.5.1 Cost of Appeal.** The cost of an appeal, if any, including the Association's attorney fees, shall be borne by the person or entity making the appeal if the finding of the Executive Director or the penalty imposed is upheld.

**10.5.2 Burden Of Proof.** The burden of showing error in the determination of ineligibility or in showing why a waiver should be granted is on the person or entity making the appeal. Such proof shall include, as a minimum, a brief statement of the facts involved, the specific bylaw(s) or policy(s) involved and argument in support of the relief requested. This statement shall be supported by any relevant documentary evidence available.

**10.5.3 Complete and Accurate Submissions.** The person or entity making the appeal must ensure that the information submitted to support such appeal or request is complete and accurate. In the event a decision by the Sectional Appeals Committee or the Board of Directors was made based on incomplete or inaccurate information, the decision shall be withdrawn and the sanctions provided by these bylaws shall apply.

**10.5.4 Request for Eligibility Ruling.** Each member school principal or his/her designee having reasonable cause to believe that a student is ineligible to participate in, or continue to participate in, interscholastic athletic competition under any provision of these regulations may request an official ruling on the student's eligibility from the Executive Director on a form to be provided by this Association, and must do so at the student's request. The Executive Director or his/her designee shall issue a ruling based on the statement of facts and any other information available to the Executive Director, which additional information shall be included in the official ruling related to the student's eligibility. In the event the Executive Director later determines that incomplete or inaccurate information has been included in the statement supporting the member schools request for an eligibility ruling, the ruling may be retracted and such penalties as deemed appropriate may be imposed by the Executive Director against the member school requesting the ruling.

**10.5.5 Initial Appeals or Requests for Waivers.** Initial appeals or requests for waivers will be heard by the Sectional Appeals Committee.

**10.5.6 Subsequent Appeals or Requests for Waivers.** Unfavorable decision found on the initial appeal or request for waiver rendered by the Sectional Appeals Committee will be heard by:

- (a) The Sectional Appeals Committee, provided new information is provided, or
- (b) The Board of Directors, which will not hear any evidence that was not presented to the Sectional Appeals Committee, and decisions will be final.

**10.5.7 Appeals of Major Violations.** Appeals of major violations will be heard by the Infraction Appeals Committee. Decisions of the Infraction Appeals Committee can be appealed to the Board of Directors. Decisions by the Board of Directors will be final.

**10.5.7.1 Infraction Appeals Committee.**

**10.5.7.1.1 Purpose of Committee.** The Board of Directors appoints an Infractions Appeals Committee to hear and act upon appeals of schools found to have committed major violations.

**10.5.7.1.2 Composition of Committee.** The committee is composed of five members as follows:

- (a) One public school member, who must be a school-based administrator;
- (b) One public school member, who must be either a school-based administrator or a district-level administrator;
- (c) One private school member, who must be a school-based administrator;
- (d) One private school member, who must be either a school-based administrator or a regional or state-level administrator in a private school accrediting organization that is recognized by the FHSAA; and
- (e) One attorney who within the last five years has been a member in good standing of the Florida Bar or the bar of any other state in the union, and who cannot be connected with any member school, public school district or private school accrediting organization, or represent student-athletes, coaches or athletic directors in any manner.

**10.5.7.1.2.1 Restrictions on Appointments.** No member of the Board of Directors or any Sectional Appeals Committee can serve on the Infractions Appeals Committee. The two public school members cannot be from the same public school district. The two private school members cannot be from the same private school accrediting organization. Otherwise, there are no restrictions on who may be appointed to the committee.

**10.5.7.1.2.2 Quorum and Alternate Members.** A quorum of the committee is four members. The Board of Directors will designate alternates the Executive Director may call as substitutes to ensure a quorum when regular committee members are absent.

**10.5.7.1.2.3 Attorney Serves as Committee Chair.** The attorney member chairs the committee, and is the only committee member who may have contact with the FHSAA staff regarding any case. The committee elects from among its remaining four members a vice chair who presides when the chair is absent or unable to act.

**10.5.7.1.3 Term of Service.** A member serves a term of three years, except as stipulated in paragraph 10.5.7.1.3.1 below. A member may be reappointed to a second term, but cannot serve more than six years on the committee.

**10.5.7.1.3.1 Initial Terms of Service to Establish Rotation.** To ensure that the terms of all members of the committee do not expire at the same time, each member initially appointed to the committee will serve the following initial terms of service:

- (a) The attorney will serve an initial term of five years and may be reappointed to a second term of three years;

- (b) One of the public school administrators and one of the private school administrators, selected at random by the Board of Directors, will serve an initial term of four years and may be reappointed to a second term of three years; and
- (c) The remaining public school administrator and private school administrator will serve an initial term of three years and may be reappointed to a second term of three years.

**10.5.7.1.4 Authority and Duties of Committee.** The committee:

- (a) Hears and acts upon appeals of schools found to have committed major violations; or
- (b) Hears and acts on appeals arising from a situation involving or affecting member schools in more than one administrative section; or
- (c) Hears and acts on requests of waiver of a rule that, if granted, would affect member schools in more than one administrative section; or
- (d) Makes recommendations to the Board of Directors and FHSAA staff relative to the formulation and revision of FHSAA enforcement policies and procedures.

**10.5.7.1.5 Committee to Meet as Needed.** The committee meets as needed upon call of the chair in consultation with the Executive Director.

**10.5.8 Emergency Hearings.** The President of the Association may conduct an emergency meeting of the Board of Directors by telephone conference call if, and only if, a decision made by the Executive Director or a Sectional Appeals Committee would eliminate a school, in a team sport, or an individual, in an individual sport, from a State Championship Series contest before the next meeting of the Board of Directors. The President shall not conduct an emergency meeting of the Board of Directors to consider undue hardship cases, or other cases, affecting a student's eligibility unless such student's eligibility would eliminate a school, in a team sport, or the student, in an individual sport, from a State Championship Series contest before the next meeting of the Board of Directors. In the event a member school requests an emergency hearing before the Board of Directors, requesting such hearing the member school consents to the hearing being conducted by telephone conference call and agrees to pay all expense including expenses such as the cost of the telephone conference call and the costs of the stenographic recording of such hearing.

**10.5.8.1 Emergency Appeals Committee.**

**10.5.8.1.1 Purpose of Committee.** The Executive Director authorizes an Emergency Appeals Committee solely to decide those issues normally decided by the Sectional Appeals Committee or the Board of Directors in which elimination from a State Championship Series has occurred.

**10.5.8.1.2 Composition of Committee.** The committee will be composed of five ad hoc members as follows:

- (a) One non-attorney member from each of the four Sectional Appeals Committees; and
- (b) One attorney member from one of the four Sectional Appeals Committees. The attorney member shall chair the Emergency Appeals Committee.

**10.5.8.1.3 Selection of Committee Members.** When requested by the Executive Director, the Emergency Appeal Committee members will be selected as follows:

- (a) Each non-lawyer member will be designated by the Chairperson of the respective Sectional Appeals Committees; and
- (b) The attorney member, who will serve as the chair of the committee, will be designated by the Executive Director.

**10.5.8.1.4 Authority and Duties of Committee.** The committee:

- (a) Shall decide those issues normally decided by the Sectional Appeals Committee or the Board of Directors when a school, in team sport, or an individual, in an individual sport, would be eliminated

from a State Championship Series contest before the next meeting of the Sectional Appeals Committee or Board of Directors;

- (b) Shall not be called upon to decide undue hardship cases, or other cases, affecting a student's eligibility unless such student's eligibility would eliminate a school, in a team sport, or the student, in an individual sport, from a State Championship Series contest before the next meeting of the appropriate Sectional Appeals Committee or the Board of Directors.

**10.5.8.1.5 Committee to Meet as Needed.** The committee meets as needed upon call by the Executive Director.

**10.5.8.1.6 Appeal of Decisions.** The decision of the Emergency Appeals Committee can be appealed by the member school or the Executive Director at the next meeting of the Board of Directors.

## **10.6 APPEAL AND REQUEST FOR WAIVER PROCEDURES**

**10.6.1 Filing an Initial Appeal or Request for Waiver.** An appeal or request for waiver must be filed with the Executive Director on the form(s) provided by this Association and must be accompanied by all necessary documentation. The appeal or request, including all required documentation, must be signed by the principal and received in the office of this Association not later than 5 p.m. Eastern Time on the filing dates established by the Board of Directors and printed in the FHSAA Planning Calendar. Appeals and requests received after the deadline date will not be considered at that Sectional Appeals Committee meeting, but will be placed on the agenda for the next regularly scheduled meeting. Incomplete appeals or requests for waiver will be returned to the person or entity making the appeal for an opportunity to resubmit with all the necessary information prior to the deadline, if time allows.

**10.6.2 Filing an Appeal or Request for Waiver to the Board of Directors.** The request for an appeal hearing before the Board of Directors must be made in writing to the Executive Director, must be signed by the member school principal or his/her designee and must be received in the office of this Association within five (5) business days following the date of the Sectional Appeals Committee meeting or the Infraction Appeals Committee meeting. Failure to file a request for an appeal hearing before the Board of Directors within the five (5) business days following the date of the Sectional Appeals Committee meeting or the Infraction Appeals Committee meeting shall be deemed a waiver of the right of an appeal as granted herein.

**10.6.3 Appearances Before Sectional Appeals Committee, Infraction Appeals Committee, Emergency Appeals Committee and/or Board of Directors.** The person or entity making the appeal has the opportunity to appear before the Sectional Appeals Committee, Infraction Appeals Committee, Emergency Appeals Committee and/or the Board of Directors if he/she so chooses. The person or entity making the appeal must give notice of their choice to appear at the time the appeal or request for waiver is filed. Appearance by the student and a school representative is mandatory for an appeal or request for undue hardship waiver involving age, limit of eligibility and unsportsmanlike conduct provisions when heard by the Sectional Appeals Committee, and is optional when heard by the Board of Directors.

**10.6.3.1 Procedure for Appearance.** A person or entity making the appeal who is required, or who chooses, to appear before the Sectional Appeals Committee, Infraction Appeals Committee and/or the Board of Directors will be assigned a time for the appearance. A twenty (20)-minute block will be allotted for each case involving an appearance.

**10.6.3.2 Student Appearance.** A student who is required, or chooses, to appear before the Sectional Appeals Committee, Infraction Appeals Committee and/or the Board of Directors must be accompanied by a school representative and may be accompanied by his/her parent(s) or other individuals with whom he/she lives. The school representative who is required to accompany the student must be a full-time employee of the school and must be identified on the form at the time of filing. The student may be represented by an attorney. Such representation will not excuse the appearance of a student when that appearance is required.

**10.6.4 Appeals of Executive Director's Findings.** To appeal the finding of the Executive Director, the appeal must be filed so that it is received in the office of this Association within ten (10) business days of the receipt of the Executive Director's finding and/or notification of the imposition of penalty. Failure to file an appeal so that it is received in the office of this Association within the ten (10) business days allowed shall be deemed a waiver of the right to appeal as granted herein.

**10.6.5 Infraction Appeals Committee Appeals Procedure.**

**10.6.5.1 Written Notice of Appeal.** To be considered by the appropriate appeals committee, the school's written notice of appeal of the findings of fact or the penalty imposed, or both, must be received in the FHSAA Office not later than 10 business days from the date that the school receives the FHSAA staff's decision in secondary cases, or confirms its receipt of the infractions report in major cases. The notice of appeal must indicate whether the school will submit its appeal in writing only or whether it will appear before the appeals committee at the time the appeal is considered. The school must submit supporting information for its appeal, if any, to the FHSAA Office by the deadline established by the FHSAA.

**10.6.5.1.1 Appeal of Secondary Violations.** Sectional Appeals Committees hear and act on appeals of secondary cases.

**10.6.5.1.2 Appeal of Major Violations.** The Infractions Appeals Committee hears and acts on appeals of major cases.

**10.6.5.2 Basis for Granting an Appeal.**

**10.6.5.2.1 Appeal of Findings.** An appeals committee may set aside findings of fact and violations arrived at ONLY if the school shows that:

- (a) The finding of the FHSAA staff is clearly not supported by evidence that is credible, persuasive and of a kind on which reasonably prudent persons rely in the conduct of serious affairs;
- (b) The school's actions do not constitute a violation of FHSAA rules; or
- (c) A procedural error affected the reliability of the information that was used to support the FHSAA staff's finding. In this case, the school must demonstrate how it contends the staff was in error.

**10.6.5.2.2 Appeal of Penalties.** An appeals committee may set aside a penalty imposed by the FHSAA staff if the appeals committee determines that the penalty is excessive or inappropriate based on all the evidence and circumstances. Only the Board of Directors may modify a penalty imposed by this Association.

**10.6.5.2.3 Committee Acts on Basis of Record in Case.** An appeals committee can act only on the basis of the record in the case. This record consists of the notice of inquiry and/or allegations to the school, the report of the investigator and the written response by the school. The committee cannot consider information that was not available to the FHSAA staff when issuing its finding and imposing the penalty.

**10.6.5.2.3.1 New Evidence.** The appeals committee may stay an appeal when new information is introduced and refer the case back to the FHSAA staff for review if the committee concludes that:

- (a) The new information was not available, and through the exercise of reasonable due diligence could not have been available, at the time the FHSAA staff issued its finding; and
- (b) The new information is demonstrably relevant to the findings of the staff.

**10.6.5.3 Appeal of Unfavorable Decision by Appeals Committee.** A school that is unsuccessful in its appeal to the Sectional Appeals Committee or Infractions Appeals Committee may appeal the committee's decision to the FHSAA Board of Directors. The school's written notice of appeal of the committee's decision must be received in the FHSAA Office not later than five business days from the date of the hearing before the appeals committee. The notice of appeal must indicate whether the school will submit its appeal in writing only, or whether it will appear before the Board of Directors at the time the appeal is considered.

**10.6.5.3.1 Board Acts on Basis of Record in Case.** The Board of Directors can act only on the basis of the record in the case. This record consists of the information that was available to the appeals committee at the time it rendered its decision. The Board of Directors may stay an appeal when new information is introduced and refer the case back to the FHSAA staff for review per the conditions of paragraph 10.6.5.2.3.1.

## **10.6.6 Emergency Appeals Committee Appeals Procedures.**

**10.6.6.1 Request for an Emergency Appeal.** A request for an emergency appeal shall be filed with the Executive Director within 48 hours after the member school learns that there is a need for a decision before the matter can be considered at a regularly scheduled meeting of the Sectional Appeals Committee. Failure to file a request within 48 hours shall be deemed a waiver of the right of an emergency appeal.

**10.6.6.2 Telephone Conference Call.** By requesting a hearing by the Emergency Appeals Committee, the member school consents to such a hearing being conducted by telephone conference call and shall be governed by Bylaw 4.1.3.1.

**10.6.6.3 Cost of Emergency Appeal.** By requesting a hearing by the Emergency Appeals Committee, the member school agrees to pay all expense including expenses such as the cost of the telephone conference call and the costs of the stenographic recording of such hearing.

## **10.7 EMPOWERMENT**

**10.7.1 Sectional Appeals Committee Powers.** The Sectional Appeals Committee is empowered to consider a request from member schools seeking exceptions to Bylaws and regulations, to hear undue hardship eligibility cases filed by member schools on behalf of student-athletes, and to hear appeals filed by member schools or other individuals. The decision in each case shall be by majority vote and may be appealed to the Board of Directors.

**10.7.1.1 Reliance on a Sectional Appeals Committee Decision.** A school that allows a student to participate in accordance with a Sectional Appeals Committee decision that is later reversed by the Board of Directors will not be subject to the penalties normally assessed a school that allows participation by an ineligible student.

**10.7.2 Infraction Appeals Committee Powers.** The Infraction Appeals Committee is empowered to hear and act upon appeals of schools found to have committed major violations and to make recommendations to the Board of Directors and FHSAA staff relative to the formulation and revision of FHSAA enforcement policies and procedures. The decision in each case shall be by majority vote and may be appealed to the Board of Directors.

**10.7.3 Board of Directors Powers.** The Board of Directors is empowered to review appeals and requests for waivers and sustain, modify or overturn the decision of the Sectional Appeals Committee, Infraction Appeals Committee and/or the Executive Director in each case that comes before it.

**10.7.3.1 Finality of Ruling.** The decision of the Board of Directors in each case shall be by majority vote and shall be final.

## **10.7.4 Executive Director's Powers.**

**10.7.4.1 Executive Director Initiated Reviews.** The Executive Director may refer to the Board of Directors for review a decision of a Sectional Appeals Committee that directly conflicts with decisions of other Sectional Appeals Committees or of the Board of Directors on the same question or rule; or that, in the opinion of the Executive Director, is rendered in conflict with the rules of the Association or will have a great effect on the proper administration of the interscholastic athletic programs throughout the Association. The Executive Director will notify a member school in writing when a decision rendered by Sectional Appeals Committee will be referred to the Board of Directors for review.

**10.7.4.2 Appeal of Infraction Appeals Committee Decisions.** The Executive Director is empowered to appeal any decisions made by the Infraction Appeals Committee to the Board of Directors.

## **10.8 PROCEDURE IN CASES OF EXPULSION**

**10.8.1 Procedures.** When the Executive Director believes that his/her findings in any investigation into any violation of any rule of this Association warrants the expulsion of a member school or a restriction of its membership privileges, the following procedure must be followed:

- (a) Notice. The Executive Director will notify in writing the principal of the school of the date, time and site of the Board of Directors meeting at which a hearing on the school's membership status will be conducted. The notice must state the findings of the Executive Director and must advise the principal of his/her obligation to represent his/her school at the hearing. This notice must be received by the principal of the school not fewer than 10 business days in advance of the date of the hearing.
- (b) Hearings. During the hearing before the Board of Directors, the school may have an attorney present, may present witnesses, testimony, and any other relevant evidence or information for consideration by the Board of Directors. The Executive Director may also present witnesses, testimony, and any other relevant evidence or information for consideration by the Board of Directors.
- (c) Final Decision. Following the presentation of evidence and arguments, the Board of Directors will render its decision by majority vote. The Board of Directors is empowered to sustain, modify or reject the findings and recommendation of the Executive Director. The decision of the Board of Directors will be final.

**10.8.2 Applying for Reinstatement.** A school that has been expelled or has had its membership privileges restricted for a period of one or more calendar years may apply for readmission or reinstatement of its membership privileges after a period of one calendar year and then yearly thereafter. The principal of the school must notify the Executive Director in writing that he/she intends to apply for readmission or reinstatement and request to be placed on the agenda for the next regularly scheduled meeting of the Board of Directors. The principal will make a verbal appeal for readmission or reinstatement before the Board of Directors at that meeting. A school that has been expelled or has had its membership privileges restricted may be readmitted or have its membership privileges reinstated only upon approval by a majority vote of the Board of Directors.

## **10.9 COMPLIANCE WITH DECISIONS**

The administrative decisions of the Board of Directors, Infraction Appeals Committee, Sectional Appeals Committee and Executive Director shall be accepted in good faith by all member schools. The principal of any member school who, by any act or attitude, shall refuse to accept, or shall hold in contempt or derision, or shall permit or acquiesce in such contempt or derision on the part of any group or individual associated with his/her school, shall subject his/her school to expulsion from this Association. These provisions are not to be construed as preventing the principal of a member school from exercising his/her school's right to due process by appealing decisions of the Executive Director to the Sectional Appeals Committee, Infraction Appeals Committee and/or the Board of Directors.





CS/HB 4057

2012

1                                   A bill to be entitled  
 2           An act relating to physical education in the public  
 3           schools; amending s. 1003.455, F.S.; deleting  
 4           provisions relating to requirements for physical  
 5           education instruction for students in grades 6 through  
 6           8; providing an effective date.  
 7  
 8   Be It Enacted by the Legislature of the State of Florida:  
 9  
 10           Section 1. Subsection (3) of section 1003.455, Florida  
 11   Statutes, is amended to read:  
 12           1003.455 Physical education; assessment.—  
 13           (3) Each district school board shall provide 150 minutes  
 14   of physical education each week for students in kindergarten  
 15   through grade 5 ~~and for students in grade 6 who are enrolled in~~  
 16   ~~a school that contains one or more elementary grades~~ so that on  
 17   any day during which physical education instruction is conducted  
 18   there are at least 30 consecutive minutes per day. Beginning  
 19   ~~with the 2009-2010 school year, the equivalent of one class~~  
 20   ~~period per day of physical education for one semester of each~~  
 21   ~~year is required for students enrolled in grades 6 through 8.~~  
 22   Students enrolled in such instruction shall be reported through  
 23   the periodic student membership surveys, and records of such  
 24   enrollment shall be audited pursuant to s. 1010.305. Such  
 25   instruction may be provided by any instructional personnel as  
 26   defined in s. 1012.01(2), regardless of certification, who are  
 27   designated by the school principal.  
 28           Section 2. This act shall take effect July 1, 2012.

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 4057 Physical Education in the Public Schools

**SPONSOR(S):** K-20 Innovation Subcommittee; Metz

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

<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR or BUDGET/POLICY CHIEF</b>
1) K-20 Innovation Subcommittee	9 Y, 6 N, As CS	Thomas	Sherry
2) Education Committee		Thomas <i>MT</i>	Klebacha <i>JK</i>

**SUMMARY ANALYSIS**

The bill repeals the requirement for each district school board to provide the equivalent of one class period per day of physical education for one semester of each year for students enrolled in grades 6 through 8.

In addition, the bill removes the requirement for each district school board to provide 150 minutes of physical education each week for students in grade 6 who are enrolled in a school that contains one or more elementary grades.

The bill does not appear to have a fiscal impact.

The bill provides an effective date of July 1, 2012.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

Current law requires each school board to provide 150 minutes of physical education instruction for students in kindergarten through grade 5 and for students in grade 6 who are enrolled in a public school that contains one or more elementary grades, so that on any day during which physical education instruction is conducted, there are at least 30 consecutive minutes of instruction per day.<sup>1</sup> Prior to the passage of SB 610 in 2008, many school districts had been counting a student walking to lunch, watching a film on nutrition or stretching for a few minutes by their desk as exercise.<sup>2</sup>

The equivalent of one class period per day of physical education for one semester of each year is required for students enrolled in grades 6 through 8.

Students enrolled in physical education instruction must be reported through the periodic student membership surveys and records of such enrollment must be audited pursuant to s. 1010.305, F.S. This reporting and auditing requirement was in law for students in grades K through 5 prior to the passage of SB 610 in 2008.

The requirements for physical education in public elementary (grades K-5) and middle schools (grades 6-8) must be waived for a student who meets one of the following criteria:

- The student is enrolled or required to enroll in a remedial course;
- The parent requests in writing that the student enrolls in another course from among those courses offered as options by the school district; or
- The student's parent indicates in writing to the school that the student is participating in physical activities outside the school day which are equal to or in excess of the mandated requirements.<sup>3</sup>

##### **Effect of Proposed Changes**

The bill repeals the requirement for each district school board to provide the equivalent of one class period per day of physical education for one semester of each year for students enrolled in grades 6 through 8.

In addition, the bill removes the requirement for each district school board to provide 150 minutes of physical education each week for students in grade 6 who are enrolled in a school that contains one or more elementary grades.

The bill does not prohibit district school boards from offering physical education instruction. Instead, the repeal allows district school boards greater flexibility when establishing course offerings. The bill also provides students in grades 6 through 8 with greater flexibility by enabling them to choose other elective courses in lieu of physical education. Based on student participation in physical education courses prior to the mandate, it is anticipated that district school boards will continue to offer physical education courses and many students will continue to choose to enroll in those courses.

The bill maintains the requirement that district school boards provide physical education instruction for public school students in grades K through 5.

The bill provides an effective date of July 1, 2012.

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<sup>1</sup> Section 1003.455(3), F.S.

<sup>2</sup> Stuart Goldman, *Florida Toughens Physical Education Standards*, Club Industry, July 1, 2008, available at [http://www.clubindustry.com/schools/florida\\_toughens\\_physical\\_education](http://www.clubindustry.com/schools/florida_toughens_physical_education)

<sup>3</sup> Section 1003.455(4), F.S.

**B. SECTION DIRECTORY:**

**Section 1.** Amends s. 1003.455, F.S., relating to physical education; assessment; to delete provisions relating to requirements of physical education instruction for students in grades 6 through 8.

**Section 2.** Provides an effective date of July 1, 2012.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On December 6, 2011, the K-20 Innovation Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute.

The strike-all amendment maintained the repeal of the requirement for each district school board to provide physical education instruction for public school students in grades 6 through 8.

The strike-all amendment restored provisions related to physical education instruction for students in grades K-5. These included:

- Requiring that physical education instruction be conducted for at least 30 consecutive minutes;
- Reporting and auditing requirements; and
- Providing criteria for a student's waiver from participation in physical education.



1                                   A bill to be entitled  
 2           An act relating to acceleration options in public  
 3           education; creating s. 1002.3105, F.S., relating to  
 4           Academically Challenging Curriculum to Enhance  
 5           Learning (ACCEL) options, to provide eligible public  
 6           school students educational options that provide  
 7           academically challenging curriculum or accelerated  
 8           instruction; providing school principal and school  
 9           district determined student eligibility and procedural  
 10          requirements; requiring a process by which a parent  
 11          may request student participation, including the  
 12          execution of a performance contract in certain  
 13          instances; amending ss. 1001.64 and 1001.65, F.S.;  
 14          conforming provisions relating to dual enrollment  
 15          articulation agreements between Florida College System  
 16          institutions and school districts; amending ss.  
 17          1002.20 and 1002.41, F.S.; conforming cross-  
 18          references; amending s. 1003.02, F.S.; requiring  
 19          school districts to notify parents of options for  
 20          early or accelerated high school graduation; amending  
 21          s. 1003.428, F.S.; conforming provisions; creating s.  
 22          1003.4281, F.S., relating to early high school  
 23          graduation; defining the term "early graduation";  
 24          requiring that each school district adopt a policy  
 25          that provides a high school student with the option of  
 26          graduating early; requiring parental notification of  
 27          student eligibility; providing for receipt of an  
 28          initial Florida Bright Futures Scholarship Program



29 award; providing requirements for funding high school  
 30 credits; amending s. 1003.4295, F.S.; requiring that  
 31 students be advised of acceleration options;  
 32 authorizing all students to participate in the Credit  
 33 Acceleration Program; amending s. 1003.436, F.S.;  
 34 conforming provisions; amending s. 1003.437, F.S.;  
 35 specifying that the middle and high school grading  
 36 system applies to the course level; repealing s.  
 37 1007.235, F.S., relating to district  
 38 interinstitutional articulation agreements; amending  
 39 s. 1007.263, F.S.; eliminating an exemption from  
 40 Florida College System admission requirements for  
 41 certain secondary students; amending s. 1007.27, F.S.,  
 42 relating to articulated acceleration mechanisms;  
 43 deleting duplicative language relating to early  
 44 admission; providing student eligibility requirements  
 45 for enrollment in advanced placement courses; amending  
 46 s. 1007.271, F.S., relating to dual enrollment  
 47 programs; providing student eligibility requirements  
 48 and restrictions for enrollment and continued  
 49 enrollment in dual enrollment courses; authorizing a  
 50 participation limit based upon capacity; providing  
 51 requirements for faculty members providing instruction  
 52 in college credit dual enrollment courses; providing  
 53 curriculum standards for college credit dual  
 54 enrollment; clarifying district school board duties;  
 55 establishing a minimum and maximum number of college  
 56 credit hours for participation in an early admission

57 | program; providing home education student eligibility  
 58 | requirements for enrollment in dual enrollment  
 59 | courses; requiring a home education articulation  
 60 | agreement; providing requirements for the development  
 61 | and contents of a school district and Florida College  
 62 | System institution dual enrollment articulation  
 63 | agreement; requiring the Department of Education to  
 64 | develop an electronic submission system for dual  
 65 | enrollment articulation agreements and to review  
 66 | agreements for compliance; authorizing dual enrollment  
 67 | articulation agreements with state universities,  
 68 | eligible independent colleges and universities, and  
 69 | private secondary schools; repealing s. 1007.272,  
 70 | F.S., relating to joint dual enrollment and advanced  
 71 | placement instruction; amending s. 1008.22, F.S.;  
 72 | requiring that the end-of-course assessment in Algebra  
 73 | I be administered four times annually; amending s.  
 74 | 1008.25, F.S.; revising legislative intent relating to  
 75 | public school student progression; requiring the  
 76 | comprehensive student progression plan to include  
 77 | information for students and parents on accelerated  
 78 | educational options; deleting a technical assistance  
 79 | responsibility of the department; amending s. 1009.25,  
 80 | F.S.; conforming a cross-reference; amending ss.  
 81 | 1009.531 and 1009.532, F.S.; providing requirements  
 82 | for the evaluation of certain students for initial and  
 83 | renewal awards under the Florida Bright Futures  
 84 | Scholarship Program; amending s. 1011.61, F.S.;

85 providing reporting requirements for school districts  
 86 for a full-time equivalent student in courses  
 87 requiring certain statewide, standardized end-of-  
 88 course assessments and for a student who passes a  
 89 statewide, standardized end-of-course assessment  
 90 without being enrolled in the corresponding course;  
 91 amending s. 1011.62, F.S.; providing a calculation of  
 92 additional full-time equivalent membership based on  
 93 early high school graduation; providing an effective  
 94 date.

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

98 Section 1. Section 1002.3105, Florida Statutes, is created  
 99 to read:

100 1002.3105 Academically Challenging Curriculum to Enhance  
 101 Learning (ACCEL) options.-

102 (1) ACCEL OPTIONS.-

103 (a) Academically Challenging Curriculum to Enhance  
 104 Learning (ACCEL) options are educational options that provide  
 105 academically challenging curriculum or accelerated instruction  
 106 to eligible public school students in kindergarten through grade  
 107 12.

108 (b) At a minimum, each school must offer the following  
 109 ACCEL options: whole-grade and midyear promotion; subject-matter  
 110 acceleration; virtual instruction in higher grade level  
 111 subjects; and the Credit Acceleration Program under s.  
 112 1003.4295. Additional ACCEL options may include, but are not

113 limited to, enriched science, technology, engineering, and  
 114 mathematics (STEM) coursework; enrichment programs; flexible  
 115 grouping; advanced academic courses; combined classes; self-  
 116 paced instruction; curriculum compacting; advanced-content  
 117 instruction; and telescoping curriculum.

118 (2) ELIGIBILITY AND PROCEDURAL REQUIREMENTS.-

119 (a) Principal determined eligibility requirements.-

120 1. Each principal must establish student eligibility  
 121 requirements for virtual instruction in higher grade level  
 122 subjects. Each principal must also establish student eligibility  
 123 requirements for whole-grade promotion, midyear promotion, and  
 124 subject-matter acceleration when the promotion or acceleration  
 125 occurs within the principal's school.

126 2. If a school offers enriched STEM coursework, enrichment  
 127 programs, flexible grouping, advanced academic courses, combined  
 128 classes, self-paced instruction, curriculum compacting,  
 129 advanced-content instruction, telescoping curriculum, or an  
 130 alternative ACCEL option established by the principal, the  
 131 principal must establish student eligibility requirements  
 132 therefor.

133 (b) School district determined eligibility and procedural  
 134 requirements.-A school district must establish student  
 135 eligibility requirements and procedural requirements for any  
 136 whole-grade promotion, midyear promotion, or subject-matter  
 137 acceleration that would result in a student attending a  
 138 different school. Student eligibility requirements and  
 139 procedural requirements established by the school district must  
 140 be included in the school district's comprehensive student

141 progression plan under s. 1008.25.

142 (3) STUDENT ELIGIBILITY CONSIDERATIONS.—When establishing  
 143 student eligibility requirements, principals and school  
 144 districts must consider, at a minimum:

145 (a) The student's performance on a locally determined  
 146 assessment, a statewide assessment, or a statewide, standardized  
 147 assessment administered pursuant to s. 1008.22.

148 (b) The student's grade point average.

149 (c) The student's attendance and conduct record.

150 (d) Recommendations from one or more of the student's  
 151 teachers in core-curricula courses as defined in s.  
 152 1003.01(14)(a)-(e).

153 (e) A recommendation from a guidance counselor if one is  
 154 assigned to the school in which the student is enrolled.

155 (4) ACCEL REQUIREMENTS.—

156 (a) Each principal must inform parents and students of the  
 157 ACCEL options available at the school and the student  
 158 eligibility requirements for the ACCEL options established  
 159 pursuant to paragraph (2)(a).

160 (b)1. Each principal must establish a process by which a  
 161 parent may request student participation in whole-grade  
 162 promotion, midyear promotion, and subject-matter acceleration  
 163 when the promotion or acceleration occurs within the principal's  
 164 school; virtual instruction in higher grade level subjects; or  
 165 an alternative ACCEL option established by the principal. If the  
 166 parent selects one of these ACCEL options and the student meets  
 167 the eligibility requirements established by the principal  
 168 pursuant to paragraph (2)(a), the student must be provided the

169 opportunity to participate in the ACCEL option.

170 2. Each school district must establish a process by which  
 171 a parent may request student participation in whole-grade  
 172 promotion, midyear promotion, or subject-matter acceleration  
 173 that would result in a student attending a different school. If  
 174 the parent selects one of these ACCEL options and the student  
 175 meets the eligibility and procedural requirements set forth in  
 176 the district's comprehensive student progression plan, as  
 177 required under paragraph (2) (b), the student must be provided  
 178 the opportunity to participate in the ACCEL option.

179 (c) If a student participates in an ACCEL option pursuant  
 180 to the parental request under subparagraph (b)1., a performance  
 181 contract must be executed by the student, the parent, and the  
 182 principal. At a minimum, the performance contract must require  
 183 compliance with:

- 184 1. Minimum student attendance requirements.
- 185 2. Minimum student conduct requirements.
- 186 3. ACCEL option requirements established by the principal,  
 187 which may include participation in extracurricular activities,  
 188 educational outings, field trips, interscholastic competitions,  
 189 and other activities related to the ACCEL option selected.

190 (d) If a principal initiates a student's participation in  
 191 an ACCEL option, the student's parent must be notified. A  
 192 performance contract, pursuant to paragraph (c), is not required  
 193 when a principal initiates participation but may be used at the  
 194 discretion of the principal.

195 Section 2. Paragraph (a) of subsection (8) of section  
 196 1001.64, Florida Statutes, is amended to read:

197 1001.64 Florida College System institution boards of  
 198 trustees; powers and duties.—

199 (8) Each board of trustees has authority for policies  
 200 related to students, enrollment of students, student records,  
 201 student activities, financial assistance, and other student  
 202 services.

203 (a) Each board of trustees shall govern admission of  
 204 students pursuant to s. 1007.263 and rules of the State Board of  
 205 Education. A board of trustees may establish additional  
 206 admissions criteria, which shall be included in the dual  
 207 enrollment ~~district interinstitutional~~ articulation agreement  
 208 developed according to s. 1007.271(21) ~~1007.235~~, to ensure  
 209 student readiness for postsecondary instruction. Each board of  
 210 trustees may consider the past actions of any person applying  
 211 for admission or enrollment and may deny admission or enrollment  
 212 to an applicant because of misconduct if determined to be in the  
 213 best interest of the Florida College System institution.

214 Section 3. Subsection (21) of section 1001.65, Florida  
 215 Statutes, is amended to read:

216 1001.65 Florida College System institution presidents;  
 217 powers and duties.—The president is the chief executive officer  
 218 of the Florida College System institution, shall be corporate  
 219 secretary of the Florida College System institution board of  
 220 trustees, and is responsible for the operation and  
 221 administration of the Florida College System institution. Each  
 222 Florida College System institution president shall:

223 (21) Develop and implement jointly with school  
 224 superintendents ~~a comprehensive articulated acceleration~~

225 | ~~program, including~~ a comprehensive dual enrollment  
 226 | ~~interinstitutional~~ articulation agreement, for the students  
 227 | enrolled in their respective school districts and service areas  
 228 | pursuant to ~~the provisions of s. 1007.271(21)~~ 1007.235.

229 | Section 4. Paragraph (d) of subsection (19) of section  
 230 | 1002.20, Florida Statutes, is amended to read:

231 | 1002.20 K-12 student and parent rights.—Parents of public  
 232 | school students must receive accurate and timely information  
 233 | regarding their child's academic progress and must be informed  
 234 | of ways they can help their child to succeed in school. K-12  
 235 | students and their parents are afforded numerous statutory  
 236 | rights including, but not limited to, the following:

237 | (19) INSTRUCTIONAL MATERIALS.—

238 | (d) Dual enrollment students.—Instructional materials  
 239 | purchased by a district school board or Florida College System  
 240 | institution board of trustees on behalf of public school dual  
 241 | enrollment students shall be made available to the dual  
 242 | enrollment students free of charge, in accordance with ~~the~~  
 243 | ~~provisions of s. 1007.271(17)~~ 1007.271(14) and ~~(15)~~.

244 | Section 5. Subsection (6) of section 1002.41, Florida  
 245 | Statutes, is amended to read:

246 | 1002.41 Home education programs.—

247 | (6) Home education students may participate in dual  
 248 | enrollment programs in accordance with ~~the provisions of ss.~~  
 249 | 1007.27(4) and 1007.271(13) ~~1007.271(10)~~.

250 | Section 6. Paragraph (i) of subsection (1) of section  
 251 | 1003.02, Florida Statutes, is amended to read:

252 | 1003.02 District school board operation and control of



253 public K-12 education within the school district.—As provided in  
 254 part II of chapter 1001, district school boards are  
 255 constitutionally and statutorily charged with the operation and  
 256 control of public K-12 education within their school district.  
 257 The district school boards must establish, organize, and operate  
 258 their public K-12 schools and educational programs, employees,  
 259 and facilities. Their responsibilities include staff  
 260 development, public K-12 school student education including  
 261 education for exceptional students and students in juvenile  
 262 justice programs, special programs, adult education programs,  
 263 and career education programs. Additionally, district school  
 264 boards must:

265 (1) Provide for the proper accounting for all students of  
 266 school age, for the attendance and control of students at  
 267 school, and for proper attention to health, safety, and other  
 268 matters relating to the welfare of students in the following  
 269 fields:

270 (i) Parental notification of acceleration options  
 271 ~~mechanisms~~.—At the beginning of each school year, notify parents  
 272 of students in or entering high school of the opportunity and  
 273 benefits of advanced placement, International Baccalaureate,  
 274 Advanced International Certificate of Education, dual  
 275 enrollment, and Florida Virtual School courses and options for  
 276 early or accelerated high school graduation under ss. 1003.4281  
 277 and 1003.429.

278 Section 7. Paragraph (c) of subsection (2) of section  
 279 1003.428, Florida Statutes, is amended to read:

280 1003.428 General requirements for high school graduation;

281 revised.—

282 (2) The 24 credits may be earned through applied,  
 283 integrated, and combined courses approved by the Department of  
 284 Education. The 24 credits shall be distributed as follows:

285 (c) Beginning with students entering grade 9 in the 2011-  
 286 2012 school year, at least one course within the 24 credits  
 287 required in this subsection must be completed through online  
 288 learning. However, an online course taken during grades 6  
 289 through 8 fulfills this requirement. This requirement shall be  
 290 met through an online course offered by the Florida Virtual  
 291 School, an online course offered by the high school, or an  
 292 online dual enrollment course ~~offered pursuant to a district~~  
 293 ~~interinstitutional articulation agreement pursuant to s.~~  
 294 ~~1007.235~~. A student who is enrolled in a full-time or part-time  
 295 virtual instruction program under s. 1002.45 meets this  
 296 requirement.

297 Section 8. Section 1003.4281, Florida Statutes, is created  
 298 to read:

299 1003.4281 Early high school graduation.—

300 (1) The purpose of this section is to provide a student  
 301 the option of early graduation if the student has completed a  
 302 minimum of 24 credits and meets the graduation requirements set  
 303 forth in s. 1003.428. For purposes of this section, the term  
 304 "early graduation" means graduation from high school in less  
 305 than 8 semesters or the equivalent.

306 (2) Each district school board shall adopt a policy that  
 307 provides a high school student the option of early graduation.  
 308 Each school district shall notify the parent of a student who is

309 eligible to graduate early. A school district may not prohibit a  
 310 student who meets the requirements of this section from  
 311 graduating early.

312 (3) A student who graduates early may continue to  
 313 participate in school activities and social events and attend  
 314 and participate in graduation events with the student's cohort,  
 315 as if the student were still enrolled in high school. A student  
 316 who graduates early will be included in class ranking, honors,  
 317 and award determinations for the student's cohort. A student who  
 318 graduates early must comply with district school board rules and  
 319 policies regarding access to the school facilities and grounds  
 320 during normal operating hours.

321 (4) If eligible for a Florida Bright Futures Scholarship  
 322 Program award under ss. 1009.53-1009.538, a student who  
 323 graduates from high school midyear may receive an initial award  
 324 in the spring term following the student's graduation.

325 (5) For purposes of this section, a credit is equal to 1/6  
 326 FTE. A student may earn up to six paid high school credits  
 327 equivalent to 1 FTE per school year in grades 9 through 12 for  
 328 courses provided by the school district. High school credits  
 329 earned in excess of six per school year in courses delivered by  
 330 the school district are unpaid credits.

331 Section 9. Subsections (1) and (3) of section 1003.4295,  
 332 Florida Statutes, are amended to read:

333 1003.4295 Acceleration options ~~courses~~.-

334 (1) Each high school shall advise each student of programs  
 335 through which a high school student can earn college credit,  
 336 including Advanced Placement, International Baccalaureate,

337 Advanced International Certificate of Education, dual  
 338 enrollment, and early admission courses, career academy courses,  
 339 and courses that lead to national industry certification, as  
 340 well as the availability of course offerings through virtual  
 341 instruction. Students shall also be advised of the early and  
 342 accelerated graduation options under ss. 1003.4281 and 1003.429.

343 (3) The Credit Acceleration Program (CAP) is created for  
 344 the purpose of allowing a ~~secondary~~ student to earn high school  
 345 credit in a course that requires a statewide, standardized end-  
 346 of-course assessment if the student attains a specified score on  
 347 the assessment. Notwithstanding s. 1003.436, a school district  
 348 shall award course credit to a student who is not enrolled in  
 349 the course, or who has not completed the course, if the student  
 350 attains a passing score ~~indicating satisfactory performance, as~~  
 351 ~~defined in s. 1008.22(3)(c)5.7~~, on the corresponding statewide,  
 352 standardized end-of-course assessment. The school district shall  
 353 permit a student who is not enrolled in the course, or who has  
 354 not completed the course, to take the standardized end-of-course  
 355 assessment during the regular administration of the assessment.

356 Section 10. Paragraph (a) of subsection (1) of section  
 357 1003.436, Florida Statutes, is amended to read:

358 1003.436 Definition of "credit".-

359 (1) (a) For the purposes of requirements for high school  
 360 graduation, one full credit means a minimum of 135 hours of bona  
 361 fide instruction in a designated course of study that contains  
 362 student performance standards. One full credit means a minimum  
 363 of 120 hours of bona fide instruction in a designated course of  
 364 study that contains student performance standards for purposes

365 of meeting high school graduation requirements in a district  
 366 school that has been authorized to implement block scheduling by  
 367 the district school board. The State Board of Education shall  
 368 determine the number of postsecondary credit hours earned  
 369 through dual enrollment pursuant to s. 1007.271 that satisfy the  
 370 requirements of a dual enrollment ~~district's interinstitutional~~  
 371 articulation agreement according to s. 1007.271(21) ~~1007.235~~ and  
 372 that equal one full credit of the equivalent high school course  
 373 identified pursuant to s. 1007.271(9) ~~1007.271(6)~~.

374 Section 11. Section 1003.437, Florida Statutes, is amended  
 375 to read:

376 1003.437 Middle and high school grading system.—The  
 377 grading system and interpretation of letter grades used to  
 378 measure student success in grade 6 through grade 12 courses for  
 379 students in public schools ~~in grades 6-12~~ shall be as follows:

380 (1) Grade "A" equals 90 percent through 100 percent, has a  
 381 grade point average value of 4, and is defined as "outstanding  
 382 progress."

383 (2) Grade "B" equals 80 percent through 89 percent, has a  
 384 grade point average value of 3, and is defined as "above average  
 385 progress."

386 (3) Grade "C" equals 70 percent through 79 percent, has a  
 387 grade point average value of 2, and is defined as "average  
 388 progress."

389 (4) Grade "D" equals 60 percent through 69 percent, has a  
 390 grade point average value of 1, and is defined as "lowest  
 391 acceptable progress."

392 (5) Grade "F" equals zero percent through 59 percent, has

393 a grade point average value of zero, and is defined as  
 394 "failure."

395 (6) Grade "I" equals zero percent, has a grade point  
 396 average value of zero, and is defined as "incomplete."

397  
 398 For the purposes of class ranking, district school boards may  
 399 exercise a weighted grading system pursuant to s. 1007.271.

400 Section 12. Section 1007.235, Florida Statutes, is  
 401 repealed.

402 Section 13. Paragraph (a) of subsection (2) of section  
 403 1007.263, Florida Statutes, is amended to read:

404 1007.263 Florida College System institutions; admissions  
 405 of students.—Each Florida College System institution board of  
 406 trustees is authorized to adopt rules governing admissions of  
 407 students subject to this section and rules of the State Board of  
 408 Education. These rules shall include the following:

409 (2) Admission to associate degree programs is subject to  
 410 minimum standards adopted by the State Board of Education and  
 411 shall require:

412 (a) A standard high school diploma, a high school  
 413 equivalency diploma as prescribed in s. 1003.435, previously  
 414 demonstrated competency in college credit postsecondary  
 415 coursework, or, in the case of a student who is home educated, a  
 416 signed affidavit submitted by the student's parent or legal  
 417 guardian attesting that the student has completed a home  
 418 education program pursuant to the requirements of s. 1002.41.  
 419 Students who are enrolled in a dual enrollment or early  
 420 admission program pursuant to s. ss. 1007.27 and 1007.271 are

421 ~~and secondary students enrolled in college-level instruction~~  
 422 ~~creditable toward the associate degree, but not toward the high~~  
 423 ~~school diploma, shall be exempt from this requirement.~~

424  
 425 Each board of trustees shall establish policies that notify  
 426 students about, and place students into, adult basic education,  
 427 adult secondary education, or other instructional programs that  
 428 provide students with alternatives to traditional college-  
 429 preparatory instruction, including private provider instruction.  
 430 A student is prohibited from enrolling in additional college-  
 431 level courses until the student scores above the cut-score on  
 432 all sections of the common placement test.

433 Section 14. Subsections (1) and (5) of section 1007.27,  
 434 Florida Statutes, are amended, subsection (6) of that section is  
 435 renumbered as subsection (5) and amended, and subsections (7)  
 436 through (9) of that section are renumbered as subsections (6)  
 437 through (8), respectively, to read:

438 1007.27 Articulated acceleration mechanisms.-

439 (1) It is the intent of the Legislature that a variety of  
 440 articulated acceleration mechanisms be available for secondary  
 441 and postsecondary students attending public educational  
 442 institutions. It is intended that articulated acceleration serve  
 443 to shorten the time necessary for a student to complete the  
 444 requirements associated with the conference of a high school  
 445 diploma and a postsecondary degree, broaden the scope of  
 446 curricular options available to students, or increase the depth  
 447 of study available for a particular subject. Articulated  
 448 acceleration mechanisms shall include, but are not ~~be~~ limited

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449 to, dual enrollment and early admission as provided for in s.  
 450 1007.271, ~~early admission~~, advanced placement, credit by  
 451 examination, the International Baccalaureate Program, and the  
 452 Advanced International Certificate of Education Program. Credit  
 453 earned through the Florida Virtual School shall provide  
 454 additional opportunities for early graduation and acceleration.  
 455 Students of Florida public secondary schools enrolled pursuant  
 456 to this subsection shall be deemed authorized users of the  
 457 state-funded electronic library resources that are licensed for  
 458 Florida College System institutions and state universities by  
 459 the Florida Center for Library Automation and the College Center  
 460 for Library Automation. Verification of eligibility shall be in  
 461 accordance with rules established by the State Board of  
 462 Education and regulations established by the Board of Governors  
 463 and processes implemented by Florida College System institutions  
 464 and state universities.

465 ~~(5) Early admission shall be a form of dual enrollment~~  
 466 ~~through which eligible secondary students enroll in a~~  
 467 ~~postsecondary institution on a full-time basis in courses that~~  
 468 ~~are creditable toward the high school diploma and the associate~~  
 469 ~~or baccalaureate degree. Students enrolled pursuant to this~~  
 470 ~~subsection shall be exempt from the payment of registration,~~  
 471 ~~tuition, and laboratory fees.~~

472 (5)~~(6)~~ Advanced placement is ~~shall be~~ the enrollment of an  
 473 eligible secondary student in a course offered through the  
 474 Advanced Placement Program administered by the College Board.  
 475 Postsecondary credit for an advanced placement course is ~~shall~~  
 476 ~~be~~ limited to students who score a minimum of 3, on a 5-point



477 scale, on the corresponding Advanced Placement Examination. The  
 478 specific courses for which students receive such credit shall be  
 479 identified in the statewide articulation agreement required by  
 480 s. 1007.23(1). Students of Florida public secondary schools  
 481 enrolled pursuant to this subsection are ~~shall be~~ exempt from  
 482 the payment of any fees for administration of the examination  
 483 regardless of whether or not the student achieves a passing  
 484 score on the examination. For purposes of this subsection, an  
 485 eligible public secondary student is a student who is enrolled  
 486 in a Florida public secondary school, demonstrates readiness for  
 487 college-level coursework through achievement of a minimum score  
 488 on a statewide assessment administered pursuant to s. 1008.22 or  
 489 a common placement test administered pursuant to s. 1008.30, and  
 490 has a 3.0 unweighted grade point average. The State Board of  
 491 Education shall establish, by rule, the required minimum scores  
 492 on statewide assessments and common placement tests.

493 Section 15. Section 1007.271, Florida Statutes, is amended  
 494 to read:

495 1007.271 Dual enrollment programs.—

496 (1) The dual enrollment program is the enrollment of an  
 497 eligible secondary student or home education student in a  
 498 postsecondary course creditable toward high school completion  
 499 and a career certificate or an associate or baccalaureate  
 500 degree. A student who is enrolled in postsecondary instruction  
 501 that is not creditable toward a high school diploma may not be  
 502 classified as a dual enrollment student.

503 (2) For the purpose of this section, an eligible secondary  
 504 student is a student who is enrolled in a Florida public

505 secondary school or in a Florida private secondary school which  
 506 is in compliance with s. 1002.42(2) and provides ~~conducts~~ a  
 507 secondary curriculum pursuant to s. 1003.428, s. 1003.429, or s.  
 508 1003.43. ~~Students enrolled in postsecondary instruction that is~~  
 509 ~~not creditable toward the high school diploma shall not be~~  
 510 ~~classified as dual enrollments.~~ Students who are eligible for  
 511 dual enrollment pursuant to this section may ~~shall be permitted~~  
 512 ~~to~~ enroll in dual enrollment courses conducted during school  
 513 hours, after school hours, and during the summer term. However,  
 514 if the student is projected to graduate from high school before  
 515 the scheduled completion date of a postsecondary course, the  
 516 student may not register for that course through dual  
 517 enrollment. The student may apply to the postsecondary  
 518 institution and pay the required registration, tuition, and fees  
 519 if the student meets the postsecondary institution's admissions  
 520 requirements under s. 1007.263. Instructional time for dual ~~such~~  
 521 enrollment may vary from 900 hours; however, the school district  
 522 may only report the student for a maximum of 1.0 FTE, as  
 523 provided in s. 1011.61(4). Any student ~~se~~ enrolled as a dual  
 524 enrollment student is exempt from the payment of registration,  
 525 tuition, and laboratory fees. Vocational-preparatory  
 526 instruction, college-preparatory instruction, and other forms of  
 527 precollegiate instruction, as well as physical education courses  
 528 that focus on the physical execution of a skill rather than the  
 529 intellectual attributes of the activity, are ineligible for  
 530 inclusion in the dual enrollment program. Recreation and leisure  
 531 studies courses shall be evaluated individually in the same  
 532 manner as physical education courses for potential inclusion in

533 the program.

534       (3) ~~The Department of Education shall adopt guidelines~~  
 535 ~~designed to achieve comparability across school districts of~~  
 536 ~~both student qualifications and teacher qualifications for dual~~  
 537 ~~enrollment courses. Student qualifications must demonstrate~~  
 538 ~~readiness for college-level coursework if the student is to be~~  
 539 ~~enrolled in college courses. Student qualifications must~~  
 540 ~~demonstrate readiness for career-level coursework if the student~~  
 541 ~~is to be enrolled in career courses. In addition to the common~~  
 542 ~~placement examination,~~ Student eligibility requirements  
 543 ~~qualifications~~ for initial enrollment in college credit dual  
 544 enrollment courses must include a 3.0 unweighted high school  
 545 grade point average, and the minimum score on a common placement  
 546 test adopted by the State Board of Education under s. 1007.27(5)  
 547 which indicates that the student is ready for college-level  
 548 coursework. Student eligibility requirements for continued  
 549 enrollment in college credit dual enrollment courses must  
 550 include the maintenance of a 3.0 unweighted high school grade  
 551 point average and the minimum postsecondary grade point average  
 552 established by the postsecondary institution. Regardless of  
 553 meeting student eligibility requirements for continued  
 554 enrollment, a student may lose the opportunity to participate in  
 555 a dual enrollment course if the student is disruptive to the  
 556 learning process such that the progress of other students or the  
 557 efficient administration of the course is hindered. Student  
 558 eligibility requirements ~~qualifications~~ for initial and  
 559 continued enrollment in career certificate dual enrollment  
 560 courses must include a 2.0 unweighted high school grade point

561 average. Exceptions to the required grade point averages may be  
 562 granted on an individual student basis if the educational  
 563 entities agree and the terms of the agreement are contained  
 564 within the dual enrollment ~~interinstitutional~~ articulation  
 565 agreement established pursuant to subsection (21). Florida  
 566 College System institution boards of trustees may establish  
 567 additional initial student eligibility requirements ~~admissions~~  
 568 ~~criteria~~, which shall be included in the dual enrollment  
 569 ~~district interinstitutional~~ articulation agreement ~~developed~~  
 570 ~~according to s. 1007.235~~, to ensure student readiness for  
 571 postsecondary instruction. Additional requirements included in  
 572 the agreement may ~~shall~~ not arbitrarily prohibit students who  
 573 have demonstrated the ability to master advanced courses from  
 574 participating in dual enrollment courses.

575 (4) District school boards may not refuse to enter into a  
 576 dual enrollment articulation ~~an~~ agreement with a local Florida  
 577 College System institution if that Florida College System  
 578 institution has the capacity to offer dual enrollment courses. A  
 579 Florida College System institution may limit dual enrollment  
 580 participation based upon capacity. Such limitation must be  
 581 clearly specified in the dual enrollment articulation agreement.

582 (5) (a) Each faculty member providing instruction in  
 583 college credit dual enrollment courses must:

- 584 1. Meet the qualifications required by the entity  
 585 accrediting the postsecondary institution offering the course.  
 586 The qualifications apply to all faculty members regardless of  
 587 the location of instruction. The postsecondary institution  
 588 offering the course must require compliance with these

589 qualifications.

590 2. Provide the institution offering the dual enrollment  
 591 course a copy of his or her postsecondary transcript.

592 3. Provide a copy of the current syllabus for each course  
 593 taught to the discipline chair or department chair of the  
 594 postsecondary institution before the start of each term. The  
 595 content of each syllabus must meet the same standards required  
 596 for all college-level courses offered by that postsecondary  
 597 institution.

598 4. Adhere to the professional rules, guidelines, and  
 599 expectations stated in the postsecondary institution's faculty  
 600 or adjunct faculty handbook. Any exceptions must be included in  
 601 the dual enrollment articulation agreement.

602 5. Adhere to the rules, guidelines, and expectations  
 603 stated in the postsecondary institution's student handbook which  
 604 apply to faculty members. Any exceptions must be noted in the  
 605 dual enrollment articulation agreement.

606 (b) Each president, or designee, of a postsecondary  
 607 institution offering a college credit dual enrollment course  
 608 must:

609 1. Provide a copy of the institution's current faculty or  
 610 adjunct faculty handbook to all faculty members teaching a dual  
 611 enrollment course.

612 2. Provide to all faculty members teaching a dual  
 613 enrollment course a copy of the institution's current student  
 614 handbook, which may include, but is not limited to, information  
 615 on registration policies, the student code of conduct, grading  
 616 policies, and critical dates.

617 3. Designate an individual or individuals to observe all  
 618 faculty members teaching a dual enrollment course, regardless of  
 619 the location of instruction.

620 4. Use the same criteria to evaluate faculty members  
 621 teaching a dual enrollment course as the criteria used to  
 622 evaluate all other faculty members.

623 5. Provide course plans and objectives to all faculty  
 624 members teaching a dual enrollment course.

625 (6) The following curriculum standards apply to college  
 626 credit dual enrollment:

627 (a) Dual enrollment courses taught on the high school  
 628 campus must meet the same competencies required for courses  
 629 taught on the postsecondary institution campus. To ensure  
 630 equivalent rigor with courses taught on the postsecondary  
 631 institution campus, the postsecondary institution offering the  
 632 course is responsible for providing in a timely manner a  
 633 comprehensive, cumulative end-of-course assessment or a series  
 634 of assessments of all expected learning outcomes to the faculty  
 635 member teaching the course. Completed, scored assessments must  
 636 be returned to the postsecondary institution and held for 1  
 637 year.

638 (b) Instructional materials used in dual enrollment  
 639 courses must be the same as or comparable to those used in  
 640 courses offered by the postsecondary institution with the same  
 641 course prefix and number. The postsecondary institution must  
 642 advise the school district of instructional materials  
 643 requirements as soon as that information becomes available but  
 644 no later than one term before a course is offered.

645 (c) Course requirements, such as tests, papers, or other  
 646 assignments, for dual enrollment students must be at the same  
 647 level of rigor or depth as those for all nondual enrollment  
 648 postsecondary students. All faculty members teaching dual  
 649 enrollment courses must observe the procedures and deadlines of  
 650 the postsecondary institution for the submission of grades. A  
 651 postsecondary institution must advise each faculty member  
 652 teaching a dual enrollment course of the institution's grading  
 653 guidelines before the faculty member begins teaching the course.

654 (d) Dual enrollment courses taught on a high school campus  
 655 may not be combined with any noncollege credit high school  
 656 course.

657 (7)(4) Career dual enrollment shall be provided as a  
 658 curricular option for secondary students to pursue in order to  
 659 earn a series of elective credits toward the high school  
 660 diploma. Career dual enrollment shall be available for secondary  
 661 students seeking a degree or certificate from a complete career-  
 662 preparatory program, and may ~~shall~~ not be used to enroll  
 663 students in isolated career courses. ~~It is the intent of the~~  
 664 ~~Legislature that career dual enrollment provide a comprehensive~~  
 665 ~~academic and career dual enrollment program within the career~~  
 666 ~~center or Florida College System institution.~~

667 (8)(5) Each district school board shall inform all  
 668 secondary students and their parents of dual enrollment as an  
 669 educational option and mechanism for acceleration. Students and  
 670 their parents shall be informed of student eligibility  
 671 requirements ~~criteria~~, the option for taking dual enrollment  
 672 courses beyond the regular school year, and the minimum academic

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673 credits required for graduation. District school boards shall  
 674 annually assess the demand for dual enrollment and provide that  
 675 information to each partnering postsecondary institution ~~other~~  
 676 ~~advanced courses, and the district school board shall consider~~  
 677 ~~strategies and programs to meet that demand and include access~~  
 678 ~~to dual enrollment on the high school campus whenever possible.~~  
 679 Alternative grade calculation, weighting systems, and ~~or~~  
 680 information regarding student education options that  
 681 discriminate ~~which discriminates~~ against dual enrollment courses  
 682 are ~~is~~ prohibited.

683 (9) ~~(6)~~ The Commissioner of Education shall appoint faculty  
 684 committees representing public school, Florida College System  
 685 institution, and university faculties to identify postsecondary  
 686 courses that meet the high school graduation requirements of s.  
 687 1003.428, s. 1003.429, or s. 1003.43, and to establish the  
 688 number of postsecondary semester credit hours of instruction and  
 689 equivalent high school credits earned through dual enrollment  
 690 pursuant to this section that are necessary to meet high school  
 691 graduation requirements. Such equivalencies shall be determined  
 692 solely on comparable course content and not on seat time  
 693 traditionally allocated to such courses in high school. The  
 694 Commissioner of Education shall recommend to the State Board of  
 695 Education those postsecondary courses identified to meet high  
 696 school graduation requirements, based on mastery of course  
 697 outcomes, by their course numbers, and all high schools shall  
 698 accept these postsecondary education courses toward meeting the  
 699 requirements of s. 1003.428, s. 1003.429, or s. 1003.43.

700 (10) ~~(7)~~ Early admission is ~~shall be~~ a form of dual



701 enrollment through which eligible secondary students enroll in a  
 702 postsecondary institution on a full-time basis in courses that  
 703 are creditable toward the high school diploma and the associate  
 704 or baccalaureate degree. A student must enroll in a minimum of  
 705 12 college credit hours per semester or the equivalent to  
 706 participate in the early admission program; however, a student  
 707 may not be required to enroll in more than 15 college credit  
 708 hours per semester or the equivalent. Students enrolled pursuant  
 709 to this subsection are ~~shall be~~ exempt from the payment of  
 710 registration, tuition, and laboratory fees.

711 (11)~~(8)~~ Career early admission is a form of career dual  
 712 enrollment through which eligible secondary students enroll full  
 713 time in a career center or a Florida College System institution  
 714 in courses that are creditable toward the high school diploma  
 715 and the certificate or associate degree. Participation in the  
 716 career early admission program is ~~shall be~~ limited to students  
 717 who have completed a minimum of 6 semesters of full-time  
 718 secondary enrollment, including studies undertaken in the ninth  
 719 grade. Students enrolled pursuant to this section are exempt  
 720 from the payment of registration, tuition, and laboratory fees.

721 (12)~~(9)~~ The State Board of Education shall adopt rules for  
 722 any dual enrollment programs involving requirements for high  
 723 school graduation.

724 (13)~~(10)~~(a) The dual enrollment program for home education  
 725 students consists of the enrollment of an eligible home  
 726 education secondary student in a postsecondary course creditable  
 727 toward an associate degree, a career certificate, or a  
 728 baccalaureate degree. To participate in the dual enrollment

729 program, an eligible home education secondary student must:

730 1. Provide proof of enrollment in a home education program  
731 pursuant to s. 1002.41.

732 2. Be responsible for his or her own instructional  
733 materials and transportation unless provided for otherwise.

734 3. Sign a home education articulation agreement pursuant  
735 to paragraph (b).

736 (b) Each postsecondary career center, Florida College  
737 System institution, and state university shall enter into a home  
738 education articulation agreement with each home education  
739 student seeking enrollment in a dual enrollment course and the  
740 student's parent. The home education articulation agreement  
741 shall include, at a minimum:

742 1. A delineation of ~~Delineate~~ courses and programs  
743 available to ~~for~~ dually enrolled home education students.  
744 Courses and programs may be added, revised, or deleted at any  
745 time by the postsecondary institution.

746 2. The initial and continued ~~Identify~~ eligibility  
747 requirements ~~criteria~~ for home education student participation,  
748 not to exceed those required of other dually enrolled students.

749 3. The student's responsibilities for providing his or her  
750 own instructional materials and transportation.

751 4. A copy of the statement on transfer guarantees  
752 developed by the Department of Education under subsection (15).

753 ~~(14)-(11)~~ The Department of Education shall approve any  
754 course for inclusion in the dual enrollment program that is  
755 contained within the statewide course numbering system. However,  
756 college-preparatory and other forms of precollegiate

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757 instruction, and physical education and other courses that focus  
 758 on the physical execution of a skill rather than the  
 759 intellectual attributes of the activity, may not be so approved,  
 760 but must be evaluated individually for potential inclusion in  
 761 the dual enrollment program. This subsection may ~~shall~~ not be  
 762 construed to mean that an independent postsecondary institution  
 763 eligible for inclusion in a dual enrollment or early admission  
 764 program pursuant to s. 1011.62 must participate in the statewide  
 765 course numbering system developed pursuant to s. 1007.24 to  
 766 participate in a dual enrollment program.

767 (15) ~~(12)~~ The Department of Education shall develop a  
 768 statement on transfer guarantees to ~~which will~~ inform students  
 769 and their parents, prior to enrollment in a dual enrollment  
 770 course, of the potential for the dual enrollment course to  
 771 articulate as an elective or a general education course into a  
 772 postsecondary education certificate or degree program. The  
 773 statement shall be provided to each district school  
 774 superintendent, who shall include the statement in the  
 775 information provided to all secondary students and their parents  
 776 as required pursuant to this subsection. The statement may also  
 777 include additional information, including, but not limited to,  
 778 dual enrollment options, guarantees, privileges, and  
 779 responsibilities.

780 (16) ~~(13)~~ Students who meet the eligibility requirements of  
 781 this section and who choose to participate in dual enrollment  
 782 programs are exempt from the payment of registration, tuition,  
 783 and laboratory fees.

784 (17) ~~(14)~~ Instructional materials assigned for use within

785 dual enrollment courses shall be made available to dual  
 786 enrollment students from Florida public high schools free of  
 787 charge. This subsection does ~~shall~~ not be construed to prohibit  
 788 a Florida College System institution from providing  
 789 instructional materials at no cost to a home education student  
 790 or student from a private school. ~~Students enrolled in~~  
 791 ~~postsecondary instruction not creditable toward a high school~~  
 792 ~~diploma shall not be considered dual enrollments and shall be~~  
 793 ~~required to assume the cost of instructional materials necessary~~  
 794 ~~for such instruction.~~

795 ~~(15)~~ Instructional materials purchased by a district  
 796 school board or Florida College System institution board of  
 797 trustees on behalf of dual enrollment students shall be the  
 798 property of the board against which the purchase is charged.

799 ~~(18)~~ ~~(16)~~ ~~Beginning with students entering grade 9 in the~~  
 800 ~~2006-2007 school year,~~ School districts and Florida College  
 801 System institutions must weigh dual enrollment courses the same  
 802 as advanced placement, International Baccalaureate, and Advanced  
 803 International Certificate of Education courses when grade point  
 804 averages are calculated. Alternative grade calculation systems,  
 805 alternative grade ~~or~~ weighting systems, and information  
 806 regarding student education options that discriminate against  
 807 dual enrollment courses are prohibited.

808 ~~(19)~~ ~~(17)~~ The Commissioner of Education may approve dual  
 809 enrollment agreements for limited course offerings that have  
 810 statewide appeal. Such programs shall be limited to a single  
 811 site with multiple county participation.

812 (20) A postsecondary institution shall assign letter

813 grades to each student enrolled in a dual enrollment course. The  
 814 letter grade assigned by the postsecondary institution shall be  
 815 posted to the student's high school transcript by the school  
 816 district.

817 (21) Each district school superintendent and Florida  
 818 College System institution president shall develop a  
 819 comprehensive dual enrollment articulation agreement for the  
 820 respective school district and Florida College System  
 821 institution. The superintendent and president shall establish an  
 822 articulation committee for the purpose of developing the  
 823 agreement. Each state university president may designate a  
 824 university representative to participate in the development of a  
 825 dual enrollment articulation agreement. A dual enrollment  
 826 articulation agreement shall be completed and submitted annually  
 827 by the Florida College System institution to the Department of  
 828 Education on or before August 1. The agreement must include, but  
 829 is not limited to:

830 (a) A ratification or modification of all existing  
 831 articulation agreements.

832 (b) A description of the process by which students and  
 833 their parents are informed about opportunities for student  
 834 participation in the dual enrollment program.

835 (c) A delineation of courses and programs available to  
 836 students eligible to participate in dual enrollment.

837 (d) A description of the process by which students and  
 838 their parents exercise options to participate in the dual  
 839 enrollment program.

840 (e) A list of any additional initial student eligibility

841 requirements for participation in the dual enrollment program.

842 (f) A delineation of the high school credit earned for the  
 843 passage of each dual enrollment course.

844 (g) A description of the process for informing students  
 845 and their parents of college-level course expectations.

846 (h) The policies and procedures, if any, for determining  
 847 exceptions to the required grade point averages on an individual  
 848 student basis.

849 (i) The registration policies for dual enrollment courses  
 850 as determined by the postsecondary institution.

851 (j) Exceptions, if any, to the professional rules,  
 852 guidelines, and expectations stated in the faculty or adjunct  
 853 faculty handbook for the postsecondary institution.

854 (k) Exceptions, if any, to the rules, guidelines, and  
 855 expectations stated in the student handbook of the postsecondary  
 856 institution which apply to faculty members.

857 (l) The responsibilities of the school district regarding  
 858 the determination of student eligibility before participating in  
 859 the dual enrollment program and the monitoring of student  
 860 performance while participating in the dual enrollment program.

861 (m) The responsibilities of the Florida College System  
 862 institution regarding the transmission of student grades in dual  
 863 enrollment courses to the school district.

864 (n) A funding provision that delineates costs incurred by  
 865 each entity. School districts should share funding to cover  
 866 instructional and support costs incurred by the postsecondary  
 867 institution.

868 (o) Any institutional responsibilities for student

869 transportation, if provided.

870 (22) The Department of Education shall develop an  
 871 electronic submission system for dual enrollment articulation  
 872 agreements and shall review, for compliance, each dual  
 873 enrollment articulation agreement submitted pursuant to  
 874 subsection (21). The Commissioner of Education shall notify the  
 875 district school superintendent and the Florida College System  
 876 institution president if the dual enrollment articulation  
 877 agreement does not comply with statutory requirements and shall  
 878 submit any dual enrollment articulation agreement with  
 879 unresolved issues of noncompliance to the State Board of  
 880 Education.

881 (23) District school boards and Florida College System  
 882 institutions may enter into additional dual enrollment  
 883 articulation agreements with state universities for the purposes  
 884 of this section. School districts may also enter into dual  
 885 enrollment articulation agreements with eligible independent  
 886 colleges and universities pursuant to s. 1011.62(1)(i).

887 (24) Postsecondary institutions may enter into dual  
 888 enrollment articulation agreements with private secondary  
 889 schools pursuant to subsection (2).

890 Section 16. Section 1007.272, Florida Statutes, is  
 891 repealed.

892 Section 17. Paragraph (c) of subsection (3) of section  
 893 1008.22, Florida Statutes, is amended to read:

894 1008.22 Student assessment program for public schools.—

895 (3) STATEWIDE ASSESSMENT PROGRAM.—The commissioner shall  
 896 design and implement a statewide program of educational

897 assessment that provides information for the improvement of the  
 898 operation and management of the public schools, including  
 899 schools operating for the purpose of providing educational  
 900 services to youth in Department of Juvenile Justice programs.  
 901 The commissioner may enter into contracts for the continued  
 902 administration of the assessment, testing, and evaluation  
 903 programs authorized and funded by the Legislature. Contracts may  
 904 be initiated in 1 fiscal year and continue into the next and may  
 905 be paid from the appropriations of either or both fiscal years.  
 906 The commissioner is authorized to negotiate for the sale or  
 907 lease of tests, scoring protocols, test scoring services, and  
 908 related materials developed pursuant to law. Pursuant to the  
 909 statewide assessment program, the commissioner shall:

910 (c) Develop and implement a student achievement testing  
 911 program as follows:

912 1. The Florida Comprehensive Assessment Test (FCAT)  
 913 measures a student's content knowledge and skills in reading,  
 914 writing, science, and mathematics. The content knowledge and  
 915 skills assessed by the FCAT must be aligned to the core  
 916 curricular content established in the Next Generation Sunshine  
 917 State Standards. Other content areas may be included as directed  
 918 by the commissioner. Comprehensive assessments of reading and  
 919 mathematics shall be administered annually in grades 3 through  
 920 10 except, beginning with the 2010-2011 school year, the  
 921 administration of grade 9 FCAT Mathematics shall be  
 922 discontinued, and beginning with the 2011-2012 school year, the  
 923 administration of grade 10 FCAT Mathematics shall be  
 924 discontinued, except as required for students who have not



925 attained minimum performance expectations for graduation as  
 926 provided in paragraph (9) (c). FCAT Writing and FCAT Science  
 927 shall be administered at least once at the elementary, middle,  
 928 and high school levels except, beginning with the 2011-2012  
 929 school year, the administration of FCAT Science at the high  
 930 school level shall be discontinued.

931 2.a. End-of-course assessments for a subject shall be  
 932 administered in addition to the comprehensive assessments  
 933 required under subparagraph 1. End-of-course assessments must be  
 934 rigorous, statewide, standardized, and developed or approved by  
 935 the department. The content knowledge and skills assessed by  
 936 end-of-course assessments must be aligned to the core curricular  
 937 content established in the Next Generation Sunshine State  
 938 Standards.

939 (I) Statewide, standardized end-of-course assessments in  
 940 mathematics shall be administered according to this sub-sub-  
 941 subparagraph. Beginning with the 2010-2011 school year, all  
 942 students enrolled in Algebra I or an equivalent course must take  
 943 the Algebra I end-of-course assessment. For students entering  
 944 grade 9 during the 2010-2011 school year and who are enrolled in  
 945 Algebra I or an equivalent, each student's performance on the  
 946 end-of-course assessment in Algebra I shall constitute 30  
 947 percent of the student's final course grade. Beginning with the  
 948 2012-2013 school year, the end-of-course assessment in Algebra I  
 949 shall be administered four times annually. Beginning with  
 950 students entering grade 9 in the 2011-2012 school year, a  
 951 student who is enrolled in Algebra I or an equivalent must earn  
 952 a passing score on the end-of-course assessment in Algebra I or

953 attain an equivalent score as described in subsection (11) in  
 954 order to earn course credit. Beginning with the 2011-2012 school  
 955 year, all students enrolled in geometry or an equivalent course  
 956 must take the geometry end-of-course assessment. For students  
 957 entering grade 9 during the 2011-2012 school year, each  
 958 student's performance on the end-of-course assessment in  
 959 geometry shall constitute 30 percent of the student's final  
 960 course grade. Beginning with students entering grade 9 during  
 961 the 2012-2013 school year, a student must earn a passing score  
 962 on the end-of-course assessment in geometry or attain an  
 963 equivalent score as described in subsection (11) in order to  
 964 earn course credit.

965 (II) Statewide, standardized end-of-course assessments in  
 966 science shall be administered according to this sub-sub-  
 967 subparagraph. Beginning with the 2011-2012 school year, all  
 968 students enrolled in Biology I or an equivalent course must take  
 969 the Biology I end-of-course assessment. For the 2011-2012 school  
 970 year, each student's performance on the end-of-course assessment  
 971 in Biology I shall constitute 30 percent of the student's final  
 972 course grade. Beginning with students entering grade 9 during  
 973 the 2012-2013 school year, a student must earn a passing score  
 974 on the end-of-course assessment in Biology I in order to earn  
 975 course credit.

976 b. During the 2012-2013 school year, an end-of-course  
 977 assessment in civics education shall be administered as a field  
 978 test at the middle school level. During the 2013-2014 school  
 979 year, each student's performance on the statewide, standardized  
 980 end-of-course assessment in civics education shall constitute 30

981 percent of the student's final course grade. Beginning with the  
 982 2014-2015 school year, a student must earn a passing score on  
 983 the end-of-course assessment in civics education in order to  
 984 pass the course and be promoted from the middle grades. The  
 985 school principal of a middle school shall determine, in  
 986 accordance with State Board of Education rule, whether a student  
 987 who transfers to the middle school and who has successfully  
 988 completed a civics education course at the student's previous  
 989 school must take an end-of-course assessment in civics  
 990 education.

991 c. The commissioner may select one or more nationally  
 992 developed comprehensive examinations, which may include, but  
 993 need not be limited to, examinations for a College Board  
 994 Advanced Placement course, International Baccalaureate course,  
 995 or Advanced International Certificate of Education course, or  
 996 industry-approved examinations to earn national industry  
 997 certifications identified in the Industry Certification Funding  
 998 List, pursuant to rules adopted by the State Board of Education,  
 999 for use as end-of-course assessments under this paragraph, if  
 1000 the commissioner determines that the content knowledge and  
 1001 skills assessed by the examinations meet or exceed the grade  
 1002 level expectations for the core curricular content established  
 1003 for the course in the Next Generation Sunshine State Standards.  
 1004 The commissioner may collaborate with the American Diploma  
 1005 Project in the adoption or development of rigorous end-of-course  
 1006 assessments that are aligned to the Next Generation Sunshine  
 1007 State Standards.

1008 d. Contingent upon funding provided in the General

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1009 Appropriations Act, including the appropriation of funds  
 1010 received through federal grants, the Commissioner of Education  
 1011 shall establish an implementation schedule for the development  
 1012 and administration of additional statewide, standardized end-of-  
 1013 course assessments in English/Language Arts II, Algebra II,  
 1014 chemistry, physics, earth/space science, United States history,  
 1015 and world history. Priority shall be given to the development of  
 1016 end-of-course assessments in English/Language Arts II. The  
 1017 Commissioner of Education shall evaluate the feasibility and  
 1018 effect of transitioning from the grade 9 and grade 10 FCAT  
 1019 Reading and high school level FCAT Writing to an end-of-course  
 1020 assessment in English/Language Arts II. The commissioner shall  
 1021 report the results of the evaluation to the President of the  
 1022 Senate and the Speaker of the House of Representatives no later  
 1023 than July 1, 2011.

1024         3. The testing program shall measure student content  
 1025 knowledge and skills adopted by the State Board of Education as  
 1026 specified in paragraph (a) and measure and report student  
 1027 performance levels of all students assessed in reading, writing,  
 1028 mathematics, and science. The commissioner shall provide for the  
 1029 tests to be developed or obtained, as appropriate, through  
 1030 contracts and project agreements with private vendors, public  
 1031 vendors, public agencies, postsecondary educational  
 1032 institutions, or school districts. The commissioner shall obtain  
 1033 input with respect to the design and implementation of the  
 1034 testing program from state educators, assistive technology  
 1035 experts, and the public.

1036         4. The testing program shall be composed of criterion-

1037 | referenced tests that shall, to the extent determined by the  
 1038 | commissioner, include test items that require the student to  
 1039 | produce information or perform tasks in such a way that the core  
 1040 | content knowledge and skills he or she uses can be measured.

1041 |         5. FCAT Reading, Mathematics, and Science and all  
 1042 | statewide, standardized end-of-course assessments shall measure  
 1043 | the content knowledge and skills a student has attained on the  
 1044 | assessment by the use of scaled scores and achievement levels.  
 1045 | Achievement levels shall range from 1 through 5, with level 1  
 1046 | being the lowest achievement level, level 5 being the highest  
 1047 | achievement level, and level 3 indicating satisfactory  
 1048 | performance on an assessment. For purposes of FCAT Writing,  
 1049 | student achievement shall be scored using a scale of 1 through 6  
 1050 | and the score earned shall be used in calculating school grades.  
 1051 | A score shall be designated for each subject area tested, below  
 1052 | which score a student's performance is deemed inadequate. The  
 1053 | school districts shall provide appropriate remedial instruction  
 1054 | to students who score below these levels.

1055 |         6. The State Board of Education shall, by rule, designate  
 1056 | a passing score for each part of the grade 10 assessment test  
 1057 | and end-of-course assessments. Any rule that has the effect of  
 1058 | raising the required passing scores may apply only to students  
 1059 | taking the assessment for the first time after the rule is  
 1060 | adopted by the State Board of Education. Except as otherwise  
 1061 | provided in this subparagraph and as provided in s.  
 1062 | 1003.428(8)(b) or s. 1003.43(11)(b), students must earn a  
 1063 | passing score on grade 10 FCAT Reading and grade 10 FCAT  
 1064 | Mathematics or attain concordant scores as described in

1065 subsection (10) in order to qualify for a standard high school  
 1066 diploma.

1067 7. In addition to designating a passing score under  
 1068 subparagraph 6., the State Board of Education shall also  
 1069 designate, by rule, a score for each statewide, standardized  
 1070 end-of-course assessment which indicates that a student is high  
 1071 achieving and has the potential to meet college-readiness  
 1072 standards by the time the student graduates from high school.

1073 8. Participation in the testing program is mandatory for  
 1074 all students attending public school, including students served  
 1075 in Department of Juvenile Justice programs, except as otherwise  
 1076 prescribed by the commissioner. A student who has not earned  
 1077 passing scores on the grade 10 FCAT as provided in subparagraph  
 1078 6. must participate in each retake of the assessment until the  
 1079 student earns passing scores or achieves scores on a  
 1080 standardized assessment which are concordant with passing scores  
 1081 pursuant to subsection (10). If a student does not participate  
 1082 in the statewide assessment, the district must notify the  
 1083 student's parent and provide the parent with information  
 1084 regarding the implications of such nonparticipation. A parent  
 1085 must provide signed consent for a student to receive classroom  
 1086 instructional accommodations that would not be available or  
 1087 permitted on the statewide assessments and must acknowledge in  
 1088 writing that he or she understands the implications of such  
 1089 instructional accommodations. The State Board of Education shall  
 1090 adopt rules, based upon recommendations of the commissioner, for  
 1091 the provision of test accommodations for students in exceptional  
 1092 education programs and for students who have limited English

1093 proficiency. Accommodations that negate the validity of a  
 1094 statewide assessment are not allowable in the administration of  
 1095 the FCAT or an end-of-course assessment. However, instructional  
 1096 accommodations are allowable in the classroom if included in a  
 1097 student's individual education plan. Students using  
 1098 instructional accommodations in the classroom that are not  
 1099 allowable as accommodations on the FCAT or an end-of-course  
 1100 assessment may have the FCAT or an end-of-course assessment  
 1101 requirement waived pursuant to the requirements of s.

1102 1003.428(8)(b) or s. 1003.43(11)(b).

1103 9. A student seeking an adult high school diploma must  
 1104 meet the same testing requirements that a regular high school  
 1105 student must meet.

1106 10. District school boards must provide instruction to  
 1107 prepare students in the core curricular content established in  
 1108 the Next Generation Sunshine State Standards adopted under s.  
 1109 1003.41, including the core content knowledge and skills  
 1110 necessary for successful grade-to-grade progression and high  
 1111 school graduation. If a student is provided with instructional  
 1112 accommodations in the classroom that are not allowable as  
 1113 accommodations in the statewide assessment program, as described  
 1114 in the test manuals, the district must inform the parent in  
 1115 writing and must provide the parent with information regarding  
 1116 the impact on the student's ability to meet expected performance  
 1117 levels in reading, writing, mathematics, and science. The  
 1118 commissioner shall conduct studies as necessary to verify that  
 1119 the required core curricular content is part of the district  
 1120 instructional programs.

1121 11. District school boards must provide opportunities for  
 1122 students to demonstrate an acceptable performance level on an  
 1123 alternative standardized assessment approved by the State Board  
 1124 of Education following enrollment in summer academies.

1125 12. The Department of Education must develop, or select,  
 1126 and implement a common battery of assessment tools that will be  
 1127 used in all juvenile justice programs in the state. These tools  
 1128 must accurately measure the core curricular content established  
 1129 in the Next Generation Sunshine State Standards.

1130 13. For students seeking a special diploma pursuant to s.  
 1131 1003.438, the Department of Education must develop or select and  
 1132 implement an alternate assessment tool that accurately measures  
 1133 the core curricular content established in the Next Generation  
 1134 Sunshine State Standards for students with disabilities under s.  
 1135 1003.438.

1136 14. The Commissioner of Education shall establish  
 1137 schedules for the administration of statewide assessments and  
 1138 the reporting of student test results. When establishing the  
 1139 schedules for the administration of statewide assessments, the  
 1140 commissioner shall consider the observance of religious and  
 1141 school holidays. The commissioner shall, by August 1 of each  
 1142 year, notify each school district in writing and publish on the  
 1143 department's Internet website the testing and reporting  
 1144 schedules for, at a minimum, the school year following the  
 1145 upcoming school year. The testing and reporting schedules shall  
 1146 require that:

1147 a. There is the latest possible administration of  
 1148 statewide assessments and the earliest possible reporting to the



1149 school districts of student test results which is feasible  
 1150 within available technology and specific appropriations;  
 1151 however, test results for the FCAT must be made available no  
 1152 later than the week of June 8. Student results for end-of-course  
 1153 assessments must be provided no later than 1 week after the  
 1154 school district completes testing for each course. The  
 1155 commissioner may extend the reporting schedule under exigent  
 1156 circumstances.

1157       b. FCAT Writing may not be administered earlier than the  
 1158 week of March 1, and a comprehensive statewide assessment of any  
 1159 other subject may not be administered earlier than the week of  
 1160 April 15.

1161       c. A statewide, standardized end-of-course assessment is  
 1162 administered at the end of the course. The commissioner shall  
 1163 select an administration period for assessments that meets the  
 1164 intent of end-of-course assessments and provides student results  
 1165 prior to the end of the course. School districts shall  
 1166 administer tests in accordance with the schedule determined by  
 1167 the commissioner. For an end-of-course assessment administered  
 1168 at the end of the first semester, the commissioner shall  
 1169 determine the most appropriate testing dates based on a review  
 1170 of each school district's academic calendar.

1171  
 1172 The commissioner may, based on collaboration and input from  
 1173 school districts, design and implement student testing programs,  
 1174 for any grade level and subject area, necessary to effectively  
 1175 monitor educational achievement in the state, including the  
 1176 measurement of educational achievement of the Next Generation

1177 Sunshine State Standards for students with disabilities.  
 1178 Development and refinement of assessments shall include  
 1179 universal design principles and accessibility standards that  
 1180 will prevent any unintended obstacles for students with  
 1181 disabilities while ensuring the validity and reliability of the  
 1182 test. These principles should be applicable to all technology  
 1183 platforms and assistive devices available for the assessments.  
 1184 The field testing process and psychometric analyses for the  
 1185 statewide assessment program must include an appropriate  
 1186 percentage of students with disabilities and an evaluation or  
 1187 determination of the effect of test items on such students.

1188 Section 18. Subsections (1), (2), (9), and (10) of section  
 1189 1008.25, Florida Statutes, are amended to read:

1190 1008.25 Public school student progression; remedial  
 1191 instruction; reporting requirements.-

1192 (1) INTENT.-It is the intent of the Legislature that each  
 1193 student's progression from one grade to another be determined,  
 1194 in part, upon satisfactory performance ~~proficiency~~ in reading,  
 1195 writing, science, and mathematics; that district school board  
 1196 policies facilitate student achievement ~~such proficiency~~; and  
 1197 that each student and his or her parent be informed of that  
 1198 student's academic progress; and that students have access to  
 1199 educational options that provide academically challenging  
 1200 coursework or accelerated instruction pursuant to s. 1002.3105.

1201 (2) COMPREHENSIVE STUDENT PROGRESSION PLAN ~~PROGRAM~~.-Each  
 1202 district school board shall establish a comprehensive plan  
 1203 ~~program~~ for student progression which must ~~include~~:

1204 (a) Provide standards for evaluating each student's

1205 performance, including how well he or she masters the  
 1206 performance standards approved by the State Board of Education.

1207 (b) Provide specific levels of performance in reading,  
 1208 writing, science, and mathematics for each grade level,  
 1209 including the levels of performance on statewide assessments as  
 1210 defined by the commissioner, below which a student must receive  
 1211 remediation, or be retained within an intensive program that is  
 1212 different from the previous year's program and that takes into  
 1213 account the student's learning style.

1214 (c) Provide appropriate alternative placement for a  
 1215 student who has been retained 2 or more years.

1216 (d)1. List the student eligibility and procedural  
 1217 requirements established by the school district for whole-grade  
 1218 promotion, midyear promotion, and subject-matter acceleration  
 1219 that would result in a student attending a different school,  
 1220 pursuant to s. 1002.3105(2) (b) .

1221 2. Notify parents and students of the school district's  
 1222 process by which a parent may request student participation in  
 1223 whole-grade promotion, midyear promotion, or subject-matter  
 1224 acceleration that would result in a student attending a  
 1225 different school, pursuant to s. 1002.3105(4) (b)2.

1226 (e)1. Advise parents and students that additional ACCEL  
 1227 options may be available at the student's school, pursuant to s.  
 1228 1002.3105.

1229 2. Advise parents and students to contact the principal at  
 1230 the student's school for information related to student  
 1231 eligibility requirements for whole-grade promotion, midyear  
 1232 promotion, and subject-matter acceleration when the promotion or

1233 acceleration occurs within the principal's school; virtual  
 1234 instruction in higher grade level subjects; and any other ACCEL  
 1235 options offered by the principal, pursuant to s.  
 1236 1002.3105(2)(a).

1237 3. Advise parents and students to contact the principal at  
 1238 the student's school for information related to the school's  
 1239 process by which a parent may request student participation in  
 1240 whole-grade promotion, midyear promotion, and subject-matter  
 1241 acceleration when the promotion or acceleration occurs within  
 1242 the principal's school; virtual instruction in higher grade  
 1243 level subjects; and any other ACCEL options offered by the  
 1244 principal, pursuant to s. 1002.3105(4)(b)1.

1245 (f) Advise parents and students of the early and  
 1246 accelerated graduation options under ss. 1003.4281 and 1003.429.

1247 (g) List, or incorporate by reference, all dual enrollment  
 1248 courses contained within the dual enrollment articulation  
 1249 agreement established pursuant to s. 1007.271(21).

1250 ~~(9) RULEMAKING STATE BOARD AUTHORITY AND~~  
 1251 ~~RESPONSIBILITIES.-~~

1252 ~~(a) The State Board of Education shall have authority as~~  
 1253 ~~provided in s. 1008.32 to enforce this section.~~

1254 ~~(b)~~ The State Board of Education shall adopt rules  
 1255 pursuant to ss. 120.536(1) and 120.54 for the administration of  
 1256 this section.

1257 ~~(10) TECHNICAL ASSISTANCE. The department shall provide~~  
 1258 ~~technical assistance as needed to aid district school boards in~~  
 1259 ~~administering this section.~~

1260 Section 19. Paragraph (a) of subsection (1) of section  
 1261 1009.25, Florida Statutes, is amended to read:

1262 1009.25 Fee exemptions.—

1263 (1) The following students are exempt from the payment of  
 1264 tuition and fees, including lab fees, at a school district that  
 1265 provides postsecondary career programs, Florida College System  
 1266 institution, or state university:

1267 (a) A student enrolled in a dual enrollment or early  
 1268 admission program pursuant to ~~s. 1007.27~~ or s. 1007.271.

1269 Section 20. Paragraphs (b) and (f) of subsection (1) of  
 1270 section 1009.531, Florida Statutes, are amended to read:

1271 1009.531 Florida Bright Futures Scholarship Program;  
 1272 student eligibility requirements for initial awards.—

1273 (1) Effective January 1, 2008, in order to be eligible for  
 1274 an initial award from any of the three types of scholarships  
 1275 under the Florida Bright Futures Scholarship Program, a student  
 1276 must:

1277 (b) Earn a standard Florida high school diploma or its  
 1278 equivalent pursuant to as described in s. 1003.428, s.  
 1279 1003.4281, s. 1003.429, s. 1003.43, or s. 1003.435 unless:

1280 1. The student completes a home education program  
 1281 according to s. 1002.41; or

1282 2. The student earns a high school diploma from a non-  
 1283 Florida school while living with a parent or guardian who is on  
 1284 military or public service assignment away from Florida.

1285 (f) Apply for a scholarship from the program by high  
 1286 school graduation. However, a student who graduates from high  
 1287 school midyear must apply no later than August 31 of the

1288 student's graduation year in order to be evaluated for and, if  
 1289 eligible, receive an award for the current academic year.

1290 Section 21. Subsection (4) is added to section 1009.532,  
 1291 Florida Statutes, to read:

1292 1009.532 Florida Bright Futures Scholarship Program;  
 1293 student eligibility requirements for renewal awards.—

1294 (4) A student who receives an initial award during the  
 1295 spring term shall be evaluated for scholarship renewal after the  
 1296 completion of a full academic year, which begins with the fall  
 1297 term.

1298 Section 22. Paragraph (c) of subsection (1) of section  
 1299 1011.61, Florida Statutes, is amended to read:

1300 1011.61 Definitions.—Notwithstanding the provisions of s.  
 1301 1000.21, the following terms are defined as follows for the  
 1302 purposes of the Florida Education Finance Program:

1303 (1) A "full-time equivalent student" in each program of  
 1304 the district is defined in terms of full-time students and part-  
 1305 time students as follows:

1306 (c)1. A "full-time equivalent student" is:

1307 a. A full-time student in any one of the programs listed  
 1308 in s. 1011.62(1)(c); or

1309 b. A combination of full-time or part-time students in any  
 1310 one of the programs listed in s. 1011.62(1)(c) which is the  
 1311 equivalent of one full-time student based on the following  
 1312 calculations:

1313 (I) A full-time student in a combination of programs  
 1314 listed in s. 1011.62(1)(c) shall be a fraction of a full-time  
 1315 equivalent membership in each special program equal to the

1316 number of net hours per school year for which he or she is a  
 1317 member, divided by the appropriate number of hours set forth in  
 1318 subparagraph (a)1. or subparagraph (a)2. The difference between  
 1319 that fraction or sum of fractions and the maximum value as set  
 1320 forth in subsection (4) for each full-time student is presumed  
 1321 to be the balance of the student's time not spent in such  
 1322 special education programs and shall be recorded as time in the  
 1323 appropriate basic program.

1324 (II) A prekindergarten handicapped student shall meet the  
 1325 requirements specified for kindergarten students.

1326 (III) A full-time equivalent student for students in  
 1327 kindergarten through grade 5 in a virtual instruction program  
 1328 under s. 1002.45 or a virtual charter school under s. 1002.33  
 1329 shall consist of a student who has successfully completed a  
 1330 basic program listed in s. 1011.62(1)(c)1.a. or b., and who is  
 1331 promoted to a higher grade level.

1332 (IV) A full-time equivalent student for students in grades  
 1333 6 through 12 in a virtual instruction program under s.  
 1334 1002.45(1)(b)1., 2., or 3. or a virtual charter school under s.  
 1335 1002.33 shall consist of six full credit completions in programs  
 1336 listed in s. 1011.62(1)(c)1.b. or c. and 3. Credit completions  
 1337 may be a combination of full-credit courses or half-credit  
 1338 courses. Beginning in the 2014-2015 fiscal year, when s.  
 1339 1008.22(3)(g) is implemented, the reported full-time equivalent  
 1340 students and associated funding of students enrolled in courses  
 1341 requiring passage of an end-of-course assessment shall be  
 1342 adjusted after the student completes the end-of-course  
 1343 assessment.

1344 (V) A Florida Virtual School full-time equivalent student  
 1345 shall consist of six full credit completions or the prescribed  
 1346 level of content that counts toward promotion to the next grade  
 1347 in the programs listed in s. 1011.62(1)(c)1.a. and b. for  
 1348 kindergarten through grade 8 and the programs listed in s.  
 1349 1011.62(1)(c)1.c. for grades 9 through 12. Credit completions  
 1350 may be a combination of full-credit courses or half-credit  
 1351 courses. Beginning in the 2014-2015 fiscal year, when s.  
 1352 1008.22(3)(g) is implemented, the reported full-time equivalent  
 1353 students and associated funding of students enrolled in courses  
 1354 requiring passage of an end-of-course assessment shall be  
 1355 adjusted after the student completes the end-of-course  
 1356 assessment.

1357 (VI) Each successfully completed full-credit course earned  
 1358 through an online course delivered by a district other than the  
 1359 one in which the student resides shall be calculated as 1/6 FTE.

1360 (VII) Each successfully completed credit earned under the  
 1361 alternative high school course credit requirements authorized in  
 1362 s. 1002.375, which is not reported as a portion of the 900 net  
 1363 hours of instruction pursuant to subparagraph (1)(a)1., shall be  
 1364 calculated as 1/6 FTE.

1365 (VIII) (A) A full-time equivalent student for courses  
 1366 requiring a statewide, standardized end-of-course assessment  
 1367 pursuant to s. 1008.22(3)(c)2.a. shall be defined and reported  
 1368 as provided in subparagraph (a)1. for the first 3 years of  
 1369 administering the end-of-course assessment. Beginning in the 4th  
 1370 year of administering the statewide, standardized end-of-course  
 1371 assessment, the FTE shall be credit based and each course shall



1372 be equal to 1/6 FTE. The reported FTE shall be adjusted after  
 1373 the student completes the end-of-course assessment pursuant to  
 1374 s. 1008.22(3)(c)2.a.

1375 (B) For students enrolled in a school district as a full-  
 1376 time student, the district may report 1/6 FTE for each student  
 1377 who passes a statewide, standardized end-of-course assessment  
 1378 without being enrolled in the corresponding course.

1379 (C) The FTE earned under this sub-sub-subparagraph and any  
 1380 FTE for courses or programs listed in s. 1011.62(1)(c) that do  
 1381 not require passing a statewide, standardized end-of-course  
 1382 assessment are subject to the requirements in subsection (4).

1383 2. A student in membership in a program scheduled for more  
 1384 or less than 180 school days or the equivalent on an hourly  
 1385 basis as specified by rules of the State Board of Education is a  
 1386 fraction of a full-time equivalent membership equal to the  
 1387 number of instructional hours in membership divided by the  
 1388 appropriate number of hours set forth in subparagraph (a)1.;  
 1389 however, for the purposes of this subparagraph, membership in  
 1390 programs scheduled for more than 180 days is limited to students  
 1391 enrolled in juvenile justice education programs and the Florida  
 1392 Virtual School.

1393

1394 The department shall determine and implement an equitable method  
 1395 of equivalent funding for experimental schools and for schools  
 1396 operating under emergency conditions, which schools have been  
 1397 approved by the department to operate for less than the minimum  
 1398 school day.

1399 Section 23. Paragraphs (p) through (s) of subsection (1)

1400 of section 1011.62, Florida Statutes, are redesignated as  
 1401 paragraphs (q) through (t), respectively, and a new paragraph  
 1402 (p) is added to that subsection to read:

1403 1011.62 Funds for operation of schools.—If the annual  
 1404 allocation from the Florida Education Finance Program to each  
 1405 district for operation of schools is not determined in the  
 1406 annual appropriations act or the substantive bill implementing  
 1407 the annual appropriations act, it shall be determined as  
 1408 follows:

1409 (1) COMPUTATION OF THE BASIC AMOUNT TO BE INCLUDED FOR  
 1410 OPERATION.—The following procedure shall be followed in  
 1411 determining the annual allocation to each district for  
 1412 operation:

1413 (p) Calculation of additional full-time equivalent  
 1414 membership based upon early high school graduation.—  
 1415 Notwithstanding s. 1011.61(4), each unpaid high school credit  
 1416 delivered by a school district during the student's prior  
 1417 enrollment may be reported by the district as 1/6 FTE when the  
 1418 student graduates early pursuant to s. 1003.4281. A district may  
 1419 report up to 1/2 FTE for unpaid credits delivered by the  
 1420 district for a student who graduates one semester in advance of  
 1421 the student's cohort and up to 1 FTE for a student who graduates  
 1422 1 year or more in advance of the student's cohort. If the  
 1423 student was enrolled in the district as a full-time high school  
 1424 student for at least 2 years, the district shall report the  
 1425 unpaid FTE delivered by the district during the student's prior  
 1426 enrollment. If the student was enrolled in the district for less  
 1427 than 2 years, the district shall report the unpaid FTE delivered

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1428 by the district and by the district in which the student was  
1429 previously enrolled. The district of enrollment for which early  
1430 graduation is claimed shall transfer a proportionate share of  
1431 the funds earned for the unpaid FTE to the district in which the  
1432 student was previously enrolled.

1433 Section 24. This act shall take effect July 1, 2012.

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 7059      PCB KINS 12-02    Acceleration Options in Public Education  
**SPONSOR(S):** PreK-12 Appropriations Subcommittee, K-20 Innovation Subcommittee, Stargel  
**TIED BILLS:**            **IDEN./SIM. BILLS:** CS/SB 1368 (Compare)

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: K-20 Innovation Subcommittee	10 Y, 4 N	Valenstein	Sherry
1) PreK-12 Appropriations Subcommittee	10 Y, 4 N, As CS	Seifert	Heflin
2) Education Committee		Valenstein <i>JD</i>	Klebacha <i>JK</i>

**SUMMARY ANALYSIS**

The bill amends various provisions of the law related to acceleration options in public education, establishes Academically Challenging Curriculum to Enhance Learning (ACCEL) options and provides an opportunity for students to graduate early from high school. More specifically, the bill:

**ACCEL Options:** Establishes ACCEL options that provide academically challenging curriculum or accelerated instruction to eligible students in kindergarten through grade 12; requires principals and school districts to establish eligibility requirements for ACCEL options and a process for a parent to request student participation in an ACCEL option; and requires a school district's student progression plan to include information about ACCEL options, early and accelerated graduation options, and dual enrollment courses included in the dual enrollment articulation agreement.

**Early Graduation:** Provides a student the option to graduate from high school early once a student has completed at least 24 credits and met the standard graduation requirements; authorizes eligible students who graduate from high school midyear to receive a Bright Futures Scholarship award during the spring term; authorizes school districts to receive funding for unpaid credits delivered to students who graduate at least one semester early; defines unpaid credits as credits earned by the student in excess of six credits per year, e.g., credit earned by passing the Algebra I end-of-course (EOC) assessment without enrolling in the course; and requires school districts to notify parents and advise students of the options for early and accelerated high school graduation.

**End-of-Course Assessments:** Establishes performance based funding for Algebra I, Biology I, and Geometry courses contingent upon students passing the EOC assessments, beginning in the fourth year of administering the EOC, and requires the Algebra I EOC to be administered four times annually.

**Advanced Placement (AP) Program:** Establishes student eligibility requirements for participation in the AP program. The requirements are the same as those required for dual enrollment, except students may also demonstrate eligibility using Florida Comprehensive Assessment Test or EOC scores.

**Dual Enrollment Program:** Clarifies student eligibility requirements for dual enrollment; provides faculty and curriculum standards for college credit dual enrollment courses, which are consistent with those required by the Southern Association of Colleges and Schools Commission on Colleges and are currently outlined in State Board rule; requires superintendents and Florida College System (FCS) institution presidents to establish a dual enrollment articulation agreement instead of a district interinstitutional articulation agreement; repeals s. 1007.235, F.S., relating to district interinstitutional articulation agreements; repeals s. 1007.272, F.S., relating to joint dual enrollment and advanced placement instruction; and prohibits the practice of "credit in escrow," which allows a student who does not qualify for dual enrollment to enroll in and pay for college courses that do not count toward high school graduation.

See FISCAL COMMENTS.

The bill takes effect July 1, 2012.

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

STORAGE NAME: h7059b.EDC.DOCX

DATE: 2/23/2012

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

##### **Acceleration Options**

##### General Information

The Florida public school system provides numerous ways to teach curriculum content to students at a faster pace, commonly referred to as acceleration. However, the acceleration options offered by school districts vary throughout the state, as does the method of parental notification regarding those options.

Currently, the Department of Education (DOE) must develop guidelines for a parent guide which describes what parents need to know about their child's educational progress including opportunities for parents to learn about rigorous academic programs that may be available such as honors programs, dual enrollment, advanced placement (AP), International Baccalaureate (IB), International General Certificate of Secondary Education (pre-AICE), Advanced International Certificate of Education (AICE), Florida Virtual School courses, and accelerated access to postsecondary education.<sup>1</sup> Each school district must annually disseminate a parent guide that includes information concerning "services, opportunities, choices, academic standards, and student assessment."<sup>2</sup>

A school district may include the acceleration options offered by the district in the district's comprehensive program for student progression, but is not required by law to do so. A district's comprehensive program for student progression, commonly referred to as a student progression plan, is only required to include information related to remediation and retention.<sup>3</sup>

Acceleration options that may be used by school districts for students include flexible class grouping; whole-grade and midyear promotion; single-subject acceleration; enrichment programs; self-paced instruction; curriculum compacting; advanced content instruction; telescoping curriculum; combined classes; grade clustering; and virtual instruction in higher level courses.<sup>4</sup> Additionally, students may participate in the IB Diploma Programs, Middle Years, or Primary Years<sup>5</sup> or the Cambridge AICE program, the Cambridge Secondary 2 Program, the Cambridge Secondary 1 program, or the Cambridge Primary Program.<sup>6</sup> Secondary students may also participate in the AP Program, the dual enrollment program, the early admission program, and the credit acceleration program (CAP).<sup>7</sup> For explanations of these acceleration options, please refer to Appendix A.

Beginning with the 2011-2012 school year, each high school must offer an IB program, an AICE program, or a combination of at least four courses in dual enrollment or AP.<sup>8</sup> Additionally, school districts must allow students to take the statewide, standardized end-of-course (EOC) assessments which a student must pass in order to graduate from high school even if the student is not enrolled in

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<sup>1</sup> Section 1002.23(2)(d), F.S.

<sup>2</sup> Section 1002.23(7)(d), F.S.

<sup>3</sup> Section 1008.25, F.S.

<sup>4</sup> Email, Florida Department of Education, Office of Legislative Affairs (Sept. 30, 2011); Florida Department of Education presentation to the K-20 Innovation Subcommittee of the Education Committee of the Florida House of Representatives, Student Acceleration Options (Nov. 1, 2011).

<sup>5</sup> International Baccalaureate Organization, About the International Baccalaureate, <http://www.ibo.org/general/who.cfm> (last visited Jan. 19, 2012).

<sup>6</sup> University of Cambridge International Examinations, Cambridge AICE Diploma Overview, <http://www.cie.org.uk/qualifications/academic/uppersec/aice> (last visited Jan. 19, 2012).

<sup>7</sup> Sections 1007.27(5) and (6), 1007.271, and 1003.4295(3), F.S.

<sup>8</sup> Section 1003.4295(2), F.S.

the course - this is known as the CAP program.<sup>9</sup> Other acceleration options are not required to be offered by a school district.<sup>10</sup>

Each elementary school principal is currently required to notify the parents of each student who scores at Level 4 or Level 5 on FCAT Reading or Mathematics of the option for the student to take accelerated courses through the Florida Virtual School.<sup>11</sup> Each high school must advise each student of programs through which a high school student can earn college credit, including AP, IB, AICE, dual enrollment, career academy courses, and courses that lead to national industry certification.<sup>12</sup>

### Advanced Placement Program

The AP program consists of advanced academic courses administered by the College Board.<sup>13</sup> The program includes more than 30 high school courses and nationally standardized examinations in 23 subject areas ranging from art to statistics.<sup>14</sup>

In 2010, 43.5 percent of Florida seniors had taken an AP examination while in high school.<sup>15</sup> During this same time period, the national average was 28.3 percent.<sup>16</sup> Florida's higher participation rate is likely attributable to the following factors:

- Public secondary students taking the AP examination do not have to pay a fee for the administration of the examination, regardless of whether the student achieves a passing score.<sup>17</sup>
- Florida does not have statewide student eligibility requirements for participating in the AP program.
- School grade calculations have been more heavily weighted for course participation than course performance.<sup>18</sup>

The number of students participating in the AP program rose from 59,111 examinations taken in 1999 to 276,290 taken in 2010. However, the pass rate of the examination declined during this same period. In 1999, 54.8 percent scored high enough to qualify for college credit.<sup>19</sup> In 2010, 41 percent scored high enough to qualify for college credit.<sup>20</sup>

The cost of an AP examination in 2012 is \$87.<sup>21</sup> If the same number of students take the AP assessment during the 2012-13 academic year, the total cost of administering AP examinations will be over \$24 million.

The Articulation Coordinating Committee (ACC) identifies, and the State Board of Education (State Board) and the Board of Governors (BOG) approve, the AP examination scores required to obtain college credit. Currently, students are recommended for college credit only if they receive an

<sup>9</sup> Section 1003.4295(3), F.S.

<sup>10</sup> See s. 1003.4295, F.S.

<sup>11</sup> Section 1002.37(9), F.S.

<sup>12</sup> Sections 1003.4295(1) and 1003.02(1)(i), F.S.

<sup>13</sup> Section 1007.27(6), F.S.

<sup>14</sup> Florida Department of Education, *2010-11 Florida Counseling for Future Education Handbook*, at 76, available at [http://facts23.facts.org/florida/facts/Home\\_Page/Counselors\\_and\\_Educators/Advising\\_Manuals/Counseling\\_for\\_Future\\_Education\\_Handbook!/ut/p/c5/04\\_SB8K8xLLM9MSSzPy8xBz9CP0os3iDEEtPfx9TQwN3Sz8DA093C38\\_M19\\_A39316B8JE55izBzArrDQfYBV\\_eAAjgZQeZgJFgEuhkAT3D28DLyDT2NzdDksdiPV95Y388jPzdVvyA3wiDTU9cRANgSS\\_Y!/dl3/d3/L2dJQSEvUUt3QS9ZOnZ3LzZfMFQ5SU9MNTEwRzlOMDBJRzhPTjZNTzBPRzQ!!](http://facts23.facts.org/florida/facts/Home_Page/Counselors_and_Educators/Advising_Manuals/Counseling_for_Future_Education_Handbook!/ut/p/c5/04_SB8K8xLLM9MSSzPy8xBz9CP0os3iDEEtPfx9TQwN3Sz8DA093C38_M19_A39316B8JE55izBzArrDQfYBV_eAAjgZQeZgJFgEuhkAT3D28DLyDT2NzdDksdiPV95Y388jPzdVvyA3wiDTU9cRANgSS_Y!/dl3/d3/L2dJQSEvUUt3QS9ZOnZ3LzZfMFQ5SU9MNTEwRzlOMDBJRzhPTjZNTzBPRzQ!!) (last visited Jan. 19, 2012).

<sup>15</sup> The College Board, *The 7<sup>th</sup> Annual AP Report to the Nation*, at 20 (Feb. 2011), available at <http://apreport.collegeboard.org/?excmpid=CBF13-ED-1-aprtm> (last visited Jan. 19, 2012).

<sup>16</sup> *Id.*

<sup>17</sup> Section 1007.27(6), F.S.

<sup>18</sup> See rule 6A-1.09981, F.A.C.

<sup>19</sup> Florida Department of Education, *Advanced Placement Exam Results Florida Public Schools 1999-2005*, at 3 (Jan. 2006), available at <http://www.fldoe.org/evaluation/pdf/aptextprt1999-2005.pdf>.

<sup>20</sup> Florida Department of Education presentation to KINS on Nov. 1, 2011.

<sup>21</sup> College Board, *Exam Fees and Reductions: 2012*, <http://apcentral.collegeboard.com/apc/public/exam/calendar/190165.html> (last visited Jan. 19, 2012).

examination score of three or higher on a 5-point scale.<sup>22</sup> In 2011, the Legislature passed HB 7151, which in part, specifically required the use of data relating to student performance in subsequent postsecondary courses to determine the appropriate examination scores for which college credit is to be awarded for AP courses.<sup>23</sup> The ACC is conducting a review and is expected to make its recommendation to the State Board and the BOG by August 2012.<sup>24</sup>

### Dual Enrollment Program

The Dual Enrollment Program is an acceleration option that allows an eligible high school or home education student to enroll in a postsecondary course creditable toward high school graduation and an associate or baccalaureate degree, or career certificate.<sup>25</sup> A secondary student must be enrolled in a public secondary school or a private secondary school using a curriculum that satisfies the state's high school graduation requirements.<sup>26</sup> Additionally, a student must have a 3.0 unweighted grade point average to enroll in college-level courses and a 2.0 unweighted grade point average to enroll in career certificate courses. In order for a student to enroll in a college credit course, the student must demonstrate adequate pre-collegiate preparation on a basic computation and communication skills assessment through the common placement examination. Exceptions to the required grade point averages may be granted if the school district and the postsecondary institution agree and the terms of such agreement are contained in a dual enrollment interinstitutional articulation agreement.<sup>27</sup> Florida College System (FCS) institutions may establish additional admissions requirements to ensure student readiness for postsecondary instruction, but such requirements may not arbitrarily prohibit students who have demonstrated the ability to master advanced courses from participating in dual enrollment courses.<sup>28</sup> Eligibility requirements for home education students are identified by each postsecondary institution. The requirements for home education students cannot exceed those required of other dually enrolled students.<sup>29</sup>

### Early Admission

Early admission is a type of dual enrollment that allows students to enroll in postsecondary courses on a full-time basis on a college or technical center campus. As with all dual enrollment programs, students earn both high school and college or career credits for courses completed and are exempt from the payment of registration, tuition, and laboratory fees.<sup>30</sup> Participation in the career early admission program is limited to students who have completed a minimum of six semesters of full-time secondary enrollment, including studies undertaken in the ninth grade.<sup>31</sup> By rule, in order for a student to be considered a full-time dual enrollment early admission student, the student must enroll in a minimum of 12 college credit hours, but may not be required to enroll in more than 15 college credit hours.<sup>32</sup>

### **Student Progression Plans**

Each district school board is required to establish a comprehensive program for student progression, commonly referred to as a student progression plan. A student progression plan must include standards for evaluating each student's performance; specific levels of performance in reading, writing,

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<sup>22</sup> Section 1007.27(6), F.S.; see also Articulation Coordinating Committee, *Credit by Exam Equivalencies*, available at [www.fldoe.org/articulation/pdf/ACC-CBE.pdf](http://www.fldoe.org/articulation/pdf/ACC-CBE.pdf).

<sup>23</sup> Section 11, ch. 2011-177, L.O.F.; s. 1007.27(2), F.S.

<sup>24</sup> Email, Florida Department of Education, Office of Legislative Affairs (Dec. 20, 2011).

<sup>25</sup> Section 1007.271(1), F.S.

<sup>26</sup> Section 1007.271(2), F.S.; see also ss. 1002.42(2) and 100.43, F.S. Section 1007.271(2), F.S., references the required curriculum with regard to the courses required for high school graduation under s. 1003.43, F.S., which applies to students entering high school before the 2007-08 academic year. Section 1003.428, F.S., applies to students who entered high school in the 2007-08 year and thereafter. Additionally, s. 1003.429, F.S., provides accelerated graduation options for students who entered high school in the 2006-07 academic year and thereafter.

<sup>27</sup> See *infra* text accompanying notes 62-67 for an explanation of interinstitutional articulation agreements.

<sup>28</sup> Section 1007.271(3), F.S.

<sup>29</sup> Section 1007.271(10)(b), F.S.

<sup>30</sup> Section 1007.271(7) and (8), F.S.

<sup>31</sup> Section 1007.271(8), F.S.

<sup>32</sup> Rule 6A-14.064(1)(g), F.A.C.

science, and mathematics for each grade level, including the levels of performance on statewide assessments as defined by the Commissioner of Education, below which a student must receive remediation or be retained;<sup>33</sup> and appropriate alternative placement for a student who has been retained two or more years.<sup>34</sup> Additionally, the student progression plans must incorporate by reference the Sunshine State Standards or the Next Generation Sunshine State Standards,<sup>35</sup> as appropriate, for each subject area and all dual enrollment courses contained within the district interinstitutional articulation agreement.<sup>36</sup>

### **End-of-Course (EOC) Assessments**

An EOC assessment is a subject-specific assessment that is administered at the end of a particular course. All state EOC assessments must be rigorous, statewide, standardized, and developed or approved by the DOE.<sup>37</sup> In 2010, the Legislature required the DOE to implement a statewide, standardized EOC assessment for Algebra I, Geometry, and Biology I at the high school level, and an EOC assessment in Civics Education at the middle school level.<sup>38</sup> Contingent upon funding, the Commissioner of Education is also required to establish an implementation schedule for the development and administration of additional statewide, standardized EOC assessments in English/Language Arts II, Algebra II, Chemistry, Physics, Earth/Space Science, United States History, and World History.<sup>39</sup> Currently, the DOE is developing an EOC assessment in U.S. History.<sup>40</sup>

Statewide, standardized EOC assessments in Algebra I, Geometry, Biology I, and Civics Education are required to have a one-year baseline administration, in which the student's performance on the EOC assessment constitutes 30 percent of the student's final course grade. After the one-year baseline administration, students must pass the EOC assessment in order to receive credit for the course, and ultimately graduate since these courses are required for high school graduation.<sup>41</sup> The EOC assessment in U.S. History will constitute at least 30 percent of the student's final course grade. Likewise, should EOC assessments be developed in English/Language Arts II, Algebra II, Chemistry, Physics, Earth/Space Science, or World History, performance on the EOC assessment will constitute 30 percent of the student's final course grade.<sup>42</sup>

Additionally, the Commissioner of Education is authorized to select one or more nationally developed comprehensive examinations, including, but not limited to, examinations for Advanced Placement, International Baccalaureate, and Advanced International Certificate of Education courses or industry-approved examinations to earn national industry certifications identified in the Industry Certification Funding List for use as EOC assessments.<sup>43</sup>

### **High School Graduation**

In order to graduate from high school, a student must earn credits in the required high school courses and achieve the required grade point average, with the number of credits, required courses, and

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<sup>33</sup> If the student is retained, he or she must be placed into an intensive program that is different from the previous year's program and that takes into account the student's learning style. Section 1008.25(2)(b), F.S.

<sup>34</sup> Section 1008.25(2), F.S.

<sup>35</sup> See s. 1003.41, F.S.

<sup>36</sup> Rule 6A-1.09401(3), F.A.C.; s. 1007.235(4), F.S.; see *infra* text accompanying notes 62-67 for an explanation of interinstitutional articulation agreements.

<sup>37</sup> Section 1008.22(3)(c)2.a., F.S.

<sup>38</sup> Section 3, ch. 2010-22, L.O.F., *codified at* s. 1003.428, F.S. (Algebra I, Geometry, and Biology I); s. 4, ch. 2010-48, L.O.F., *codified at* s. 1008.22(3)(c), F.S. (Civics).

<sup>39</sup> Section 1008.22(3)(c)2.c., F.S.

<sup>40</sup> Rule 6A-1.09422(3)(e), F.A.C.

<sup>41</sup> Section 1008.22(3)(c)2.a.(I) and (II), F.S. The requirement to pass the EOC assessments in Algebra I, Geometry, and Biology I is not coupled with a student's grade, therefore, a student could receive a grade of "C" in the course but not achieve the necessary credit to graduate if that student did not pass the EOC assessment. Section 1003.428, F.S.

<sup>42</sup> Section 1008.22(3)(c)2.b., F.S.

<sup>43</sup> Section 1008.22(3)(c)2.b., F.S.



required grade point average varying based upon which graduation option the student selects.<sup>44</sup> Students have three graduation options including the traditional 24-credit option, the accelerated 18-credit College Preparatory Program option, and the accelerated 18-credit Career Preparatory Program option. Students must also pass the 10<sup>th</sup> grade FCAT in Reading and Mathematics or attain concordant scores on a different standardized test.<sup>45</sup>

The following table compares the credit requirements of the three graduation options for students entering grade 9 in the 2011-12 academic year.<sup>46</sup>

	<b>Traditional 24-Credit Option (s. 1003.428, F.S.)</b>	<b>Accelerated 18-Credit Options</b>	
		<b>COLLEGE PREPARATORY (s. 1003.429(1)(b), F.S.)</b>	<b>CAREER PREPARATORY (s. 1003.429(1)(c), F.S.)</b>
<b>English</b>	4 credits (with major concentration in composition, reading for information, and literature)	4 credits (with major concentration in composition and literature)	4 credits (with major concentration in composition and literature)
<b>Mathematics</b>	4 credits, including: ❖ 1 credit in Algebra I, the equivalent, or a higher-level mathematics course (must pass EOC) ❖ 1 credit in Geometry or equivalent (performance on an EOC in Geometry constitutes 30 percent of a student's final course grade)	4 credits, including: ❖ 1 credit in Algebra I, or a higher-level mathematics course (must pass EOC) ❖ 1 credit in Geometry or equivalent (performance on an EOC in Geometry constitutes 30 percent of a student's final course grade)	4 credits, including: ❖ 1 credit in Algebra I (performance on an EOC in Algebra I constitutes 30 percent of a student's final course grade) ❖ 1 credit in Geometry or equivalent
<b>Science</b>	3 credits (2 credits must have a laboratory component) including: ❖ Biology I (performance on an EOC in Biology I constitutes 30 percent of a student's final course grade)	3 credits (2 credits must have a laboratory component) including: ❖ Biology I (performance on an EOC in Biology I constitutes 30 percent of a student's final course grade)	3 credits (2 credits must have a laboratory component) including: ❖ Biology I (performance on an EOC in Biology I constitutes 30 percent of a student's final course grade)
<b>Social Studies / Social Sciences</b>	3 credits in Social Studies, including: ❖ 1 credit in US History ❖ 1 credit in World History ❖ ½ credit in Economics ❖ ½ credit in US Government	3 credits in Social Sciences, including: ❖ 1 credit in US History ❖ 1 credit in World History ❖ ½ credit in Economics ❖ ½ credit in US Government	3 credits in Social Sciences, including: ❖ 1 credit in US History ❖ 1 credit in World History ❖ ½ credit in Economics ❖ ½ credit in US Government
<b>Second Language</b>	None	2 credits in the same second language	None
<b>Fine or Performing Arts / Speech and Debate / Practical Arts</b>	1 credit (three options): ❖ Fine or Performing Arts; ❖ Speech and Debate; or ❖ An approved Practical Arts Course	None	None
<b>Vocational or Career Education</b>	None	None	Three options: ❖ 3 credits in vocational or career education program; ❖ 3 credits in career and technical certificate dual enrollment courses; or ❖ 5 credits in vocational or career education courses
<b>Physical Education</b>	1 credit (including integration of health)	None	None
<b>Electives</b>	8 credits in Electives	2 credits	1 credit <sup>47</sup>

<sup>44</sup> Sections 1003.428, 1003.429, and 1003.43, F.S.

<sup>45</sup> Sections 1003.428(4)(b), 1003.429(6)(a), 1003.43(5)(a), and 1008.22(3)(c)6. and (10), F.S.

<sup>46</sup> For the graduation requirements for students who entered high school before the 2007-08 academic year, see s. 1003.43, F.S.

<sup>47</sup> If a student earns five credits in vocational or career education courses, no elective credit is required. Section 1003.429(1)(c)6., F.S.

## School Funding through the Florida Education Finance Program

The Florida Education Finance Program (FEFP) is the funding formula adopted by the Legislature in 1973 to allocate funds appropriated to school districts for K-12 public school operations.<sup>48</sup> The FEFP implements the constitutional requirement for a uniform system of free public education<sup>49</sup> and is an allocation model based upon individual student participation in educational programs. The purpose of the funding system is to guarantee to each student in the Florida public educational system the availability of programs and services appropriate to his or her educational needs which are substantially equal to those available to any similar student notwithstanding geographic differences and varying local economic factors.<sup>50</sup>

In order to equalize funding among the school districts, the FEFP takes into account the local property tax base; costs of educational programs; district cost differential; and sparsity of student population.<sup>51</sup>

The FEFP allocates funds to each school district based upon actual student enrollment.<sup>52</sup> The FEFP uses a unit of measurement for each student called a full-time equivalent (FTE). One FTE equals one school year of instruction provided to a student.<sup>53</sup> Generally, one FTE equals at least 720 hours of instruction in grades K-3 and at least 900 hours of instruction in grades 4-12.<sup>54</sup> In general, the maximum value for funding a student through the FEFP is one FTE student membership for a school year. A yearlong course (one credit), taken by a student equals 1/6 of an FTE. Funding is capped at six full year courses or 6 credits. A school district does not currently receive additional funding for providing a student an additional course above six credits.<sup>55</sup>

### Bright Futures Scholarship Program

The Bright Futures Scholarship (BFS) Program is a lottery-funded scholarship program that was created to reward Florida high school graduates who merit recognition for high academic achievement by providing them with scholarships to pursue postsecondary education at eligible public and independent postsecondary institutions in Florida.<sup>56</sup> The BFS Program consists of three scholarship awards, the Florida Academic Scholars Award, the Florida Medallion Scholars Award, and the Florida Gold Seal Vocational Scholars Award.<sup>57</sup> To be considered for any of the BFS awards, a student must apply prior to high school graduation, or the student will forfeit his or her future eligibility for an award.<sup>58</sup>

To be considered for any of the BFS awards, a student must:

- Be a Florida resident;
- Earn a standard Florida high school diploma or its equivalent;
- Be accepted by and enrolled in an eligible Florida public or independent postsecondary education institution for at least six credit hours per semester or the equivalent;
- Not have been found guilty of, or entered a plea of nolo contendere to, a felony charge, unless the student has been granted clemency; and
- Have completed an application for the program prior to high school graduation.<sup>59</sup>

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<sup>48</sup> Chapter 73-345, L.O.F.

<sup>49</sup> Art. IX, s. 1(a), Fla. Const.

<sup>50</sup> Florida Department of Education, *Overview of School District Funding* (2011-12), at 4, available at <http://www.fldoe.org/febp/pdf/febpdist.pdf>; see generally s. 1011.62, F.S.

<sup>51</sup> *Id.*

<sup>52</sup> See s. 1011.62(1)(d), F.S.

<sup>53</sup> Section 1011.61(1)(a), F.S.

<sup>54</sup> Section 1011.61(1)(a)1., F.S.

<sup>55</sup> See s. 1011.61(1)(c), F.S.; Florida Department of Education, *Overview of School District Funding* (2011-12), at 10, available at <http://www.fldoe.org/febp/pdf/febpdist.pdf>.

<sup>56</sup> Section 1009.53(1), F.S.

<sup>57</sup> Sections 1009.53(2), 1009.534, 1009.535, and 1009.536, F.S.

<sup>58</sup> Sections 1009.53(3) and 1009.531(1)(f) and (2), F.S.

<sup>59</sup> Sections 1009.40(1) and 1009.531(1) and (2), F.S.

In addition to the general student eligibility requirements above, each BFS award also has specific student eligibility requirements, including, required coursework, grade point averages, test scores, and community service.<sup>60</sup>

The DOE evaluates students twice each year, either after the seventh or eighth semester of high school. However, even if a student qualifies after the seventh semester of high school, the DOE only issues awards for the fall term. Therefore, if a student graduates from high school midyear, the student must wait until the fall term to receive a BFS award.<sup>61</sup>

### **District Interinstitutional Articulation Agreement**

District school superintendents and Florida College System (FCS) institution presidents must jointly develop and implement a comprehensive articulated acceleration program for the students enrolled in their respective school districts and service areas. Each superintendent and president must develop a comprehensive interinstitutional articulation agreement for the school district and FCS institution that serves the school district. An articulation committee must be established by the superintendent and the president to develop the interinstitutional articulation agreement. While not required, each state university president is encouraged to designate a university representative to participate in the development of the interinstitutional articulation agreement. Each interinstitutional articulation agreement must be completed before high school registration for the fall term of the following school year.<sup>62</sup>

The interinstitutional articulation agreements must include various provisions related to dual enrollment such as, a delineation of courses and programs available to students eligible to participate in dual enrollment; a delineation of the process by which students and their parents are informed about opportunities to participate in an articulated acceleration program; a delineation of the process by which students, and their parents, exercise the student's option to participate in a dual enrollment course; a list of postsecondary courses that meet the criteria for inclusion in a district articulated acceleration program to be counted toward meeting graduation requirements; a delineation of institutional responsibilities regarding student screening before enrollment and monitoring student performance after enrollment in dual enrollment courses; and identification of the responsibility of the postsecondary educational institution for assigning letter grades for dual enrollment courses and the responsibility of school districts for posting dual enrollment course grades to a student's high school transcript as assigned by the postsecondary institution awarding the credit.<sup>63</sup>

In addition to the dual enrollment provisions, the interinstitutional articulation agreements must also include a ratification or modification of all existing articulation agreements; mechanisms and strategies for reducing the incidence of postsecondary remediation in math, reading, and writing for first-time-enrolled recent high school graduates; and mechanisms and strategies for promoting "tech prep" programs of study. Additionally, the interinstitutional articulation agreement must include a plan that outlines the mechanisms and strategies for improving the preparation of elementary, middle, and high school teachers.<sup>64</sup>

All dual enrollment courses listed within the interinstitutional articulation agreement must be incorporated, either directly or by reference, into the district school board's student progression plan.<sup>65</sup>

The DOE is required to review each interinstitutional articulation agreement and certify the statewide course number of postsecondary courses that meet each district's graduation requirements.<sup>66</sup>

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<sup>60</sup> Sections 1009.534, 1009.535, and 1009.536, F.S.

<sup>61</sup> Telephone interview with Director, State Scholarship and Grant Programs, Florida Department of Education (Jan. 11, 2011).

<sup>62</sup> Section 1007.235(1) and (2), F.S.

<sup>63</sup> Section 1007.235(2), F.S.

<sup>64</sup> Section 1007.235(2) and (3), F.S.

<sup>65</sup> Section 1007.235(4), F.S.

<sup>66</sup> Section 1007.235(5), F.S.

District school boards and FCS institutions are authorized to enter into additional interinstitutional articulation agreements with state universities. Additionally, district school boards may enter into interinstitutional agreements with eligible independent colleges and universities and state universities and FCS institutions may enter into interinstitutional articulation agreements with eligible nonpublic secondary schools.<sup>67</sup>

### **Admissions Requirements for an FCS Institution**

FCS institutions do not require a minimum grade point average or test score to enroll; however, in order to be admitted to an associate degree program, a student must have earned a standard high school diploma or its equivalent; previously demonstrated competency in college credit postsecondary coursework; or for home education students, provide a signed affidavit from the student's parent attesting that the student has completed a home education program pursuant to state law. Students enrolled in the dual enrollment or early admission programs and secondary students enrolled in college-level instruction creditable toward the associate degree, but not toward the high school diploma, are exempt from the high school diploma admissions requirement. This allows institutions to admit otherwise ineligible students into the institution to take and pay for college-level courses, but not provide the student college credit until the student graduates from high school. This process is commonly referred to as "credit in escrow."

An applicant must also have a demonstrated level of achievement of college-level communication and computation skills and any other requirements established by the institution's board of trustees.<sup>68</sup>

A student who has been awarded a special diploma or a certificate of completion is not eligible to enroll in college credit courses, but may enroll in certificate career education programs. Admission into other programs within an FCS institution includes education requirements established by the institution's board of trustees.<sup>69</sup>

### **Effect of Proposed Changes**

#### **Academically Challenging Curriculum to Enhance Learning (ACCEL) Options**

The bill establishes Academically Challenging Curriculum to Enhance Learning (ACCEL) options which are educational options that provide academically challenging curriculum or accelerated instruction to eligible public school students in kindergarten through grade 12. The bill does not create new acceleration options, but allows principals to do so and provides more information about and greater access to existing acceleration options through parental notification and parent initiated student participation.

At a minimum, the bill requires each school to offer whole grade and midyear promotion; subject-matter acceleration; virtual instruction in higher grade level subjects; and the credit acceleration program (CAP). Schools may also offer other ACCEL options, which may include, but are not limited to, enriched science, technology, engineering, and mathematics (STEM) coursework; enrichment programs; flexible grouping; advanced academic courses; combined classes; self-paced instruction; curriculum compacting; advanced-content instruction; and telescoping curriculum.<sup>70</sup>

Each principal must specify the student eligibility requirements for virtual instruction in higher grade level subjects. Principals must also establish eligibility requirements for whole grade promotion, midyear promotion, and subject-matter acceleration when the promotion or acceleration occurs within the principal's school. This allows an elementary principal to establish student eligibility requirements for a student to be promoted from 4<sup>th</sup> grade to 5<sup>th</sup> grade, but not from 5<sup>th</sup> grade to 6<sup>th</sup> grade, unless the school serves students in 6<sup>th</sup> grade.

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<sup>67</sup> Section 1007.235(6) and (7), F.S.

<sup>68</sup> Section 1007.263(2), F.S.

<sup>69</sup> Section 1007.263(3) and (4), F.S.

<sup>70</sup> For explanations of these acceleration options, please refer to Appendix A.

For whole grade promotion, midyear promotion, or subject-matter acceleration that would result in a student attending a different school, the school district must establish student eligibility requirements and procedural requirements. Therefore, a school district would establish student eligibility requirements and procedural requirements for a student to be promoted from 8<sup>th</sup> grade to 9<sup>th</sup> grade. Examples of procedural requirements a school district may establish include the verification of facility capacity, class size, and transportation availability.

Principals must also establish student eligibility requirements for other ACCEL options offered by the school, including STEM coursework, enrichment programs, flexible grouping, advanced academic courses, combined classes, self-paced instruction, curriculum compacting, advanced-content instruction, telescoping curriculum, or an alternative established by the principal. Neither the principal nor the school district establishes eligibility requirements for the CAP program. The eligibility requirements for the CAP program are those otherwise established in law.

When establishing student eligibility requirements, principals and school districts must consider the student's performance on a locally determined assessment, a statewide assessment, or a statewide, standardized assessment;<sup>71</sup> the student's grade point average, attendance record, and conduct record; a recommendation from a core-curricula teacher; and a recommendation from a guidance counselor, if one is assigned to the school.

Principals currently provide information to parents and students on a variety of educational topics, which may include the availability of acceleration options. For example, on August 30, 2011, one Collier County principal sent parents a letter informing them of the acceleration options available in their child's school.<sup>72</sup> The bill requires principals to inform parents and students of the ACCEL options available at the school and the student eligibility requirements. By requiring parental notification by the principal, all parents will receive information regarding the opportunities provided by the principal for their students to participate in acceleration options.

Each principal must establish a process for a parent to request student participation in whole-grade promotion, midyear promotion, and subject-matter acceleration when the promotion or acceleration occurs within the principal's school; virtual instruction in higher grade level subjects; or alternative ACCEL options established by the principal. School districts must also establish a process for a parent to request student participation in ACCEL options, but only for whole-grade promotion, midyear promotion, or subject-matter acceleration that would result in a student attending a different school.

If a parent selects an ACCEL option and the student meets the eligibility requirements established by the principal or the eligibility and procedural requirements established by the school district, the student must be provided the opportunity to participate in the ACCEL option. Neither a principal nor a school district can prohibit an eligible student from participating in an ACCEL option, if requested by a parent.

If a student participates in certain ACCEL options pursuant to parental request, a performance contract must be executed by the student, the parent, and the principal, for each ACCEL option in which the student participates. A performance contract is required for whole-grade promotion, midyear promotion, and subject-matter acceleration when the promotion or acceleration occurs within a principal's school; virtual instruction in higher grade level subjects; or an alternative ACCEL option established by a principal. Performance contracts must require compliance with minimum attendance

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<sup>71</sup> These assessments include, but are not limited to, the Florida Comprehensive Achievement Test (FCAT), Florida Assessments for Instruction in Reading (FAIR), and end-of-course (EOC) assessments.

<sup>72</sup> Letter to Parents from Sea Gate Elementary School Principal, Collier County, August 30, 2011. The letter stated, in part, "Schools in Collier County are committed to excellence in all educational endeavors. As a part of this commitment, differentiated instruction designed to meet the learning needs of all students is provided in each classroom every day. For students requiring acceleration beyond the typical grade level curriculum, as evidenced by performance both in the classroom and on standardized tests, a variety of options are available: Guided Reading Instruction based on above-grade level materials; Flexible grouping in math to encourage exploration beyond grade level expectations; Pre-Laureate Curriculum focused on developing and enhancing reference, research, writing and presentation skills across the curriculum; and Study Skills Curriculum to promote lifelong organization and planning skills."

and conduct requirements and any other ACCEL requirements, which may include participation in extracurricular activities, educational outings, field trips, interscholastic competitions, and other activities related to the ACCEL option selected.

If a parent requests that a student participate in an ACCEL option that requires the school district to establish student eligibility and procedural requirements, the bill does not require a performance contract to be executed. However, the bill does not prevent a school district from including a performance contract in its student eligibility and procedural requirements. Similarly, if a principal initiates participation in an ACCEL option, a performance contract is not required, but may be used at the discretion of the principal. Additionally, if a principal initiates a student's participation in an ACCEL option, the bill requires a principal to notify the student's parent.

To further expand access to accelerated coursework, the bill allows all students, not just secondary students, to participate in the CAP. There have been reports of elementary school students that have been unable to take the Algebra I EOC assessment to earn high school credit because the law limits the CAP to secondary students. The bill allows elementary school students the opportunity to take an EOC assessment, and if passed, earn high school credit.

Additionally, since the bill may result in more students taking accelerated coursework, the bill clarifies that an elementary school student who takes a middle or high school level course must receive a grade of A through F for that course, as is currently required for students in middle and high school.

### **Student Progression Plans**

The bill expands the information a school district's student progression plan must contain. The bill amends the student progression plan to include a list of the eligibility and procedural requirements established by a school district for certain ACCEL options. School districts are only required to establish eligibility and procedural requirements for whole-grade promotion, midyear promotion, and subject-matter acceleration when the promotion or acceleration would result in a student attending a different school. The student progression plan must also delineate the school district's process for a parent to request student participation in these ACCEL options.

The bill requires the student progression plan to provide notice to parents and students that additional ACCEL options may be available at the student's school, and the principal should be contacted for additional information, including information regarding the school's process for a parent to request student participation in an ACCEL option. The bill does not require principals to report to the school district each ACCEL option offered, or the eligibility requirements for each ACCEL option offered; however, each principal is required to provide this information to parents. This will promote flexibility at the district and school levels, as necessary.

The student progression plan must also list the early and accelerated graduation options available to students and list, or incorporate by reference, all dual enrollment courses contained within the dual enrollment articulation agreement.

The bill increases the information to be included in a district's student progression plan in order to provide parents access to additional information regarding the acceleration opportunities available to their children.

### **Early High School Graduation**

The bill authorizes a student to graduate from high school in fewer than four years if the student has completed a minimum of 24 credits and meets the general requirements for graduation. If a student meets the requirements, the district school board cannot prevent the student from graduating early. Early graduation is defined as graduating from high school in less than eight semesters or the equivalent. Currently, students often remain in high school even if they have met the general requirements for graduation in fewer than eight semesters. These students remain in high school and

accumulate additional credits. Students may be discouraged from graduating early from high school because they are unable to receive an initial Bright Futures Scholarship award midyear.

The bill requires each district school board to adopt a policy providing students the option to graduate early from high school. District school boards must currently notify parents at the beginning of each year of the opportunity and benefits of various acceleration options. The bill expands this notification to include the options for early or accelerated high school graduation. A district school board must also notify the parent of a student who is eligible to graduate early. The bill expands the student advisement currently required for high schools related to acceleration options to include the options for early or accelerated high school graduation.

The bill authorizes a student who graduates early to continue participating in school activities and social events and attend and participate in graduation events with the student's cohort. Additionally, the bill requires a student who graduates early to be included in class ranking, honors, and award determinations for the student's cohort. This, for example, allows a student who graduates early to become valedictorian and attend prom. While a student who graduates early is authorized to participate in school activities and social events, the student must comply with district school board rules and policies regarding access to school facilities and grounds during normal operating hours.

To provide school districts an incentive for facilitating a student's early graduation from high school, the bill authorizes school districts to report "unpaid high school credits." An unpaid high school credit is a high school credit earned in excess of six per school year in courses delivered by the school district. Unpaid high school credits could include credits earned from an optional seventh period, the credit acceleration program, or dual enrollment courses.

A district may report each unpaid high school credit provided to a student who graduates early from high school. For a student who graduates one semester before the student's cohort, a district may receive funding for up to 1/2 FTE for unpaid credits delivered by the district. For a student who graduates one year or more in advance of the student's cohort, the district may receive funding up to 1 FTE for unpaid credits delivered by the district.

### **End-of-Course (EOC) Assessments**

The bill requires the EOC assessment for Algebra I to be administered four times each year, beginning with the 2012-13 school year. As of the 2011-12 academic year, Algebra I is the only must pass EOC assessment. Per current law, Biology I and Geometry EOC assessments will also be must pass beginning in the 2012-13 school year, but the bill does not require four administrations of those EOC assessments. Accordingly, they will only be administered three times per year.

The fourth administration of the Algebra I EOC assessment will provide students taking the course through the Florida Virtual School a shorter time period between the completion of the course and the administration of an EOC assessment.

The bill establishes performance-based funding for courses requiring must pass, statewide, standardized EOC assessments. Beginning in the fourth year of administering the EOC assessment, a school district's receipt of FTE funding for the course is contingent upon the student passing the EOC assessment. Therefore, if a student failed the EOC assessment, the school would not receive FTE funding for that course.

The bill also authorizes a school district to report 1/6 FTE for each student who passes an EOC assessment without being enrolled in the corresponding course. This may encourage school districts to increase the number of students participating in the credit acceleration program, since the bill allows a school district to report 1/6 FTE for students even if the student did not take the course, as long as the EOC assessment was passed.

The opportunities for additional FTE are limited to one FTE per year, unless a student graduates early from high school. Therefore, if a student is taking a full-course load (6 full-credit courses), and takes

and passes an EOC assessment without being enrolled in the course, the additional 1/6 FTE will be counted as "unpaid credit." If a student graduates early, the school district may report up to 1/2 FTE (equivalent to three full-credit courses) for students that graduate one semester early and up to one FTE (equivalent to six full-credit courses) for students that graduate at least one year early for any unpaid credits delivered by the district.

### **Bright Futures Scholarship Program**

The bill authorizes a student who graduates from high school midyear to receive an initial Bright Futures Scholarship award during the spring term following the student's graduation, as long as the student applies for the scholarship award no later than August 31 of the student's graduation year. This date provides the DOE Office of Student Financial Assistance sufficient time to evaluate and distribute scholarship awards.

A student who receives an initial award during the spring term will be evaluated for scholarship renewal after the completion of a full academic year, which begins with the fall term. This provides students who graduate from high school midyear and receive an initial award in the spring term three semesters before they will be evaluated for scholarship renewal.

### **Advanced Placement (AP) Program**

The bill establishes student eligibility requirements for the AP program. In order for a public secondary student to participate in the AP program, the student must be enrolled in a Florida public secondary school, demonstrate readiness for college-level coursework through achievement on a statewide assessment or on a common placement test, and have a 3.0 unweighted grade point average. The eligibility requirements are the same as those required for the dual enrollment program, except an AP student also has the opportunity to demonstrate readiness for college-level coursework through performance on a statewide assessment.

The State Board is required to establish, by rule, the minimum test score a student must receive to demonstrate readiness for college-level coursework. A student may use results from the FCAT, or the EOC assessment in Algebra I, Biology I, and Geometry, when available. The student may also use results from a common placement test, including the Postsecondary Education Readiness Test (PERT), the College Placement Test (CPT), the PSAT, the PLAN, the SAT, or the ACT. The eligibility requirements are anticipated to increase the state's return on investment since students that meet the requirements are more likely to earn a score of 3 or higher on the AP examination and therefore be eligible to earn college credit.

### **Dual Enrollment Program**

#### *Student Eligibility*

The bill clarifies student eligibility requirements for the dual enrollment program. If a student is scheduled to graduate from high school before the scheduled completion of a postsecondary course, the student may not register for that course through dual enrollment. However, the student may apply to the postsecondary institution and pay the required registration, tuition, and fees, as long as the student meets the postsecondary institution's admissions requirements.

The bill clarifies that in order to continue in the dual enrollment program, a student must maintain a 3.0 high school grade point average and the minimum postsecondary grade point average established by the postsecondary institution. Additionally, a student may lose the opportunity to participate in the dual enrollment program if the student disrupts the learning process. These requirements are currently found in State Board rule.<sup>73</sup>

Per State Board rule, to be considered a full-time early admission dual enrollment student, a student must enroll in at least 12 college credit hours per semester, but may not be required to enroll in more

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<sup>73</sup> Rule 6A-14.064, F.A.C.



than 15 college credit hours per semester.<sup>74</sup> The bill codifies this rule, maintaining the same credit hour requirements.

The bill clarifies student eligibility requirements for home education students. Home education students who seek enrollment in a dual enrollment course, their parents, and the postsecondary institution must enter into an articulation agreement. The articulation agreement must include, at a minimum, a delineation of courses and programs available for dually enrolled home education students; the initial and continued eligibility requirements for home education student participation; the students' responsibilities for providing his or her own instructional materials and transportation; and a copy of the statement of transfer guarantees, developed by the DOE. Courses and programs available for dually enrolled home education students may be added, revised, or deleted at any time by the postsecondary institution.

#### Faculty Standards

The bill codifies current State Board rule that establishes faculty standards for each faculty member teaching college credit dual enrollment courses. A faculty member must meet the qualifications required by the entity accrediting the postsecondary institution offering the course; provide the institution offering the dual enrollment course a copy of his or her postsecondary transcript; provide a copy of the current syllabus for each course taught to the discipline chair or department chair of the postsecondary institution before the beginning of each term; adhere to the professional rules, guidelines, and expectations in the postsecondary institution's faculty or adjunct faculty handbook and to those that apply to faculty in the student handbook.

Each president of a postsecondary institution offering a college credit dual enrollment course, or his or her designee, must provide a copy of the institution's current faculty or adjunct faculty handbook and student handbook to all dual enrollment faculty members; designate an individual or individuals to observe all dual enrollment faculty members, regardless of the location of instruction; use the same criteria to evaluate dual enrollment faculty members as used to evaluate all other faculty members; and provide course plans and objectives to all faculty members teaching a dual enrollment course.

The faculty standards established in the bill apply to all dual enrollment faculty members including those teaching a dual enrollment course on a high school campus. Additionally, the faculty standards established in the bill are consistent with those required by the Southern Association of Colleges and Schools (SACS) Commission on Colleges and are currently outlined in State Board rule.<sup>75</sup>

#### Curriculum Standards

The bill codifies current State Board rule that establishes curriculum standards for college credit dual enrollment courses to help maintain rigor for those courses. Dual enrollment courses taught on a high school campus are required to meet the same competencies required for courses taught on a postsecondary institution campus. The postsecondary institution offering the course is responsible for providing a comprehensive, cumulative end-of-course assessment or a series of assessments of all expected learning outcomes, to the faculty member teaching the course in a timely manner. Once the assessments are completed and scored, the assessments must be returned to the postsecondary institution and retained for one year.

The bill requires textbooks and instructional materials used in dual enrollment courses to be the same or similar to those used in other postsecondary courses with the same course prefix and number. The postsecondary institution must advise the school district of the instructional materials requirements as soon as the information is available, but no later than one term before the course is offered.

Course requirements, including tests, papers, or other assignments, must be at the same level of rigor or depth as those for all non-dual enrollment postsecondary students. The bill requires all faculty members teaching dual enrollment courses to observe the postsecondary institution's procedures and

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<sup>74</sup> Rule 6A-14.064(1)(g), F.A.C.

<sup>75</sup> Rule 6A-14.064(2), F.A.C.

deadlines for grade submission. The bill requires the faculty to be advised of institution-wide grading guidelines before teaching a dual enrollment course.

Additionally, the bill prohibits the combination of dual enrollment courses and other high school courses. This prohibits a school district from offering dual enrollment credit to a portion of students within a class, even though all students are performing the same coursework.

The curriculum standards established in the bill are consistent with those required by the SACS Commission on Colleges and are currently outlined in State Board rule.<sup>76</sup>

#### Dual Enrollment Articulation Agreement

In an effort to streamline the dual enrollment program, the bill repeals s. 1007.235, F.S., related to District Interinstitutional Articulation Agreements and reestablishes the provisions related to dual enrollment in s. 1007.271, F.S.<sup>77</sup> The bill requires each district school superintendent and FCS institution president to develop a comprehensive dual enrollment articulation agreement for their respective school district and FCS institution. As currently required for district interinstitutional articulation agreements, the superintendent and the president must establish an articulation committee to develop the dual enrollment agreement. State university presidents are authorized to designate a university representative to participate in the development of the dual enrollment articulation agreement.

The bill incorporates current requirements from district interinstitutional articulation agreements and State Board rule into the required elements of a dual enrollment articulation agreement, which at a minimum, must include:

- A ratification or modification of all existing articulation agreements;
- The process by which students and their parents are informed about opportunities to participate in the dual enrollment program;
- A delineation of available dual enrollment courses;
- The process by which students and their parents exercise the option to participate in the dual enrollment program;
- Any additional initial eligibility requirements for student participation in the dual enrollment program;
- A delineation of high school credits earned for completion of each dual enrollment course;
- The process for informing students and parents of college course-level expectations;
- The policies and procedures, if any, for determining exceptions to the grade point average requirements on an individual student basis;
- The policies relating to dual enrollment course withdrawals and repeats as determined by the postsecondary institution;
- Exceptions, if any, to the professional guidelines, rules, and expectations established in the faculty or adjunct faculty handbook for the postsecondary institution;
- Exceptions, if any, to the guidelines, rules, and expectations in the student handbook of the postsecondary institution that apply to faculty;
- The responsibilities of the school district regarding student screening prior to participation in the dual enrollment program and the monitoring of student performance while participating in the dual enrollment program;
- The responsibilities of the FCS institution regarding the transmission of student grades in dual enrollment courses to the school district;
- A funding agreement that delineates costs incurred by each entity;<sup>78</sup> and
- The institutional responsibility for student transportation, if provided.

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<sup>76</sup> Rule 6A-14.064(3), F.A.C.

<sup>77</sup> See *infra* text accompanying notes 79-85 for an explanation of the district interinstitutional articulation agreement elements the bill repeals.

<sup>78</sup> The bill states school districts should share funding to cover instructional and support costs incurred by the postsecondary institution.

The bill clarifies that district school boards may not refuse to enter into a dual enrollment articulation agreement, but a FCS institution may limit dual enrollment participation based upon capacity. Any limitation based upon capacity must be clearly specified in the dual enrollment articulation agreement.

The dual enrollment articulation agreement must be submitted by the FCS institution to the DOE on or before August 1 each year, through the electronic submission system developed by the DOE. The DOE has had an electronic submission system for district interinstitutional articulation agreements since 2009. The bill maintains the requirement that the DOE review, for compliance, each articulation agreement, but also requires the Commissioner of Education to inform the district school superintendent and the FCS institution president if the articulation agreement does not comply with statutory requirements and submit any articulation agreement with unresolved issues of noncompliance to the State Board. The DOE has annually collected and reviewed district interinstitutional articulation agreements, but never had a defined course of action if the agreements did not comply with the law.

The bill maintains the authority district school boards and FCS institutions have to enter into additional dual enrollment articulation agreements with state universities. Similarly, the bill maintains the authority district school boards have to enter into an articulation agreement with eligible independent colleges and universities and the authority postsecondary institutions have to enter into articulation agreements with nonpublic secondary schools.

#### Other Requirements

The DOE is currently required to develop a statement on transfer guarantees that informs students, prior to enrollment in a dual enrollment course, of the potential for the course to articulate into a postsecondary education certificate or degree program. The bill requires the statement on transfer guarantees to inform both students and their parents.

Currently, district school boards must notify all secondary students of the dual enrollment program and the eligibility requirements. The bill requires parents to also be informed of the dual enrollment eligibility requirements.

District school boards must also annually assess the demand for dual enrollment and provide that information to each partnering postsecondary institution. School districts currently assess this information, along with the demand for other advanced courses, but do not currently provide the information to the partnering postsecondary institutions.

The bill also maintains the requirement that postsecondary institutions assign letter grades to each student enrolled in a dual enrollment course. The grade assigned by the postsecondary institution, must be posted to the student's high school transcript by the school district. This prevents a school district from posting a higher or lower grade than the one earned in the college-level course on a student's high school report card.

#### **Admissions Requirements for an FCS Institution**

The bill eliminates the exemption from FCS admission standards for secondary students taking a college-level course outside of the dual enrollment program. By eliminating this exemption, the bill prohibits the practice of "credit in escrow," which allows a student, who does not qualify for dual enrollment, to enroll in and pay for college courses that do not count toward high school graduation.

## District Interinstitutional Articulation Agreements

The bill repeals s. 1007.235, F.S., related to District Interinstitutional Articulation Agreements. FCS institutions and school districts no longer have to enter into district interinstitutional articulation agreements; however, the bill requires FCS institutions and school districts to annually establish dual enrollment articulation agreements. Although previously included in the district interinstitutional articulation agreements, the dual enrollment articulation agreements are not required to include:

- A process for converting college credit hours earned to high school credit based upon mastery of course outcomes.
  - A committee appointed by the Commissioner of Education establishes the number of postsecondary semester credit hours of instruction and equivalent high school credits earned through dual enrollment.<sup>79</sup> It is unnecessary for a local dual enrollment articulation agreement to include a process established in law.
- Mechanisms and strategies for reducing the incidence of postsecondary remediation in math, reading, and writing for first-time-enrolled recent high school graduates.
  - Florida high schools are required to evaluate, before the beginning of grade 12, the college readiness of each student who scores at Level 2 or 3 on the 10<sup>th</sup> Grade Reading FCAT, or Level 2 through 4 on a statewide standardized mathematics assessment.<sup>80</sup> These students must take the PERT. If a student fails the PERT, the student must complete appropriate postsecondary preparatory instruction before graduating from high school.<sup>81</sup> It is unnecessary for a local dual enrollment articulation agreement to include mechanisms and strategies when state law prescribes heightened requirements to reduce the incidence of postsecondary remediation.
- Mechanisms and strategies for promoting “tech prep” programs of study.
  - Federal legislation addresses “Programs of Study” that were formerly referred to as “tech prep” programs.<sup>82</sup> Similar information is contained within career and professional education programs including the Career and Professional Academies.<sup>83</sup>
- A plan that outlines the mechanisms and strategies for improving the preparation of elementary, middle, and high school teachers.
  - Florida law authorizes postsecondary educator preparation institutes at FCS institutions.<sup>84</sup> The purpose of these programs is to provide access to needed elementary, middle and high school teacher preparation for students in each college service area. FCS institutions and school districts work closely together to ensure quality teacher outcomes. Given this collaboration, it is unnecessary to require a plan within the dual enrollment articulation agreement that is unrelated to the dual enrollment program.<sup>85</sup>

## Joint Dual Enrollment and Advanced Placement Instruction

The bill repeals s. 1007.272, F.S., related to joint dual enrollment and advanced placement instruction. By repealing this section, school districts may no longer conduct advanced placement instruction within dual enrollment courses. Joint AP and dual enrollment courses have become unnecessary due to the expansion of access to acceleration mechanisms and because students are required to choose which credit they wish to pursue at the beginning of the course.

### B. SECTION DIRECTORY:

**Section 1.** Creates s. 1002.3105, F.S., relating to Academically Challenging Curriculum to Enhance Learning (ACCEL) options; to provide eligible public school students educational options that provide academically challenging curriculum or accelerated instruction; to provide school principal and school

<sup>79</sup> Section 1007.271(6), F.S.

<sup>80</sup> Statewide standardized mathematics assessments currently include Algebra I and Geometry end-of-course assessments.

<sup>81</sup> Section 1008.30(2), F.S.

<sup>82</sup> 20 U.S.C. s. 2301 et seq.

<sup>83</sup> Email, Florida Department of Education, Legislative Affairs (Jan. 12, 2012); *see* s. 1003.493, F.S.

<sup>84</sup> Section 1004.85, F.S.

<sup>85</sup> *See* email, Florida Department of Education, Legislative Affairs (Jan. 12, 2012).

district determined student eligibility and procedural requirements; and to require a process by which a parent may request student participation, including the execution of a performance contract in certain instances.

**Section 2.** Amends s. 1001.64, F.S., relating to Florida College System institution boards of trustees; powers and duties; to conform provisions relating to dual enrollment articulation agreements between Florida College System institutions and school districts.

**Section 3.** Amends s. 1001.65, F.S., relating to Florida College System institution presidents; powers and duties; to conform provisions relating to dual enrollment articulation agreements between Florida College System institutions and school districts.

**Section 4.** Amends s. 1002.20, F.S., relating to K-12 student and parent rights; to conform cross-references.

**Section 5.** Amends s. 1002.41, F.S., relating to home education programs; to conform cross-references.

**Section 6.** Amends s. 1003.02, F.S., relating to district school board operation and control of public K-12 education within the school district; to require school districts to notify parents of options for early or accelerated high school graduation.

**Section 7.** Amends s. 1003.428, F.S., relating to general requirements for high school graduation; to conform provisions to changes made by the act.

**Section 8.** Creates s. 1003.4281, F.S., relating to early high school graduation; to define the term "early graduation"; to require that each school district adopt a policy that provides a high school student with the option of graduating early; to require parental notification of student eligibility; to provide for receipt of an initial Florida Bright Futures Scholarship Program award; and to provide requirements for funding high school credits.

**Section 9.** Amends s. 1003.4295, F.S., relating to acceleration options; to require that students be advised of acceleration options and to authorize all students to participate in the Credit Acceleration Program.

**Section 10.** Amends s. 1003.436, F.S., relating to definition of "credit"; to conform provisions to changes made by the act.

**Section 11.** Amends s. 1003.437, F.S., relating to middle and high school grading system; to specify that the middle and high school grading system applies to the course level.

**Section 12.** Repeals s. 1007.235, F.S., relating to district interinstitutional articulation agreements.

**Section 13.** Amends s. 1007.263, F.S., relating to Florida College System institutions, admissions of students; to eliminate an exemption from Florida College System admission requirements for certain secondary students.

**Section 14.** Amends s. 1007.27, F.S., relating to articulated acceleration mechanisms; to delete duplicative language relating to early admission; and to provide student eligibility requirements for enrollment in advanced placement courses.

**Section 15.** Amends s. 1007.271, F.S., relating to dual enrollment programs; to provide student eligibility requirements and restrictions for enrollment and continued enrollment in dual enrollment courses; to authorize a participation limit based upon capacity; to provide requirements for faculty members providing instruction in college credit dual enrollment courses; to provide curriculum standards for college credit dual enrollment; to clarify district school board duties; to establish a minimum and maximum number of college credit hours for participation in an early admission program;

to provide home education student eligibility requirements for enrollment in dual enrollment courses; to require a home education articulation agreement; to provide requirements for the development and contents of a school district and Florida College System institution dual enrollment articulation agreement; to require the Department of Education to develop an electronic submission system for dual enrollment articulation agreements and to review agreements for compliance; and to authorize dual enrollment articulation agreements with state universities, eligible independent colleges and universities, and private secondary schools.

**Section 16.** Repeals s. 1007.272, F.S., relating to joint dual enrollment and advanced placement instruction.

**Section 17.** Amends s. 1008.22, F.S., relating to student assessment program for public schools; to require that the end-of-course assessment in Algebra I be administered four times annually.

**Section 18.** Amends s. 1008.25, F.S., relating to public school student progression, remedial instruction, reporting requirements; to revise legislative intent relating to public school student progression; to require the comprehensive student progression plan to include information for students and parents on accelerated educational options; and to delete a technical assistance responsibility of the department.

**Section 19.** Amends s. 1009.25, F.S., relating to fee exemptions; to conform a cross-reference.

**Section 20.** Amends s. 1009.531, F.S., relating to Florida Bright Futures Scholarship Program, student eligibility requirements for initial awards; to provide requirements for the evaluation of certain students for initial awards under the Florida Bright Futures Scholarship Program.

**Section 21.** Amends s. 1009.532, F.S., relating to Florida Bright Futures Scholarship Program, student eligibility requirements for renewal awards; to provide requirements for the evaluation of certain students for renewal awards under the Florida Bright Futures Scholarship Program.

**Section 22.** Amends s. 1011.61, F.S., relating to definitions; to provide reporting requirements for school districts for a full-time equivalent student in courses requiring certain statewide, standardized end-of-course assessments and for a student who passes a statewide, standardized end-of-course assessment without being enrolled in the corresponding course.

**Section 23.** Amends s. 1011.62, F.S., relating to funds for operation of schools; to provide a calculation of additional full-time equivalent membership based on early high school graduation.

**Section 24.** Provides an effective date of July 1, 2012.

## 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:

See FISCAL COMMENTS.

2. Expenditures:

See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See FISCAL COMMENTS.

D. FISCAL COMMENTS:

ACCEL Options

The fiscal impact from the notification requirements for ACCEL options is anticipated to be minimal, if any, since principals and district school boards already notify parents of various requirements and options.

Early High School Graduation

The bill provides students the option to graduate early from high school and authorizes school districts to receive funding for unpaid credits for students who graduate at least one semester early. In order to receive funding for unpaid credits, school districts and DOE will need to implement new database requirements and procedures for tracking student progression and credits earned. According to DOE, the fiscal impact of developing a separate database is unknown. In order to develop a fiscal impact, DOE reports it would have to conduct a needs analysis of DOE's system and the district systems.<sup>86</sup>

After the upfront programming costs, paying districts for unpaid credits is anticipated to be fiscally neutral and possibly provide cost savings. If a student graduates early, the district can receive funding for unpaid credits; however, the amount is capped at 1/2 FTE for students that graduate one semester early and one FTE for students who graduate at least one year early.

Additionally, school districts are currently required to advise students of available acceleration options; the bill expands the required advisement to include the options of early and accelerated graduation, which may have an insignificant fiscal impact.

End-of-Course (EOC) Assessments

The bill adds a fourth administration of the Algebra I EOC assessment which is currently administered three times a year. DOE anticipates an increased annual cost of \$750,000, which includes the costs of administration and those associated with increasing the number of test questions in the Algebra I test bank, to maintain test security.

A school district may incur upfront costs in order to report 1/6 FTE for those students who pass an EOC assessment without being enrolled in the course; however, excluding upfront costs, the fiscal impact is anticipated to be neutral since the total FTE a school district can earn is capped at one FTE.

Due to the performance funding established by the bill, a school district may receive less funding for courses with EOC assessments, beginning in the fourth year of administration, if the school district has students that do not pass the EOC assessment. DOE estimates substantial upfront costs for both the DOE and districts to update their databases to properly capture and report these changes.<sup>87</sup> Excluding upfront costs, the fiscal impact is anticipated to be neutral since the total FTE a school district can earn is capped at one FTE.

Advanced Placement

According to the DOE, over 77 percent of students with grade point averages below 3.0 fail to earn college credit on AP examinations.<sup>88</sup> By establishing eligibility requirements for student participation in AP courses, including minimum grade point averages, a cost savings of more than \$9.1 million may be achieved. In 2010, 171,238 students enrolled in AP courses. These students took 276,290 examinations; however, only 41 percent earned a grade of 3 or higher, and were eligible to earn college

<sup>86</sup> Email, Florida Department of Education, Legislative Affairs (Jan. 19, 2012).

<sup>87</sup> Email, Florida Department of Education, Legislative Affairs (Jan. 17, 2012).

<sup>88</sup> Email, Florida Department of Education, Legislative Affairs (Jan. 10, 2012).

credit for the course.<sup>89</sup> The cost of an AP examination in 2012 is \$87.<sup>90</sup> Using the same number of tests administered in 2010, as a conservative estimate, the total cost of administering AP examinations in 2012 could cost over \$24 million.

#### Dual Enrollment

The bill requires district school superintendents and FCS institution presidents to establish a dual enrollment articulation agreement. Minimal cost savings may result from the elimination of some of the requirements included in district interinstitutional articulation agreements which are not required in the establishment of the dual enrollment articulation agreements.

Since 2009, the DOE has had an electronic system for submission of articulation agreements; however, slight modifications are anticipated to be completed in-house with little fiscal impact.<sup>91</sup>

FCS institutions may incur a minimal, indeterminate fiscal impact due to the required home education articulation agreement. However, the institutions are currently providing home education student most of the items required by the agreement.

#### Bright Futures Scholarship Program

By establishing a Bright Futures Scholarship Program application deadline of August 31 for students that will graduate from high school midyear, the DOE anticipates minimal fiscal impacts since the review of the application will be incorporated into the standard review of eighth semester applicants.<sup>92</sup>

### 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:

The bill requires the State Board to adopt rules establishing minimum scores on a statewide assessment administered pursuant to s. 1008.22, F.S., or on a common placement test administered pursuant to s. 1008.30, F.S., that a student must achieve to demonstrate readiness for college-level coursework.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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<sup>89</sup> Florida Department of Education presentation to KINS on Nov. 1, 2011.

<sup>90</sup> College Board, *Exam Fees and Reductions: 2012*, <http://apcentral.collegeboard.com/apc/public/exam/calendar/190165.html> (last visited Jan. 19, 2012).

<sup>91</sup> Email, Florida Department of Education, Office of Articulation (Jan. 19, 2012).

<sup>92</sup> Telephone interview with Director, State Scholarship and Grant Programs, Office of Student Financial Assistance, Florida Department of Education (Jan. 11, 2012).



#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 31, 2012, the PreK-12 Appropriations Subcommittee adopted three amendments and reported the bill favorably as a committee substitute. The amendments:

- Clarified that the FTE for courses requiring passage of EOC assessments shall continue to be reported under the normal hours of instruction requirement in s. 1011.61(1)(a)1., F.S. until the 4th year of administration of the EOC.
- Clarified that in order for a district to earn unpaid credits a student must be enrolled full-time.
- Clarified that a student must have been enrolled in the district in which the early graduation is reported for payment of unpaid credits for at least two years in order to receive payment for all unpaid credits (limited to 1/2 FTE for six months early and one FTE for a year early). If the student has been enrolled in the district reporting the early graduation for less than two years, the district must share a proportionate amount of the funding earned for unpaid credits with the prior district(s) of enrollment that provided the instruction for the unpaid credits.

## APPENDIX A

The following are explanations of acceleration options that may be offered by a school district:

- *Whole Grade Promotion*: Allows a student to be placed one or more grade levels ahead of chronological-age peers.<sup>93</sup>
- *Midyear Promotion*: Allows a student to be promoted one or more grade levels during a school year if the student demonstrates proficiency on the appropriate curriculum standards.<sup>94</sup>
- *Subject-Matter Acceleration*: Allows a student to be placed in classes with older peers for a part of the day in one or more content areas. Subject-matter acceleration may be accomplished by the student either physically moving to a higher-level class for instruction or using higher-level curricular or study materials.<sup>95</sup>
- *Virtual instruction in higher grade level subjects*: Provides a student additional access to subject-matter acceleration.
- *Enrichment Programs*: Provide more depth, breadth, or complexity to the presentation of curriculum content than the general curriculum.<sup>96</sup>
- *Flexible Grouping*: Allows students with similar needs, abilities, or interests to be grouped together.<sup>97</sup>
- *Combined Classes*: Allows a younger student to interact academically and socially with older peers, for example a fourth- and fifth-grade split room. Combined classes do not necessarily result in advanced grade placement.<sup>98</sup>
- *Self-Paced Instruction*: Allows a student to proceed through learning and instructional activities at a self-selected pace. A student has control over all pacing decisions in self paced instruction.<sup>99</sup>
- *Curriculum Compacting*: Reduces the amount of introductory activities, drills, and practice time in the student's instruction. The time gained may be used for more advanced content instruction or to participate in enrichment activities. Curriculum compacting does not necessarily result in advanced grade placement.<sup>100</sup>
- *Telescoping Curriculum*: Reduces the amount of instructional time. For example, a student could complete a one-year course in one semester, or three years of middle school in two years. Telescoping curriculum differs from curriculum compacting in that time saved from telescoping always results in advanced grade placement. Telescoping curriculum is planned to fit a precise time schedule.<sup>101</sup>
- *Credit Acceleration Program (CAP)*: Allows a middle or high school student to earn high school credit in a course that requires a statewide, standardized end-of-course (EOC) assessment if the student attains a score indicating satisfactory performance on the corresponding assessment. A student does not have to be enrolled in or complete the course to take the EOC assessment during the regular administration of the assessment.<sup>102</sup>
- *IB Programs*: Provide an intensive curriculum established by the International Baccalaureate Organization for students aged 3 to 19 years that help develop intellectual, personal, emotional, and social skills.<sup>103</sup> Students are eligible to receive postsecondary credit if they obtain a passing score on the corresponding IB examination.<sup>104</sup>
- *Cambridge Programs*: Provide a curriculum established by the University of Cambridge International Examinations for students aged 5 to 19 years. Examples of the programs include the Advanced International Certificate of Education (AICE) and the International General Certificate of Secondary Education.<sup>105</sup> Students are eligible to receive postsecondary credit if they obtain a passing score on the corresponding AICE examination.<sup>106</sup>
- *Advanced Placement Program*: A nationwide program administered by the College Board consisting of more than 30 college-level courses and examinations. Students are eligible to receive postsecondary credit if they obtain a passing score on the corresponding AP examination.<sup>107</sup>
- *Dual Enrollment Program*: Allows eligible secondary students to enroll in a postsecondary course that provides credit towards high school graduation and a postsecondary degree or certificate.<sup>108</sup>

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<sup>93</sup> See The Templeton National Report on Acceleration, *A Nation Deceived: How Schools Hold Back America's Brightest Students*, Vol. 2, at 5-6 (Oct. 2004), available at [http://www.accelerationinstitute.org/Nation\\_Deceived/Get\\_Report.aspx](http://www.accelerationinstitute.org/Nation_Deceived/Get_Report.aspx), (last visited Jan. 19, 2012), [hereinafter *A Nation Deceived*].

<sup>94</sup> See s. 1008.25(7)(b)4., F.S.

<sup>95</sup> *A Nation Deceived*, supra note 93.

<sup>96</sup> Florida Department of Education, *Acceleration of Gifted Students* (2003), available at [http://www.fldoe.org/ESE/pdf/gift\\_accel.pdf](http://www.fldoe.org/ESE/pdf/gift_accel.pdf).

<sup>97</sup> See email, Florida Department of Education, Office of Legislative Affairs (Sept. 30, 2011).

<sup>98</sup> See *A Nation Deceived*, supra note 93.

<sup>99</sup> *A Nation Deceived*, supra note 93.

<sup>100</sup> *A Nation Deceived*, supra note 93.

<sup>101</sup> *A Nation Deceived*, supra note 93.

<sup>102</sup> Section 1003.4295(3), F.S.

<sup>103</sup> International Baccalaureate Organization, About the International Baccalaureate, <http://www.ibo.org/general/who.cfm> (last visited Jan. 19, 2012).

<sup>104</sup> Section 1007.27(8), F.S.

<sup>105</sup> University of Cambridge International Examinations, Cambridge AICE Diploma Overview,

<http://www.cie.org.uk/qualifications/academic/uppersec/aice> (last visited Jan. 19, 2012).

<sup>106</sup> Section 1007.27(9), F.S.

<sup>107</sup> Section 1007.27(6), F.S.; Florida Department of Education, *Advanced Placement Program*, available at

<http://www.fldoe.org/flbpso/otherpubschopt/advplacement.asp> (last visited Jan. 19, 2012).

<sup>108</sup> Section 1007.271(1), F.S.



1 A bill to be entitled  
 2 An act relating to postsecondary education; amending  
 3 s. 1001.02, F.S.; providing duties of the State Board  
 4 of Education relating to the 5-year plan for  
 5 postsecondary enrollment and the strategic plan that  
 6 specifies goals and objectives for public schools and  
 7 Florida College System institutions; providing powers  
 8 and duties of the state board relating to the  
 9 evaluation of Florida College System presidents,  
 10 institution service delivery areas, and credit hour  
 11 requirements; amending s. 1001.03, F.S.; requiring the  
 12 state board to adopt a unified state plan for STEM and  
 13 STEM-related programs; amending s. 1001.64, F.S.;  
 14 conforming provisions; amending s. 1001.706, F.S.;  
 15 providing requirements for the strategic plan and the  
 16 accountability plan specifying goals and objectives  
 17 for the State University System and its institutions  
 18 developed by the Board of Governors; authorizing the  
 19 Board of Governors to waive or modify certain fee  
 20 requirements; providing requirements relating to state  
 21 university presidential selection and reappointment;  
 22 authorizing the Board of Governors to revoke or modify  
 23 certain powers or duties; amending s. 1005.22, F.S.;  
 24 requiring the Commission for Independent Education to  
 25 collect certain student data; amending s. 1007.25,  
 26 F.S.; revising provisions relating to general  
 27 education course and associate and baccalaureate  
 28 degree requirements; amending s. 1007.33, F.S.;

29 requiring a Florida College System institution  
 30 offering a baccalaureate degree program to report its  
 31 status using specified performance and compliance  
 32 standards; deleting provisions relating to exemption  
 33 from state board approval of certain baccalaureate  
 34 degree programs; amending s. 1008.46, F.S.; conforming  
 35 provisions; providing an effective date.  
 36

37 Be It Enacted by the Legislature of the State of Florida:  
 38

39 Section 1. Paragraph (v) of subsection (2), paragraph (a)  
 40 of subsection (3), paragraphs (b) and (d) of subsection (4), and  
 41 paragraph (d) of subsection (6) of section 1001.02, Florida  
 42 Statutes, are amended to read:

43 1001.02 General powers of State Board of Education.—

44 (2) The State Board of Education has the following duties:

45 (v) To develop, in conjunction with the Board of  
 46 Governors, and periodically review for adjustment, a coordinated  
 47 5-year plan for postsecondary enrollment, identifying enrollment  
 48 and graduation expectations by baccalaureate degree program, and  
 49 annually submit the plan to the Legislature as part of its  
 50 legislative budget request.

51 (3) (a) The State Board of Education shall adopt a  
 52 strategic plan that specifies goals and objectives for the  
 53 state's public schools and Florida College System institutions.  
 54 The plan shall be formulated in conjunction with plans of the  
 55 Board of Governors in order to provide for the roles of the  
 56 universities and Florida College System institutions to be

57 coordinated to best meet state needs and reflect cost-effective  
 58 use of state resources. The strategic plan must clarify the  
 59 mission statements of each Florida College System institution  
 60 and the system as a whole and identify degree programs,  
 61 including baccalaureate degree programs, to be offered at each  
 62 Florida College System institution in accordance with the  
 63 objectives provided in this subsection and the coordinated 5-  
 64 year plan pursuant to paragraph (2)(v). The strategic plan must  
 65 cover a period of 5 years, with modification of the program  
 66 lists after 2 years. Development of each 5-year plan must be  
 67 coordinated with and initiated after completion of the master  
 68 plan. The strategic plans must specifically include programs and  
 69 procedures for responding to the educational needs of teachers  
 70 and students in the public schools of this state and consider  
 71 reports and recommendations of the Higher Education Coordinating  
 72 Council pursuant to s. 1004.015 and the Articulation  
 73 Coordinating Committee pursuant to s. 1007.01. The state board  
 74 shall submit a report to the President of the Senate and the  
 75 Speaker of the House of Representatives upon modification of the  
 76 plan and as part of its legislative budget request.

77 (4) The State Board of Education shall:

78 (b) Specify, by rule, procedures to be used by the Florida  
 79 College System institution boards of trustees in the annual  
 80 evaluations of presidents and review the evaluations of  
 81 presidents by the boards of trustees, including the extent to  
 82 which presidents serve both institutional and system goals. The  
 83 state board may require boards of trustees to consider  
 84 recommendations of the Chancellor of the Florida College System

85 when evaluating the performance of the president.

86 (d) Establish criteria for making recommendations for  
 87 modifying district boundary lines for Florida College System  
 88 institutions, including criteria for service delivery areas of  
 89 institutions designated as state colleges.

90 (6) The State Board of Education shall prescribe minimum  
 91 standards, definitions, and guidelines for Florida College  
 92 System institutions that will ensure the quality of education,  
 93 coordination among the Florida College System institutions and  
 94 state universities, and efficient progress toward accomplishing  
 95 the Florida College System institution mission. At a minimum,  
 96 these rules must address:

97 (d) Provisions for curriculum development, graduation  
 98 requirements, college calendars, and program service areas.  
 99 These provisions must include rules that:

100 1. Provide for the award of an associate in arts degree to  
 101 a student who successfully completes 60 semester credit hours at  
 102 the Florida College System institution.

103 2. Require all of the credits accepted for the associate  
 104 in arts degree to be in the statewide course numbering system as  
 105 credits toward a baccalaureate degree offered by a state  
 106 university or a Florida College System institution.

107 3. Require no more than 30 ~~36~~ semester credit hours in  
 108 general education courses in the subject areas of communication,  
 109 mathematics, social sciences, humanities, and natural sciences.

110  
 111 The rules should encourage Florida College System institutions  
 112 to enter into agreements with state universities that allow

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113 Florida College System institution students to complete upper-  
 114 division-level courses at a Florida College System institution.  
 115 An agreement may provide for concurrent enrollment at the  
 116 Florida College System institution and the state university and  
 117 may authorize the Florida College System institution to offer an  
 118 upper-division-level course or distance learning.

119 Section 2. Subsection (16) is added to section 1001.03,  
 120 Florida Statutes, to read:

121 1001.03 Specific powers of State Board of Education.—

122 (16) UNIFIED PLAN FOR STEM.—The State Board of Education  
 123 shall adopt a definition of STEM and STEM-related programs. The  
 124 state board shall also, in consultation with the Board of  
 125 Governors and the Department of Economic Opportunity, adopt a  
 126 unified state plan to improve K-20 education and prepare  
 127 students for high-skill, high-wage, and high-demand employment  
 128 in STEM and STEM-related fields. The unified plan must advise  
 129 school districts, Florida College System institutions, and state  
 130 universities to inform, advise, and recruit students into STEM  
 131 and STEM-related programs and employment opportunities.

132 Section 3. Paragraph (d) of subsection (8) of section  
 133 1001.64, Florida Statutes, is amended to read:

134 1001.64 Florida College System institution boards of  
 135 trustees; powers and duties.—

136 (8) Each board of trustees has authority for policies  
 137 related to students, enrollment of students, student records,  
 138 student activities, financial assistance, and other student  
 139 services.

140 (d) Boards of trustees shall identify their general



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141 education ~~core~~ curricula, ~~which shall include courses required~~  
 142 ~~by the State Board of Education,~~ pursuant to the provisions of  
 143 s. 1007.25(6).

144 Section 4. Paragraph (c) of subsection (4), subsection  
 145 (5), paragraph (a) of subsection (6), and subsections (9) and  
 146 (10) of section 1001.706, Florida Statutes, are amended, and  
 147 subsection (11) is added to that section, to read:

148 1001.706 Powers and duties of the Board of Governors.—

149 (4) POWERS AND DUTIES RELATING TO FINANCE.—

150 (c) The Board of Governors, or the board's designee, shall  
 151 establish tuition and fees pursuant to ss. 1009.24 and 1009.26,  
 152 unless otherwise provided in law.

153 (5) POWERS AND DUTIES RELATING TO ACCOUNTABILITY.—

154 (a) The Legislature intends that the Board of Governors  
 155 shall align the missions of each constituent university with the  
 156 academic success of its students; the national reputation of its  
 157 faculty and its academic and research programs; the quantity of  
 158 externally generated research, patents, and licenses; and the  
 159 strategic and accountability plans required in paragraphs (b)  
 160 and (c). The mission alignment and strategic plan shall consider  
 161 peer institutions at the constituent universities. The mission  
 162 alignment and strategic plan shall acknowledge that universities  
 163 that have a national and international impact have the greatest  
 164 capacity to promote the state's economic development through:  
 165 new discoveries, patents, licenses, and technologies that  
 166 generate state businesses of global importance; research  
 167 achievements through external grants and contracts that are  
 168 comparable to nationally recognized and ranked universities; the

169 creation of a resource rich academic environment that attracts  
 170 high-technology business and venture capital to the state; and  
 171 this generation's finest minds focusing on solving the state's  
 172 economic, social, environmental, and legal problems in the areas  
 173 of life sciences, water, sustainability, energy, and health  
 174 care. A nationally recognized and ranked university that has a  
 175 global perspective and impact shall be afforded the opportunity  
 176 to enable and protect the university's competitiveness on the  
 177 global stage in fair competition with other institutions of  
 178 other states in the highest Carnegie Classification.

179 (b) The Board of Governors shall develop a strategic plan  
 180 specifying goals and objectives for the State University System  
 181 and each constituent university, including each university's  
 182 contribution to overall system goals and objectives. The  
 183 strategic plan must:

184 1. Include performance metrics and standards common for  
 185 all institutions and metrics and standards unique to  
 186 institutions depending on institutional core missions,  
 187 including, but not limited to, student admission requirements,  
 188 graduation, retention, employment, continuing education,  
 189 licensure passage, excess hours, student loan burden and default  
 190 rates, faculty awards, state and federal research funding,  
 191 patents, licenses and royalties, intellectual property, startup  
 192 companies, annual giving, endowments, and well-known, highly  
 193 respected national rankings for institutional and program  
 194 achievements.

195 2. Consider reports and recommendations of the Higher  
 196 Education Coordinating Council pursuant to s. 1004.015 and the

197 Articulation Coordinating Committee pursuant to s. 1007.01.

198 3. Include student enrollment and performance data  
 199 delineated by traditional, online, or distance learning  
 200 instruction.

201 (c) The Board of Governors shall develop an accountability  
 202 plan for the State University System and each constituent  
 203 university. The accountability plan must address institutional  
 204 and system achievement of goals and objectives specified in the  
 205 strategic plan adopted pursuant to paragraph (b) and must be  
 206 submitted as part of its legislative budget request.

207 (d) The Board of Governors shall maintain an effective  
 208 information system to provide accurate, timely, and cost-  
 209 effective information about each university. The board shall  
 210 continue to collect and maintain, at a minimum, management  
 211 information as such information existed on June 30, 2002.

212 (e) If the Board of Governors of the State University  
 213 System determines that a state university board of trustees is  
 214 unwilling or unable to address substantiated allegations made by  
 215 any person relating to waste, fraud, or financial mismanagement  
 216 within the state university, the Office of the Inspector General  
 217 shall investigate the allegations.

218 (f) The Board of Governors may consider waiving its  
 219 regulations and waive or modify tuition differential use  
 220 requirements under s. 1009.24(16)(a). If not currently  
 221 authorized, the Board of Governors may request from the  
 222 Legislature waiver or modification of specific statutory  
 223 requirements, including percentages and dollar amount  
 224 limitations in s. 1009.24, in order to reduce barriers and

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225 support attainment of goals identified in institutional plans as  
 226 necessary for advancing system and unique institutional  
 227 priorities. Regulatory or statutory flexibilities authorized or  
 228 sought by the Board of Governors pursuant to this paragraph must  
 229 be disclosed in the accountability plan prepared and submitted  
 230 pursuant to paragraph (c).

231 (6) POWERS AND DUTIES RELATING TO PERSONNEL.—

232 (a) The Board of Governors, or the board's designee, shall  
 233 establish the personnel program for all employees of a state  
 234 university. The Board of Governors shall confirm the  
 235 presidential selection and reappointment by a university board  
 236 of trustees as a means of acknowledging that system cooperation  
 237 is expected. The recommendation of the Chancellor of the State  
 238 University System must be considered by a university board of  
 239 trustees when fulfilling requirements of this paragraph.

240 (9) COOPERATION WITH OTHER BOARDS.—The Board of Governors  
 241 shall implement a plan for working on a regular basis with the  
 242 State Board of Education, the Commission for Independent  
 243 Education, the Higher Education Coordinating Council, the  
 244 Articulation Coordinating Committee, the university boards of  
 245 trustees, representatives of the Florida College System  
 246 institution boards of trustees, representatives of the private  
 247 colleges and universities, and representatives of the district  
 248 school boards to achieve a seamless education system.

249 (10) PROHIBITION.—The Board of Governors is prohibited  
 250 from assessing any fee on state universities, unless  
 251 specifically authorized by law.

252 (11) AUTHORIZATION TO REVOKE OR MODIFY.—The Board of

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253 Governors may revoke or modify the scope of any power or duty it  
 254 has delegated.

255 Section 5. Paragraph (i) of subsection (1) of section  
 256 1005.22, Florida Statutes, is amended to read:

257 1005.22 Powers and duties of commission.—

258 (1) The commission shall:

259 (i) Serve as a central agency for collecting and  
 260 distributing current information regarding institutions licensed  
 261 by the commission. The commission shall collect, and all  
 262 institutions licensed by the commission shall report, student-  
 263 level data for each student who receives state funds. At a  
 264 minimum, data must be reported annually and include retention  
 265 rates, transfer rates, completion rates, graduation rates,  
 266 employment and placement rates, and earnings of graduates.

267 Section 6. Subsections (3), (6), (7), (8), and (10) of  
 268 section 1007.25, Florida Statutes, are amended to read:

269 1007.25 General education courses; common prerequisites;  
 270 other degree requirements.—

271 (3) The Chancellor of the Florida College System and the  
 272 Chancellor of the State University System ~~department~~ shall  
 273 jointly appoint faculty committees to identify those courses  
 274 that meet general education requirements, including statewide  
 275 core course requirements, within the subject areas of  
 276 communication, mathematics, social sciences, humanities, and  
 277 natural sciences. General education core course requirements  
 278 shall consist of 15 to 18 semester credit hours that contain  
 279 high-level academic and critical thinking skills and  
 280 competencies that students must demonstrate to successfully

281 complete the courses. Each general education course ~~The courses~~  
 282 shall be identified by its ~~their~~ statewide course ~~code~~ number.  
 283 All public postsecondary educational institutions shall offer  
 284 and accept core ~~these~~ general education courses.

285 (6) ~~The boards of trustees of the Florida College System~~  
 286 ~~institutions shall identify their core curricula, which shall~~  
 287 ~~include courses required by the State Board of Education. The~~  
 288 ~~boards of trustees of the state universities shall identify~~  
 289 ~~their core curricula, which shall include courses required by~~  
 290 ~~the Board of Governors.~~ The universities and Florida College  
 291 System institutions shall work with their school districts to  
 292 assure that high school curricula coordinate with the general  
 293 education ~~core~~ curricula and to prepare students for college-  
 294 level work. General education ~~Core~~ curricula for associate in  
 295 arts programs shall be identified by each institution ~~adopted in~~  
 296 ~~rule by the State Board of Education~~ and shall include 30 ~~36~~  
 297 semester hours ~~of general education courses~~ in the subject areas  
 298 of communication, mathematics, social sciences, humanities, and  
 299 natural sciences.

300 (7) An associate in arts degree shall require no more than  
 301 60 semester hours of college credit, including 30 ~~36~~ semester  
 302 hours of general education coursework and 8 semester hours of  
 303 college credit in one foreign language if two high school  
 304 credits in one foreign language were not earned in high school.  
 305 Except for college-preparatory coursework required pursuant to  
 306 s. 1008.30, all required coursework shall count toward the  
 307 associate in arts degree or the baccalaureate degree.

308 (8) A baccalaureate degree program shall require no more

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309 than 120 semester hours of college credit, including 30 ~~36~~  
 310 semester hours of general education coursework, unless prior  
 311 approval has been granted by the Board of Governors for  
 312 baccalaureate degree programs offered by state universities and  
 313 by the State Board of Education for baccalaureate degree  
 314 programs offered by Florida College System institutions.

315 (10) Students at state universities may request associate  
 316 in arts certificates if they have successfully completed the  
 317 minimum requirements for the degree of associate in arts (A.A.).  
 318 The university must grant the student an associate in arts  
 319 degree if the student has successfully completed minimum  
 320 requirements for college-level communication and computation  
 321 skills adopted by the State Board of Education and 60 academic  
 322 semester hours or the equivalent within a degree program area,  
 323 with 30 ~~36~~ semester hours in general education courses in the  
 324 subject areas of communication, mathematics, social sciences,  
 325 humanities, and natural sciences, consistent with the general  
 326 education requirements specified in the articulation agreement  
 327 pursuant to s. 1007.23.

328 Section 7. Subsections (5), (6), and (7) of section  
 329 1007.33, Florida Statutes, are amended to read:

330 1007.33 Site-determined baccalaureate degree access.—

331 (5) The approval process for baccalaureate degree programs  
 332 shall require:

333 (a) Each Florida College System institution to submit a  
 334 notice of its intent to propose a baccalaureate degree program  
 335 to the Division of Florida Colleges at least 100 days before the  
 336 submission of its proposal under paragraph (d). The notice must

337 include a brief description of the program, independently  
 338 determined ~~the~~ workforce demand and unmet need for graduates of  
 339 the program, the geographic region to be served, and an  
 340 estimated timeframe for implementation. Notices of intent may be  
 341 submitted by a Florida College System institution at any time  
 342 throughout the year.

343 (b) The Division of Florida Colleges to forward the notice  
 344 of intent within 10 business days after receiving such notice to  
 345 the Chancellor of the State University System, the President of  
 346 the Independent Colleges and Universities of Florida, and the  
 347 Executive Director of the Council for Independent Education.  
 348 State universities shall have 60 days following receipt of the  
 349 notice by the Chancellor of the State University System to  
 350 submit objections to the proposed new program or submit an  
 351 alternative proposal to offer the baccalaureate degree program.  
 352 If a proposal from a state university is not received within the  
 353 60-day period, the State Board of Education shall provide  
 354 regionally accredited private colleges and universities 30 days  
 355 to submit objections to the proposed new program or submit an  
 356 alternative proposal. Alternative proposals shall be submitted  
 357 to the Division of Florida Colleges and must be considered by  
 358 the State Board of Education in making its decision to approve  
 359 or deny a Florida College System institution's proposal.

360 (c) An alternative proposal submitted by a state  
 361 university or private college or university to adequately  
 362 address:

363 1. The extent to which the workforce demand and unmet need  
 364 described in the notice of intent will be met.



365 2. The extent to which students will be able to complete  
 366 the degree in the geographic region proposed to be served by the  
 367 Florida College System institution.

368 3. The level of financial commitment of the college or  
 369 university to the development, implementation, and maintenance  
 370 of the specified degree program, including timelines.

371 4. The extent to which faculty at both the Florida College  
 372 System institution and the college or university will  
 373 collaborate in the development and offering of the curriculum.

374 5. The ability of the Florida College System institution  
 375 and the college or university to develop and approve the  
 376 curriculum for the specified degree program within 6 months  
 377 after an agreement between the Florida College System  
 378 institution and the college or university is signed.

379 6. The extent to which the student may incur additional  
 380 costs above what the student would expect to incur if the  
 381 program were offered by the Florida College System institution.

382 (d) Each proposal submitted by a Florida College System  
 383 institution to, at a minimum, include:

384 1. A description of the planning process and timeline for  
 385 implementation.

386 2. An independent analysis of workforce demand and unmet  
 387 need for graduates of the program on a district, regional, or  
 388 statewide basis, as appropriate.

389 3. Identification of the facilities, equipment, and  
 390 library and academic resources that will be used to deliver the  
 391 program.

392 4. The program cost analysis of creating a new

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393 baccalaureate degree when compared to alternative proposals and  
 394 other program delivery options.

395 5. The program's admission requirements, academic content,  
 396 curriculum, faculty credentials, student-to-teacher ratios, and  
 397 accreditation plan.

398 6. The program's enrollment projections and funding  
 399 requirements.

400 7. A plan of action if the program is terminated.

401 (e) The Division of Florida Colleges to review the  
 402 proposal, notify the Florida College System institution of any  
 403 deficiencies in writing within 30 days following receipt of the  
 404 proposal, and provide the Florida College System institution  
 405 with an opportunity to correct the deficiencies. Within 45 days  
 406 following receipt of a completed proposal by the Division of  
 407 Florida Colleges, the Commissioner of Education shall recommend  
 408 approval or disapproval of the proposal to the State Board of  
 409 Education. The State Board of Education shall consider such  
 410 recommendation, the proposal, and any alternative proposals at  
 411 its next meeting. If the State Board of Education disapproves  
 412 the Florida College System institution's proposal, it shall  
 413 provide the Florida College System institution with written  
 414 reasons for that determination.

415 (f) The Florida College System institution to obtain from  
 416 the Commission on Colleges of the Southern Association of  
 417 Colleges and Schools accreditation as a baccalaureate-degree-  
 418 granting institution if approved by the State Board of Education  
 419 to offer its first baccalaureate degree program.

420 (g) The Florida College System institution to notify the

421 Commission on Colleges of the Southern Association of Colleges  
 422 and Schools of subsequent degree programs that are approved by  
 423 the State Board of Education and to comply with the  
 424 association's required substantive change protocols for  
 425 accreditation purposes.

426 (h) The Florida College System institution to annually,  
 427 and upon request of the State Board of Education, the  
 428 Commissioner of Education, the Chancellor of the Florida College  
 429 System, or the Legislature, report its status using the  
 430 following performance and compliance indicators:

- 431 1. Obtaining and maintaining appropriate Southern  
 432 Association of Colleges and Schools accreditation;
- 433 2. Maintaining qualified faculty and institutional  
 434 resources;
- 435 3. Maintaining enrollment projections in previously  
 436 approved programs;
- 437 4. Managing fiscal resources appropriately;
- 438 5. Complying with the primary mission and responsibility  
 439 requirements in subsections (2) and (3);
- 440 6. Timely submitting the institution's annual performance  
 441 accountability report; and
- 442 7. Other indicators of success, including program  
 443 completers, placements, and surveys of students and employers.

444  
 445 The State Board of Education, upon review of the performance and  
 446 compliance indicators, may require a Florida College System  
 447 institution's board of trustees to modify or terminate a  
 448 baccalaureate degree program authorized under this section.

449 ~~(6) (a) Beginning July 1, 2010, and each subsequent July 1,~~  
 450 ~~the Division of Florida Colleges may accept and review~~  
 451 ~~applications from a Florida College System institution to obtain~~  
 452 ~~an exemption from the State Board of Education's approval for~~  
 453 ~~subsequent degrees as required in subsection (5), if the Florida~~  
 454 ~~College System institution is accredited by the Commission on~~  
 455 ~~Colleges of the Southern Association of Colleges and Schools as~~  
 456 ~~a baccalaureate degree-granting institution and has been~~  
 457 ~~offering baccalaureate degree programs for 3 or more years. The~~  
 458 ~~division shall develop criteria for determining eligibility for~~  
 459 ~~an exemption based upon demonstrated compliance with the~~  
 460 ~~requirements for baccalaureate degrees, primary mission, and~~  
 461 ~~fiscal, including, but not limited to:~~

- 462 ~~1. Obtaining and maintaining appropriate SACS~~  
 463 ~~accreditation;~~
- 464 ~~2. The maintenance of qualified faculty and institutional~~  
 465 ~~resources;~~
- 466 ~~3. The maintenance of enrollment projections in previously~~  
 467 ~~approved programs;~~
- 468 ~~4. The appropriate management of fiscal resources;~~
- 469 ~~5. Compliance with the primary mission and responsibility~~  
 470 ~~requirements in subsections (2) and (3);~~
- 471 ~~6. The timely submission of the institution's annual~~  
 472 ~~performance accountability report; and~~
- 473 ~~7. Other indicators of success such as program completers,~~  
 474 ~~placements, and surveys of students and employers.~~

475 ~~(b) If the Florida College System institution has~~  
 476 ~~demonstrated satisfactory progress in fulfilling the eligibility~~

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477 ~~criteria in this subsection, the Division of Florida Colleges~~  
 478 ~~may recommend to the State Board of Education that the~~  
 479 ~~institution be exempt from the requirement in subsection (5) for~~  
 480 ~~approval of future baccalaureate degree programs. The State~~  
 481 ~~Board of Education shall review the division's recommendation~~  
 482 ~~and determine if an exemption is warranted. If the State Board~~  
 483 ~~of Education approves the application, the Florida College~~  
 484 ~~System institution is exempt from subsequent program approval~~  
 485 ~~under subsection (5) and such authority is delegated to the~~  
 486 ~~Florida College System institution board of trustees. If the~~  
 487 ~~State Board of Education disapproves of the Florida College~~  
 488 ~~System institution's request for an exemption, the college shall~~  
 489 ~~continue to be subject to the State Board of Education's~~  
 490 ~~approval of subsequent baccalaureate degree programs.~~

491 ~~(c) Prior to developing or proposing a new baccalaureate~~  
 492 ~~degree program, all Florida College System institutions,~~  
 493 ~~regardless of an exemption from subsection (5), shall:~~

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

497 ~~2. Send documentation, data, and other information from~~  
 498 ~~the inter-institutional discussions regarding program need,~~  
 499 ~~demand, and impact required in subparagraph 1. to the college's~~  
 500 ~~board of trustees, the Division of Florida Colleges, and the~~  
 501 ~~Chancellor of the State University System.~~

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

505  
 506 ~~The Division of Florida Colleges shall use the documentation,~~  
 507 ~~data, and other information required in this subsection,~~  
 508 ~~including information from the Chancellor of the State~~  
 509 ~~University System, in its compliance review.~~

510 ~~(d) The board of trustees of a Florida College System~~  
 511 ~~institution that is exempt from subsection (5) must submit newly~~  
 512 ~~approved programs to the Division of Florida Colleges and SACS~~  
 513 ~~within 30 days after approval.~~

514 ~~(e) Within 30 days after receiving the approved~~  
 515 ~~baccalaureate degree program, the Division of Florida Colleges~~  
 516 ~~shall conduct a compliance review and notify the college if the~~  
 517 ~~proposal meets the criteria for implementation based upon the~~  
 518 ~~criteria in paragraphs (5) (d) and (6) (c). If the program fails~~  
 519 ~~to meet the criteria for implementation as determined by the~~  
 520 ~~Division of Florida Colleges, the college may not proceed with~~  
 521 ~~implementation of the program until the State Board of Education~~  
 522 ~~reviews the proposal and the compliance materials and gives its~~  
 523 ~~final approval of the program.~~

524 ~~(6) (7)~~ The State Board of Education shall adopt rules to  
 525 prescribe format and content requirements and submission  
 526 procedures for notices of intent, proposals, and alternative  
 527 proposals, and compliance reviews under subsection (5).

528 Section 8. Section 1008.46, Florida Statutes, is amended  
 529 to read:

530 1008.46 State university accountability process.—It is the  
 531 intent of the Legislature that an accountability process be  
 532 implemented that provides for the systematic, ongoing evaluation

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533 of quality and effectiveness of state universities. It is  
 534 further the intent of the Legislature that this accountability  
 535 process monitor performance at the system level in each of the  
 536 major areas of instruction, research, and public service, while  
 537 recognizing the differing missions of each of the state  
 538 universities. The accountability process shall provide for the  
 539 adoption of systemwide performance standards and performance  
 540 goals for each standard identified through a collaborative  
 541 effort involving state universities, the Board of Governors, the  
 542 Legislature, and the Governor's Office, consistent with  
 543 requirements specified in s. 1001.706. These standards and goals  
 544 shall be consistent with s. 216.011(1) to maintain congruity  
 545 with the performance-based budgeting process. This process  
 546 requires that university accountability reports reflect measures  
 547 defined through performance-based budgeting. The performance-  
 548 based budgeting measures must also reflect the elements of  
 549 teaching, research, and service inherent in the missions of the  
 550 state universities.

551 (1) By December 31 of each year, the Board of Governors  
 552 shall submit an annual accountability report providing  
 553 information on the implementation of performance standards,  
 554 actions taken to improve university achievement of performance  
 555 goals, the achievement of performance goals during the prior  
 556 year, and initiatives to be undertaken during the next year. The  
 557 accountability reports shall be designed in consultation with  
 558 the Governor's Office, the Office of Program Policy Analysis and  
 559 Government Accountability, and the Legislature.

560 (2) The Board of Governors shall recommend in the annual

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561 | accountability report any appropriate modifications to this  
562 | section.

563 |       Section 9. This act shall take effect upon becoming a law.


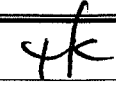


## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB EDC 12-03 Postsecondary Education

**SPONSOR(S):** Education Committee

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

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

### SUMMARY ANALYSIS

The bill amends provisions of law relating to the State University System (SUS), the Florida College System (FCS), general education requirements, and various other provisions.

The bill requires that the strategic plan adopted by the BOG address, not only goals and objectives for the State University System (SUS) and each constituent university, but also each university's contribution to overall system goals and objectives. The BOG may consider waiving its regulations to reduce barriers and support attainment of goals identified in institutional plans as necessary for advancing system and unique institutional priorities.

The bill directs the State Board of Education (SBE) to clarify the mission statements of each Florida College System (FCS) institution and its role within the system as a whole. More specifically, the bill requires the SBE to identify the role of each institution in baccalaureate degree production and establish criteria for service delivery areas of "state colleges."

The bill requires a FCS institution notice of intent to propose a baccalaureate degree program, to include independently-determined workforce demand and unmet need data. The bill repeals the unused provision allowing FCS institutions to bypass SBE approval for additional baccalaureate degrees and requires each FCS institution offering baccalaureate degree programs to annually report its status using specific performance and compliance indicators.

The bill revises provisions related to general education by reducing the requirement from 36 semester credit hours to 30 semester credit hours for an associate or baccalaureate degree. The bill also requires an additional 8 semester hours of college credit in one foreign language for an associate in arts degree, if two high school credits in one foreign language are not earned in high school. The Chancellor of the FCS and the Chancellor of the SUS are required to jointly convene faculty committees to identify 15 to 18 statewide general education core course requirements.

The bill requires the SBE, in consultation with the Board of Governors (BOG) and the Department of Economic Opportunity (DEO) to adopt a unified state plan for Science, Technology, Engineering, and Mathematics (STEM).

The bill requires boards of trustees of FCS institutions and boards of trustees at state universities to consider the extent to which presidents are serving both institutional and system goals when evaluating the performance of presidents.

The Commission for Independent Education (CIE) is required to collect, and institutions under its jurisdiction to report, student-level data for all respective institutions that receive state funds.

The bill shall take effect upon becoming law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **State Board of Education**

###### Present Situation

As set forth in the Florida Constitution, the State Board of Education (SBE) is responsible for supervising the system of free public education as provided by law and serves as the head of the Department of Education (DOE).<sup>1</sup> The SBE is the chief implementing and coordinating body of public education in Florida, except for the State University System (SUS).<sup>2</sup> The SBE, in conjunction with the Board of Governors (BOG), is required to develop and periodically review a 5-year plan for postsecondary enrollment and annually submit the plan to the Legislature.

Current law requires SBE to adopt a strategic plan that specifies goals and objectives for the state's public schools and Florida College System institutions (FCS). The plan must be formulated in conjunction with plans of the BOG in order to provide for the roles of the universities and FCS institutions to be coordinated to best meet state needs and reflect cost-effective use of state resources.<sup>3</sup>

The SBE is required to specify, by rule, procedures for use by FCS institution boards of trustees in annual evaluation of college presidents and must review the evaluation of each president by their board of trustees.

###### Effect of Proposed Changes

In order to strengthen the oversight function of the SBE in relation to the FCS institutions, the bill requires the SBE to:

- Clarify the mission statements of each FCS institution and the system as a whole as part of its strategic plan. The strategic plan must consider reports and recommendations of the Higher Education Coordinating Council (HECC) and the Articulation Coordinating Committee (ACC).
- In conjunction with the Board of Governors, identify enrollment and graduation expectations by baccalaureate degree program as part of the required 5-year plan to be submitted to the Legislature as part of its legislative budget request (LBR).
- Adopt a definition of STEM and STEM-related programs pursuant to recommendations of the HECC.
- Adopt a unified state plan to improve K-20 education and prepare students for high skill, high wage, and high-demand employment in STEM and STEM-related fields in conjunction with the BOG and the DEO. The unified plan must advise school districts, FCS institutions, and state universities of requirements to inform, advise, and recruit students into said programs and employment opportunities.
- Include procedures used to evaluate the extent to which college presidents serve both institutional and system goals. The SBE may also require boards of trustees to consider recommendations of the chancellor when evaluating the performance of the president.

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<sup>1</sup> Art. IX, s. 2, Fla Const.

<sup>2</sup> Section 1001.02, F.S.

<sup>3</sup> Section 1001.02(3)(a), F.S.

## **State University System Accountability**

### Present Situation

Current law requires an accountability process be implemented that provides for the systematic, ongoing evaluation of quality and effectiveness of state universities. This accountability process is required to monitor performance at the system level in each of the major areas of instruction, research, and public service, while recognizing the differing mission of each of the state universities. The accountability process provides for the adoption of system-wide performance standards and performance goals for each standard identified through a collaborative effort involving state universities, the BOG, the Legislature, and the Governor's office. These standards and goals must be consistent with and maintain congruity with the performance based budgeting process. This process requires that university accountability reports reflect measures defined through performance based budgeting. The performance based budgeting measures must also reflect the elements of teaching, research, and service inherent in the mission of the state universities.<sup>4</sup>

The BOG must submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives, providing information on the SUS's performance on quality and effectiveness indicators in the areas of instruction, research, and public service.<sup>5</sup> Each board of trustees must submit to the BOG a university annual report that describes progress regarding articulated goals and summarizes other key data, with accompanying narrative to highlight or explain information. Each university's annual report must include, at a minimum, the following:

- An executive summary that captures key performance data required by the BOG;
- The university's mission and vision;
- Summary information on budgets, enrollments, and other core resources;
- Reports on undergraduate education, graduate education, and research and economic development, as appropriate to the university's mission, including narrative to provide context and perspective on key goals, data trends, and university performance on metrics specified by the BOG; and
- Any other specific performance information requested by the BOG in advance of the submission deadline.<sup>6</sup>

### Effect of Proposed Changes

In order to ensure that the BOG and all institutions within the SUS System are working together to provide the best quality education, the bill requires the BOG to include as part of the strategic plan each university's contribution to overall system goals and objectives. The strategic plan must include performance metrics and standards common for all institutions, and metrics and standards unique to institutions depending on institutional core missions, including:

- Student admission requirements
- Graduation
- Retention
- Employment
- Continuing education
- Licensure passage
- Excess hours
- Student loan burden and default rates
- Faculty awards
- State and federal research funding

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<sup>4</sup> Section 1008.46, F.S.

<sup>5</sup> Section 1008.46(1) F.S.

<sup>6</sup> Florida Board of Governors Regulation 2.002; *see also* s. 1008.46, F.S.

- Patents
- Licenses and royalties
- Intellectual property
- Start-up companies
- Annual giving
- Endowments
- Well-known, highly-respected national rankings for institutional and program achievements.

The bill also requires the BOG strategic plan to consider reports and recommendations of the Higher Education Coordinating Council and the Articulation Coordinating Committee and include student enrollment and performance data, delineated by traditional, online, or distance learning credits.

## **Tuition differential**

### Present Situation

Current law and BOG regulation authorizes each university board of trustees to establish a tuition differential for undergraduate courses upon approval from the BOG. The combination of base tuition and tuition differential cannot increase more than 15 percent over the prior year, or exceed the national average. Seventy percent of the revenues from the tuition differential must be expended for the purposes of enhancing undergraduate education. The remaining 30 percent of the tuition differential must be used to provide financial assistance to undergraduate students who exhibit financial need. Universities that have met the entire tuition and fee costs of all students who exhibit financial need are allowed to expend the excess portion of the 30 percent in the same manner as required for the other seventy percent of the tuition differential revenues.<sup>7</sup>

### Effect of Proposed Changes

In order to reduce barriers and support attainment of goals identified in institutional plans necessary for advancing system and unique institutional priorities, the bill provides flexibility to the BOG to waive regulations and request from the Legislature a waiver or modification of specific statutory requirements, including percentage and dollar amount limitations relating to state university student fees. Regulatory or statutory flexibilities authorized or sought by the BOG related to waiving or modifying tuition differential must be disclosed in the accountability plan.

## **The Commission for Independent Education**

### Present Situation

The Commission for Independent Education (CIE) regulates independent postsecondary education institutions, which are postsecondary educational institutions that operate or make application to operate in Florida and that are not provided, operated, and supported by the State of Florida, its political subdivisions, or the Federal Government.<sup>8</sup> For these institutions, the CIE is responsible for matters concerning licensure, consumer protection, and program improvement.<sup>9</sup> Independent postsecondary educational institutions may not grant diplomas or degrees until they have been licensed by the CIE.<sup>10</sup>

Currently, the CIE has jurisdiction over 377 degree-granting independent postsecondary educational institutions. During FY 2010-11, these institutions enrolled 264,491 students and reported 55,651 graduates. The CIE also has jurisdiction over 567 non-degree-granting independent postsecondary

<sup>7</sup> Section 1009.24(16(a), F.S.; Florida board of Governors Regulation 7.001 (Feb. 20, 2012).

<sup>8</sup> Section 1005.02(11), F.S.

<sup>9</sup> Section 1005.21(2), F.S.

<sup>10</sup> Section 1005.21(1), F.S.

educational institutions. During 2010-11 these institutions enrolled 73,500 students and reported 44,531 graduates.<sup>11</sup>

The CIE requires all licensed institutions to report enrollment, graduation, and placement outcomes using CIE Annual Data Collection forms<sup>12</sup> and institutions may volunteer to participate in the Florida Education and Training Placement Information Program (FETPIP), which is required for those licensed institutions that are Workforce Development training providers.<sup>13</sup>

### Effect of Proposed Changes

The bill requires the CIE to collect, and institutions licensed by the commission to report, student-level data for all respective institutions that receive state funds. Data must be reported annually and include retention rates, transfer rates, completion rates, graduation rates, employment and placement rates, and earning of graduates.

## **General Education**

### Present Situation

To meet regional accreditation requirements, each institution must require in each undergraduate degree program, "the successful completion of a general education component at the collegiate level that (1) is a substantial component of each undergraduate degree, (2) ensures breadth of knowledge, and (3) is based on a coherent rationale."<sup>14</sup> For baccalaureate degree programs, the general education component constitutes a minimum of thirty semester hours or the equivalent. These credit hours must be drawn from and include at least one course from each of the following areas: humanities/fine arts, social/behavioral sciences, and natural science/mathematics.<sup>15</sup>

The DOE is required to identify courses that meet general education requirements within the subject areas of communication, mathematics, social sciences, humanities, and natural sciences. Such courses must be identified by their statewide course code number using the statewide course numbering system. All public postsecondary educational institutions are required to accept the general education courses.<sup>16</sup> In Florida, the general education component for undergraduate degree programs constitutes a total of thirty-six semester hours.<sup>17</sup>

### Effect of Proposed Changes

In order to provide institutions the flexibility in developing a solid foundation for students entering their undergraduate programs, the bill revises provisions related to general education by requiring 30 semester credit hours of general education rather than 36 semester credit hours. The bill also requires students to complete 8 semester hours of college credit in one foreign language for an associate in arts degree if two credits in one foreign language in high school are not met. The SBE and BOG are required to jointly convene faculty committees to identify statewide general education core course requirements.

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<sup>11</sup> Florida Department of Education, Commission for Independent Education, <http://www.fldoe.org/cie> (last visited Feb. 21, 2012).

<sup>12</sup> Florida Department of Education, Commission for Independent Education, Chapter 6E, Florida Administrative Code, [http://www.fldoe.org/cie/pdf/chapter6E\\_rules.pdf](http://www.fldoe.org/cie/pdf/chapter6E_rules.pdf) (last visited Feb. 21, 2012).

<sup>13</sup> Section 1008.39, F.S.

<sup>14</sup> Southern Association of Colleges and Schools Commission on Colleges, *Foundations for Quality Enhancement*, at 19 (2012), available at <http://sacscoc.org/principles.asp> (last visited Feb. 15, 2012).

<sup>15</sup> Southern Association of Colleges and Schools Commission on Colleges, *Foundations for Quality Enhancement*, at 19 (2012), available at <http://sacscoc.org/principles.asp> (last visited Feb. 15, 2012).

<sup>16</sup> Section 1007.25 (3), F.S.

<sup>17</sup> Rule 6A-10.024, F.A.C.

## Site-determined baccalaureate degree access<sup>18</sup>

### Present Situation

Section 1007.33(6), F.S., effective July 1, 2010, allows eligible FCS institutions to apply for an exemption from the existing State Board of Education approval process for offering subsequent baccalaureate degree programs. To qualify for this exemption, and bypass State Board of Education approval for new baccalaureate degrees, a FCS institution must have received a Level 2 accreditation from the Southern Association of Colleges and Schools and must have been a baccalaureate-degree-granting institution that has offered baccalaureate degree programs at their institution for 3 years or more. 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. Broward College and Palm Beach College will become eligible later in 2012.<sup>19</sup>

### Effect of Proposed Changes

The bill removes section 1007.33 (6), F.S., governing the approval process for subsequent 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. To date no colleges have applied for the exemption.<sup>20</sup> The repeal of this section does not prohibit FCS institutions from adding baccalaureate degree programs for which a need is demonstrated and approval is received by the SBE.

The bill also includes as part of the approval process for baccalaureate degree programs that the FCS institutions annually and upon the request of the State Board of Education, Commissioner of Education, Chancellor of the Florida College System, or Legislature, report on the status using the following performance and compliance indicators:

- Obtaining and maintaining appropriate Southern Association of Colleges and Schools accreditation;
- Maintaining qualified faculty and institutional resources;
- Maintaining enrollment projections in previously approved programs;
- Managing fiscal resources appropriately;
- Complying with primary mission and responsibility requirements;
- Submitting the institution's annual performance accountability report timely;
- Other indicators of success, including program completers, placements, and survey of students and employers.

The bill authorizes the SBE, upon review of the performance and compliance indicators, to require a Florida College System institution's board of trustees, to modify or terminate a baccalaureate degree program.

## B. SECTION DIRECTORY:

**Section 1.** Amends s. 1001.02, F.S., relating to general powers of State Board of Education; to provide duties of the State Board of Education relating to the 5-year plan for postsecondary enrollment and the strategic plan that specifies goals and objectives for public schools and Florida College System institutions; provide powers and duties of the state board relating to the evaluation of Florida College System presidents, institution service delivery areas, and credit hour requirements.

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<sup>18</sup> Section 1007.33(6), F.S.

<sup>19</sup> Staff of the Florida Department of Education, Division of Florida Colleges, *Agency Legislative Bill Analysis for SB 492* (2012).

<sup>20</sup> Telephone Conversation with Department of Education Staff (March 18, 2011).

**Section 2.** Amends s. 1001.03, F.S., relating to specific powers of State Board of Education; to require the state board to adopt a unified state plan for STEM and STEM-related programs.

**Section 3.** Amends s. 1001.64, F.S., relating to Florida College System institution boards of trustees; powers and duties; to conform provisions.

**Section 4.** Amends s. 1001.706, F.S., relating to powers and duties of the Board of Governors; to provide requirements for the strategic plan and the accountability plan specifying goals and objectives for the State University System and its institutions developed by the Board of Governors; authorize the Board of Governors to waive or modify certain fee requirements; provide requirements relating to state university presidential selection and reappointment; authorize the Board of Governors to revoke or modify certain powers or duties.

**Section 5.** Amends s. 1005.22, F.S., relating to powers and duties of commission; to require the Commission for Independent Education to collect certain student data.

**Section 6.** Amends s. 1007.25, F.S., relating to general education courses; common prerequisites; other degree requirements; to revise provisions relating to general education course and associate and baccalaureate degree requirements.

**Section 7.** Amends 1007.33, F.S., relating to site-determined baccalaureate degree access; to require a Florida College System institution offering a baccalaureate degree program to report its status using specified performance and compliance standards; delete provisions relating to exemption from state board approval of certain baccalaureate degree programs.

**Section 8.** Amends 1008.46, F.S., relating to state university accountability process; to conform provisions.

**Section 9.** Provides an effective date of upon becoming law.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

### **D. FISCAL COMMENTS:**

None.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

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

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

None.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

Not applicable.