

Education Committee

Monday, February 13, 2012

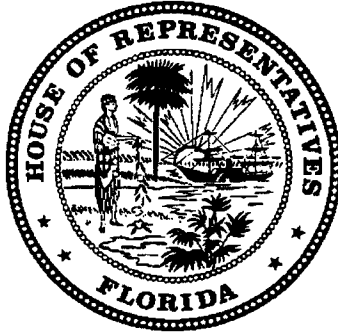
11:30 am – 1:30 pm

Reed Hall – 102 HOB

Meeting Packet

**Dean Cannon
Speaker**

**William Proctor
Chair**



AGENDA

Education Committee
Monday, February 13, 2012
11:30 am – 1:30 pm
Reed Hall – 102 HOB

- I. Call to Order/Roll Call
- II. Opening Remarks
- III. Consideration of the following bill(s):
 - CS/SB 98 Education by Judiciary, Siplin
 - CS/HB 291 Youth Athletes by Health & Human Services Access Subcommittee, Renuart
 - HB 7085 Voluntary Prekindergarten Education Program by K-20 Competitiveness Subcommittee, Fresen
- IV. Closing Remarks and Adjournment

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1 A bill to be entitled
2 An act relating to education; authorizing a district
3 school board to adopt a policy that allows an
4 inspirational message to be delivered by students at a
5 student assembly; providing policy requirements;
6 providing purpose; providing an effective date.

7
8 Be It Enacted by the Legislature of the State of Florida:

9
10 Section 1. (1) A district school board may adopt a policy
11 allowing an inspirational message to be delivered by students at
12 a student assembly. The policy must provide that:

13 (a) Students who are responsible for organizing any
14 student-led portion of a student assembly shall:

15 1. Have sole discretion in determining whether an
16 inspirational message is to be delivered.

17 2. Choose the student volunteers who will deliver an
18 inspirational message. The student volunteers shall be solely
19 responsible for the preparation and content of the inspirational
20 message.

21 (b) School district personnel may not:

22 1. Participate in, or otherwise influence, the
23 determination of whether an inspirational message is to be
24 delivered or select the student volunteers who will deliver the
25 inspirational message.

26 2. Monitor or otherwise review the content of a student
27 volunteer's inspirational message.

28 (2) The purpose of this section is to provide students with
29 the opportunity for formal or ceremonious observance of an

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30 occasion or event.

31 Section 2. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/SB 98 Education
SPONSOR(S): Judiciary, Siplin and others
TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Education Committee		Muller EHM	Klebacha TK
2) Judiciary Committee			

SUMMARY ANALYSIS

The bill authorizes, but does not require, a district school board to adopt a policy allowing an inspirational message to be delivered by students at a student assembly.

The bill requires that if adopted, the policy provide that students who are responsible for organizing any student-led portion of a student assembly must have sole discretion in determining whether an inspirational message is to be delivered. Additionally, those students must choose the student volunteer or volunteers who will deliver the inspirational message. The student volunteer must be solely responsible for the preparation and content of the inspirational message.

If adopted, the policy must provide that school district personnel may not participate in, or otherwise influence, the determination of whether an inspirational message is to be delivered or select the student volunteer who will deliver the message. School district personnel may not monitor or otherwise review the content of a student volunteer's inspirational message.

Some school districts have already authorized policies permitting student speech at assemblies. The bill resembles a policy which has withstood scrutiny when considered by a federal court.

The bill has no fiscal impact.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation:

Florida law currently allows district school boards to provide secular instruction including, but not limited to, an objective study of the Bible and religion.¹ Additionally, the district school board may provide a brief period, not to exceed 2 minutes, to be set aside at the start of each school day or each school week for the purpose of silent prayer or meditation.²

Florida law also requires the Department of Education to distribute the guidelines on "Religious Expression in Public Schools," published by the United States Department of Education.³ The guidelines must be provided to all district school board members, district school superintendents, school principals, and teachers.⁴ These guidelines provide information regarding, for example, student prayer, moments of silence, student speech at student assemblies and extracurricular events,⁵ and prayer at graduation.⁶

Florida law does not, however, specifically address student speech at student assemblies. Even though the law is silent on this issue, a school district currently has the authority to adopt a policy regarding student speech at student assemblies, provided the policy aligns with constitutional standards and national guidelines referenced above. Duval County School Board, for example, adopted such a policy, which is discussed below.

Effect of Proposed Changes:

The bill authorizes, but does not require, a district school board to adopt a policy allowing an inspirational message to be delivered by students at a student assembly. The bill does not restrict the application of these policies to a particular grade level. Accordingly, a school district could adopt a policy which pertains only to student assemblies at secondary schools. However, a policy that applies to K-12 would generally have limited impact on elementary schools in that student assemblies do not occur as often in the elementary grades and to the extent they do, elementary school students are less frequently held responsible for organizing any student-led portion of such an assembly, as is required by the bill.

If a district school board chooses to adopt a policy allowing a student inspirational message at a student assembly, then the policy must provide that the students who are responsible for organizing any student-led portion of that assembly have sole discretion to determine whether an inspirational message is to be delivered. Additionally, those students must choose the student volunteer or volunteers who will deliver the inspirational message. The student volunteer is solely responsible for the preparation and content of the inspirational message.

¹ Section 1003.45(1), F.S.

² Section 1003.45(2), F.S.

³ Section 1002.205, F.S.; United States Department of Education, *Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools*, available at http://www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html.

⁴ Section 1002.205, F.S.

⁵ Section 1003.4505, F.S., provides for protection of school speech. More particularly, "[d]istrict school boards, administrative personnel, and instructional personnel are prohibited from taking affirmative action ... that infringes or waives the rights or freedoms afforded to instructional personnel, school staff, or students by the First Amendment to the United States Constitution, in the absence of the express written consent of any individual whose constitutional rights would be impacted by such infringement or waiver."

⁶ United States Department of Education, *Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools*, available at http://www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html.

The bill also stands silent regarding the types of assemblies (e.g., commencement exercises, sporting events) at which an inspirational message could be delivered, leaving that determination to each school district. Accordingly, a school district could narrow its policy to address specific types of assemblies.

If adopted, the policy must prohibit school district personnel from participating in, or otherwise influencing, the determination of whether an inspirational message is to be delivered or select the student volunteer who will deliver the message. School district personnel may not monitor or otherwise review the content of a student volunteer's inspirational message.

The stated purpose of the bill is to provide students with the opportunity for formal or ceremonious observance of an occasion or event.

Some school districts have adopted policies regarding student speech as assemblies. For example, Duval County School Board adopted such a policy in 2001.⁷ The Duval County policy allowed a brief opening and/or closing message at high school graduation exercises, at the discretion of the graduating senior class. The policy also explained that the message was to be given by a student volunteer, in the graduating senior class, chosen by the graduating senior class as a whole. Additionally, Duval County's policy required that if the graduating senior class chose to use a message, the content of the message was to be prepared by the student volunteer, and was not to be monitored or otherwise reviewed by Duval County School Board, its officers or employees. The stated purpose of the policy was to allow students to direct their own graduation message without monitoring or review by school officials.⁸

The Duval County policy was challenged as a violation of the "Establishment Clause."⁹ The Establishment Clause, part of the First Amendment to the United States Constitution, provides that government shall make no law respecting the establishment of religion.¹⁰ Similarly, the Florida Constitution provides "[t]here shall be no law respecting the establishment of religion or prohibiting or penalizing the free exercise thereof."¹¹

The Eleventh Circuit Court held¹² that Duval County's policy was facially constitutional and did not violate the Establishment Clause because the policy was neutral on its face, in that it contained no religious terms or references;¹³ prohibited oversight by district personnel;¹⁴ and, stated a secular purpose for such messages.¹⁵ Like the Duval County policy, the bill contains no overtly religious

⁷ *Adler v. Duval County School Bd.*, 250 F.3d 1330, 1332 (11th Cir. 2001).

⁸ *Id.*

⁹ *Id.*

¹⁰ U.S. Const., Amend. 1. The Fourteenth Amendment imposes the substantive limitations of the First Amendment on the legislative power of the States and their political subdivisions. *See Everson v. Board of Education*, 330 U.S. 1 (1947). The First Amendment governs the relationship between religion and government in the United States. The First Amendment not only prevents the government from establishing religion but also protects privately initiated religious expression and activities from government interference and discrimination.

¹¹ Art. I, s. 3, Fla. Const.

¹² *Adler*, 250 F.3d at 1332-33.

¹³ The United States Supreme Court has stated that certain language, such as the term "invocation," describes "an appeal for divine assistance," and has held a policy permitting this type of student speech unconstitutional. The Court reasoned that a policy containing such language encouraged the selection of a religious message. *Santa Fe Independent School District v. Doe*, 530 U.S. 290, 306-07. (In *Santa Fe*, the Court considered a school district policy which permitted "a brief invocation or message.")

¹⁴ The United States Supreme Court in *Santa Fe* stated that involvement by school district personnel indicates affirmative state-sponsorship of religion. *Santa Fe*, 530 U.S. at 306-10. Also, the court in *Adler* stated: "[U]nder Duval County's policy school officials have no power to direct that a message (let alone a religious message) be delivered at graduation ceremonies, or control in any way the content of any message actually to be delivered. The School Board also does not suggest in any way, let alone require, that the graduating class consider religious or any other criteria in deciding whether to have a student message or in selecting a particular student speaker. ... [T]he content of the message shall be prepared by the student speaker alone and no one else. ... There, on the face of the policy itself, the students unambiguously understand that any student message is utterly divorced from any state sponsorship." *Adler*, 250 F.3d at 1332-33.

¹⁵ The policy in *Santa Fe* stated that the purpose of the message was "to solemnize the event." The United States Supreme Court reasoned that a religious message is the most obvious method of solemnizing an event. *Santa Fe*, 530 U.S. at 306.

language; contains an explicit prohibition on oversight by school district personnel; and states a secular purpose for such messages; i.e., "to provide student with the opportunity for formal or ceremonious observance of an occasion or event."

B. SECTION DIRECTORY:

Section 1. Creates an unnumbered section of law that allows a district school board to adopt a policy allowing a student-led inspirational message at a student assembly, provides policy requirements, and provides the purpose of the bill.

Section 3. 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

Not applicable.

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

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

Section 1. Paragraphs (e), (f), and (g) are added to
 subsection (2) of section 943.0438, Florida Statutes, to read:

943.0438 Athletic coaches for independent sanctioning
 authorities.—

(2) An independent sanctioning authority shall:

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

(f) Adopt bylaws or policies that require the parent or
 guardian of a youth who is participating in athletic competition
 or who is a candidate for an athletic team to sign and return an
 informed consent that explains the nature and risk of concussion

29 and head injury, including the risk of continuing to play after
 30 concussion or head injury, each year before participating in
 31 athletic competition or engaging in any practice, tryout,
 32 workout, or other physical activity associated with the youth's
 33 candidacy for an athletic team.

34 (g) Adopt bylaws or policies that require each youth
 35 athlete who is suspected of sustaining a concussion or head
 36 injury in a practice or competition to be immediately removed
 37 from the activity. A youth athlete who has been removed from an
 38 activity may not return to practice or competition until the
 39 youth submits to the athletic coach a written medical clearance
 40 to return stating that the youth athlete no longer exhibits
 41 signs, symptoms, or behaviors consistent with a concussion or
 42 other head injury. Medical clearance must be authorized by the
 43 appropriate health care practitioner trained in the diagnosis,
 44 evaluation, and management of concussions as defined by the
 45 Sports Medicine Advisory Committee of the Florida High School
 46 Athletic Association.

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

49 1006.20 Athletics in public K-12 schools.—

50 (2) ADOPTION OF BYLAWS, POLICIES, OR GUIDELINES.—

51 (e) The organization shall adopt guidelines to educate
 52 athletic coaches, officials, administrators, and student
 53 athletes and their parents of the nature and risk of concussion
 54 and head injury.

55 (f) The organization shall adopt bylaws or policies that
 56 require the parent of a student who is participating in

57 | interscholastic athletic competition or who is a candidate for
58 | an interscholastic athletic team to sign and return an informed
59 | consent that explains the nature and risk of concussion and head
60 | injury, including the risk of continuing to play after
61 | concussion or head injury, each year before participating in
62 | interscholastic athletic competition or engaging in any
63 | practice, tryout, workout, or other physical activity associated
64 | with the student's candidacy for an interscholastic athletic
65 | team.

66 | (g) The organization shall adopt bylaws or policies that
67 | require each student athlete who is suspected of sustaining a
68 | concussion or head injury in a practice or competition to be
69 | immediately removed from the activity. A student athlete who has
70 | been removed from an activity may not return to practice or
71 | competition until the student submits to the school a written
72 | medical clearance to return stating that the student athlete no
73 | longer exhibits signs, symptoms, or behaviors consistent with a
74 | concussion or other head injury. Medical clearance must be
75 | authorized by the appropriate health care practitioner trained
76 | in the diagnosis, evaluation, and management of concussions as
77 | defined by the Sports Medicine Advisory Committee of the Florida
78 | High School Athletic Association.



79 | Section 3. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 291 Youth Athletes

SPONSOR(S): Health & Human Services Access Subcommittee; Renuart and others

TIED BILLS: IDEN./SIM. **BILLS:** SB 256, SB 948

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) K-20 Innovation Subcommittee	11 Y, 1 N	Valenstein	Sherry
2) Health & Human Services Access Subcommittee	13 Y, 1 N, As CS	Holt	Schoolfield
3) Education Committee		Valenstein 	Klebacha 

SUMMARY ANALYSIS

The bill requires independent sanctioning authorities and the Florida High School Athletic Association (FHSAA) to adopt guidelines to educate athletic coaches, officials, administrators, and athletes and their parents or guardians of the nature and risk of concussions and head injuries.

Independent sanctioning authorities and the FHSAA must also adopt bylaws or policies that require the parent or guardian of an athlete who is participating in an athletic competition or is a candidate for an athletic team to sign an informed consent that explains the nature and risk of concussions and head injuries. The bill requires the signed informed consent to be returned before the athlete participates in any practice, tryout, workout, athletic competition, or other physical activity associated with candidacy for an athletic team.

Additionally, the bill requires the independent sanctioning authority and the FHSAA to adopt bylaws or policies that require each athlete who is suspected of sustaining a concussion or head injury to be removed from practice or competition until the athlete receives written medical clearance to return from an appropriate health care practitioner trained in the diagnosis, evaluation, and management of concussions, as defined by the Sports Medicine Advisory Committee of the FHSAA.

The bill has no fiscal impact on the state or local governments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Overview

Youth Athletics: Current law defines a youth athletic independent sanctioning authority as a private, nongovernmental entity that organizes, operates or coordinates a youth athletic team in Florida that includes one or more minors and is not affiliated with a private school. As an example, Pop Warner is an independent sanctioning authority in Florida.¹ An independent sanctioning authority is currently required to conduct background screenings on each current and prospective athletic coach, disqualify an athletic coach that fails the background screening, and provide written notice to a disqualified athletic coach.²

Public High School Athletics: The Florida High School Athletic Association (FSHAA) is designated as the governing nonprofit organization of athletics in Florida public schools.³ Currently, the FHSAA is required to adopt bylaws to establish eligibility requirements for all students, prohibit recruiting students for athletic purposes, and require students participating in athletics to satisfactorily pass an annual medical evaluation.⁴

Over 30 states⁵ across the country have passed legislation that targets youth sports-related head injuries.⁶ Additionally, the "Protecting Student Athletes from Concussions Act of 2011" has been filed in the U.S. House of Representatives. This legislation requires each state educational agency to issue regulations establishing minimum requirements for the prevention and treatment of concussions, in order to be eligible to receive funds under the Elementary and Secondary Education Act. The bill is currently in the Subcommittee on Early Childhood, Elementary, and Secondary Education.⁷

The Centers for Disease Control and Prevention (CDC) define a concussion as a type of traumatic brain injury that is caused by a bump, blow, or jolt to the head that can change the way the brain normally works. Concussions may also occur from a blow to the body that causes the head to move rapidly back and forth. Additional damage can occur from repeat concussions. A repeat concussion occurs when a person receives another concussion before the brain recovers from the first. Repeat concussions can slow recovery or increase the likelihood of having long-term problems, and in rare cases, can result in brain swelling, permanent brain damage, and even death.⁸ In an effort to raise awareness and provide education to coaches, athletes and parents of athletes, the CDC has created free tools that provide important information on preventing, recognizing, and responding to a concussion.⁹

As an example of one independent athletic sanctioning authority, Pop Warner adopted a rule related to concussions on September 30, 2010. The rule requires a player who is suspected of having a

¹ See Pop Warner Little Scholars, Inc., <http://www.popwarner.com/aboutus/pop.asp> (last visited Feb. 6, 2012).

² Section 943.0438, F.S.

³ While high school is typically defined to include grades 9 through 12, for the purposes of athletics in public K-12 schools, high school is defined to include grades 6-12. Section 1006.20(1), F.S.

⁴ Section 1006.20(1) and (2), F.S.

⁵ The states with laws that target youth sports-related head injuries are: Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Massachusetts, Minnesota, Missouri, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Texas, Utah, Vermont, Virginia, Washington, and Wyoming. National Conference of State Legislatures, *Traumatic Brain Injury Legislation*, Nov. 2011, available at www.ncsl.org/default.aspx?tabid=18687 (last visited Feb. 6, 2012).

⁶ *Id.*

⁷ Protecting Student Athletes from Concussions Act of 2011, H.R. 469, 112th Cong. (2011).

⁸ Centers for Disease Control and Prevention, *Heads Up Concussion in Youth Sports, A Fact Sheet for Coaches*, available at http://www.cdc.gov/concussion/pdf/coaches_Engl.pdf.

⁹ Centers for Disease Control and Prevention, *Concussion in Sports*, Centers for Disease Control and Prevention, available at <http://www.cdc.gov/concussion/sports/index.html> (last visited Feb. 6, 2012).

concussion to be removed from practice, play, or competition. Pursuant to the rule, a player may not return to Pop Warner activities until the player has been evaluated by a currently licensed medical professional trained in the evaluation and management of concussions and receives written clearance to return to play from that licensed practitioner.¹⁰

On June 14, 2011, the FHSAA Board of Directors addressed the issue of safety of student athletes by adopting the *FHSAA Concussion Action Plan*, which is incorporated into the *2011-12 FHSAA Handbook*; adding language to the *Consent and Release from Liability Certificate* about the potential dangers of concussions and head and neck injuries in interscholastic athletics; and adding a required course, *Concussion in Sports – What You Need to Know*, for all FHSAA-member school head coaches and paid coaches.¹¹ The FHSAA currently requires any athlete who exhibits signs, symptoms, or behaviors consistent with a concussion (such as loss of consciousness, headache, dizziness, confusion, or balance problems) to be immediately removed from the contest or practice and not allowed to return to play until cleared by an appropriate health-care professional.¹² An appropriate health-care professional is defined as a “licensed physician (MD, as per Chapter 458, Florida Statutes), a licensed osteopathic physician (DO, as per Chapter 459, Florida Statutes), a licensed physicians assistant [sic] under the supervision of a MD/DO (as per Chapters [sic] 458.347 and 459.022, Florida Statutes) or a health care professional trained in the management of concussions.”¹³

Additionally, the FHSAA has established the following “Return to Play Criteria”:

- (1) No athlete should return to play or practice on the same day of a suspected concussion. “When in doubt, sit them out!”
- (2) Any athlete suspected of having a concussion should be evaluated by an appropriate health-care professional that day or within 24 hours.
- (3) Any athlete with a suspected concussion should be medically cleared by an appropriate health-care professional prior to resuming participation in any practice or competition.
- (4) After medical clearance, return to play should follow a step-wise protocol with provisions for delayed return to play based upon the return of any signs or symptoms.¹⁴

Effect of Proposed Changes

Youth Athletics: The bill requires an independent sanctioning authority to adopt guidelines to educate athletic coaches, officials, administrators, and youth athletes and their parents or guardians relating to the nature and risk of concussions and head injuries. An independent sanctioning authority must also adopt bylaws or policies that require the parent or guardian of a youth athlete who is participating in an athletic competition, or is a candidate for an athletic team, to sign an informed consent that explains the nature and risk of concussions and head injuries. The bill requires the signed informed consent to be returned before the youth athlete participates in any practice, tryout, workout, athletic competition, or other physical activity associated with candidacy for an athletic team. By requiring those involved in athletics to receive information related to concussions and head injuries, the bill may reduce the long-term problems associated with repeat concussions.

Additionally, the bill requires the independent sanctioning authority to adopt bylaws or policies that require a youth athlete who is suspected of sustaining a concussion or head injury to be removed from practice or competition, until the youth receives written medical clearance to return from an appropriate health care practitioner trained in the diagnosis, evaluation, and management of concussions, as

¹⁰ Pop Warner Little Scholars Official Rules 2010, Part III, Art. 17, s. 2, available at <http://www.popwarner.com/admin/pdf/2010%20Concussion%20Rule%20Change.pdf>.

¹¹ Florida Department of Education Analysis of SB 256, Oct. 11, 2011, at 4; see also Official Minutes of Board of Directors Meeting, June 13-14, 2011, Florida High School Athletic Association, available at http://www.fhsaa.org/sites/default/files/orig_uploads/gov/board/2010-11/minutes/june.pdf.

¹² Administrative Policy 6.1.3.1 Concussions, Florida High School Athletic Association, available at http://www.fhsaa.org/sites/default/files/attachments/2010/09/16/node-235/administrative_policies_77pgs.pdf.

¹³ Administrative Procedure 1.2.1 Appropriate Health-Care Professional Defined, Florida High School Athletic Association, available at http://www.fhsaa.org/sites/default/files/attachments/2010/09/16/node-235/administrative_procedures_126pgs.pdf.

¹⁴ Administrative Procedure 1.2.3 Return to Play Criteria, Florida High School Athletic Association, available at http://www.fhsaa.org/sites/default/files/attachments/2010/09/16/node-235/administrative_procedures_126pgs.pdf.

defined by the Sports Medicine Advisory Committee of the FHSAA. The medical clearance must state that the youth athlete no longer exhibits signs, symptoms, or behaviors consistent with a concussion or other head injury. By requiring written medical clearance for a youth athlete to return to play, the bill will help prevent further injury by preventing a youth athlete from returning to play before his or her brain has recovered.

Public High School Athletics: The bill requires the FHSAA to adopt additional guidelines and bylaws or policies related to concussions and head injuries. The FHSAA must adopt guidelines to educate athletic coaches, officials, administrators, and student athletes and their parents relating to the nature and risk of concussions and head injuries. The FHSAA must also adopt either bylaws or policies that require the parent of a student athlete who is a candidate for an interscholastic athletic team or is participating in an interscholastic athletic competition to sign an informed consent that explains the nature and risk of concussions and head injuries. The bill requires the signed informed consent to be returned before the student athlete participates in any practice, tryout, workout, athletic competition, or other physical activity associated with candidacy for an athletic team. By requiring those involved in athletics to receive information related to concussions and head injuries, the bill may reduce the number of concussions and long-term problems associated with repeat concussions.

Additionally, the bill requires the FHSAA to adopt bylaws or policies that require each student athlete who is suspected of sustaining a concussion or head injury to be removed from practice or competition, until the student athlete submits a written medical clearance to return from an appropriate health care practitioner trained in the diagnosis, evaluation, and management of concussions, as defined by the Sports Medicine Advisory Committee of the FHSAA to the school. The medical clearance must state that the student athlete no longer exhibits signs, symptoms, or behaviors consistent with a concussion or other head injury. By requiring written medical clearance for a student to return to play, the bill will help prevent further injury by preventing a student from returning to play before his or her brain has recovered.

The bill requires both independent sanctioning authorities and the FHSAA to adopt policies relating to concussions and head injuries. The FHSAA and some independent sanctioning authorities have already adopted policies that comply with the bill, but for those independent sanctioning authorities that have not yet adopted policies, the entities will be able to use policies and information made available through the CDC and other sources, as the bill only requires the entities to adopt policies, not develop them.

B. SECTION DIRECTORY:

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

Section 2. Amends s. 1006.20, F.S., relating to athletics in public K-12 schools; to require the Florida High School Athletic Association to adopt guidelines, bylaws, and policies relating to the nature and risk of concussion and head injury in student athletes; requiring informed consent for participation in practice or competition; to require removal from practice or competition under certain circumstances and written medical clearance to return.

Section 3. 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. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 30, 2012, the Health & Human Services Access Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all:

- Clarifies that only the parents of athletes need to be educated;
- Amends the catchline to include the "adoption of policies or guidelines";
- Amends the term health care "professional" to "practitioner"; and
- Requires the youth athlete to submit written medical clearance to the athletic coach and student athletes to submit written medical clearance to the school.

This analysis is drafted to the committee substitute.

1 A bill to be entitled
 2 An act relating to the Voluntary Prekindergarten
 3 Education Program; amending ss. 1002.55, 1002.61, and
 4 1002.63, F.S.; requiring private prekindergarten
 5 providers and public schools that deliver the
 6 Voluntary Prekindergarten Education Program to execute
 7 the statewide provider agreement prescribed by the
 8 Office of Early Learning; authorizing the execution of
 9 a single agreement on behalf of multiple private
 10 prekindergarten providers or public schools under
 11 certain circumstances; creating s. 1002.64, F.S.;
 12 requiring the Office of Early Learning to adopt rules
 13 prescribing the statewide provider agreement;
 14 requiring early learning coalitions to use the
 15 agreement; providing for the format and content of the
 16 agreement; prohibiting an early learning coalition
 17 from executing agreements with private prekindergarten
 18 providers until the coalition determines that the
 19 providers are eligible to deliver the program;
 20 providing for publication of the statewide provider
 21 agreement and the submission of executed agreements to
 22 the Office of Early Learning; requiring the submission
 23 of certain proposed rules to the presiding officers of
 24 the Legislature within a specified period; amending s.
 25 1002.71, F.S.; revising requirements for the
 26 calculation of student enrollment for purposes of
 27 initial allocations of funds for the Voluntary
 28 Prekindergarten Education Program; providing for the

29 monthly reporting of student enrollment; requiring the
 30 Auditor General to conduct audits of early learning
 31 coalitions; amending s. 1002.75, F.S.; requiring the
 32 Office of Early Learning to monitor and evaluate the
 33 performance, finances, and operations of early
 34 learning coalitions; amending s. 411.01, F.S.;
 35 conforming provisions; repealing ss. 1002.65 and
 36 1002.77, F.S., relating to legislative intent
 37 concerning the professional credentials of
 38 prekindergarten instructors and the creation,
 39 membership, and duties of the Florida Early Learning
 40 Advisory Council; providing an effective date.

41

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

43

44 Section 1. Paragraph (i) of subsection (3) of section
 45 1002.55, Florida Statutes, is redesignated as paragraph (j), and
 46 a new paragraph (i) is added to that subsection, to read:

47 1002.55 School-year prekindergarten program delivered by
 48 private prekindergarten providers.—

49 (3) To be eligible to deliver the prekindergarten program,
 50 a private prekindergarten provider must meet each of the
 51 following requirements:

52 (i) The private prekindergarten provider must execute the
 53 statewide provider agreement prescribed under s. 1002.64, except
 54 that an individual who owns or operates multiple private
 55 prekindergarten providers within a coalition's service area may
 56 execute a single agreement with the coalition on behalf of each

57 provider.

58 Section 2. Subsection (3) of section 1002.61, Florida
59 Statutes, is amended to read:

60 1002.61 Summer prekindergarten program delivered by public
61 schools and private prekindergarten providers.-

62 (3) (a) Each district school board shall determine which
63 public schools in the school district are eligible to deliver
64 the summer prekindergarten program. The school district shall
65 use educational facilities available in the public schools
66 during the summer term for the summer prekindergarten program.

67 (b) Each public school delivering the summer
68 prekindergarten program must execute the statewide provider
69 agreement prescribed under s. 1002.64, except that the school
70 district may execute a single agreement with the early learning
71 coalition on behalf of all district schools.

72 (c) ~~(b)~~ Except as provided in this section, to be eligible
73 to deliver the summer prekindergarten program, a private
74 prekindergarten provider must meet each requirement in s.
75 1002.55.

76 Section 3. Subsection (3) of section 1002.63, Florida
77 Statutes, is amended to read:

78 1002.63 School-year prekindergarten program delivered by
79 public schools.-

80 (3) (a) The district school board of each school district
81 shall determine which public schools in the district may deliver
82 the prekindergarten program during the school year.

83 (b) Each public school delivering the school-year
84 prekindergarten program must execute the statewide provider

85 | agreement prescribed under s. 1002.64, except that the school
 86 | district may execute a single agreement with the early learning
 87 | coalition on behalf of all district schools.

88 | Section 4. Section 1002.64, Florida Statutes, is created
 89 | to read:

90 | 1002.64 Statewide provider agreement.-

91 | (1) (a) The Office of Early Learning shall adopt rules
 92 | prescribing the statewide provider agreement for the Voluntary
 93 | Prekindergarten Education Program.

94 | (b) An early learning coalition must use the statewide
 95 | provider agreement to annually contract with each private
 96 | prekindergarten provider and public school that delivers the
 97 | Voluntary Prekindergarten Education Program within the
 98 | coalition's service area.

99 | (c) The rules must prescribe a standardized uniform format
 100 | for the statewide provider agreement. An early learning
 101 | coalition may not omit, supplement, or amend any provision of
 102 | the statewide provider agreement. In addition, an early learning
 103 | coalition may not insert or append attachments, addenda, or
 104 | exhibits to the statewide provider agreement.

105 | (2) The statewide provider agreement must include:

106 | (a) Child eligibility and enrollment procedures and
 107 | requirements under s. 1002.53.

108 | (b) Student reenrollment requirements under s. 1002.71.

109 | (c) Eligibility requirements for private prekindergarten
 110 | providers and public schools delivering the program under ss.
 111 | 1002.55, 1002.61, 1002.63, and 1002.66.

112 | (d) Program performance and accountability requirements

113 under ss. 1002.67 and 1002.69.

114 (e) Requirements for the maintenance of records and data
 115 and the confidentiality of such information.

116 (f) Provisions requiring compliance with the
 117 antidiscrimination requirements of s. 1002.53(6)(c).

118 (g) Provisions prohibiting a private prekindergarten
 119 provider or public school from requiring payment of any fee or
 120 charge that is inconsistent with s. 1002.71(8)(a).

121 (h) Provisions prohibiting a private prekindergarten
 122 provider or public school from requiring a child's enrollment in
 123 or payment of any fee or charge for supplemental services in a
 124 manner that is inconsistent with s. 1002.71(8)(b).

125 (i) Requirements for notifications between the early
 126 learning coalition, the private prekindergarten provider or
 127 public school, and the parent, which may include, but are not
 128 limited to:

129 1. Changes to information submitted in the private
 130 prekindergarten provider's or public school's registration form
 131 or the prekindergarten class registration.

132 2. A parent's withdrawal of his or her child from the
 133 program or a private prekindergarten provider's or public
 134 school's dismissal of a child under s. 1002.71.

135 3. Temporary closure of a private prekindergarten
 136 provider's facility and subsequent reopening of the facility.

137 (j) Procedures for the reporting and certification of
 138 student attendance under s. 1002.71.

139 (k) Specific grounds for termination of the agreement.

140 (l) Dispute resolution procedures.

141 (m) Provisions under which the private prekindergarten
 142 provider, public school, or school district indemnifies the
 143 early learning coalition from liability arising under the
 144 agreement.

145 (3) (a) An early learning coalition may not execute the
 146 statewide provider agreement with a private prekindergarten
 147 provider before the coalition determines that the provider is
 148 eligible to deliver the Voluntary Prekindergarten Education
 149 Program under s. 1002.55 or s. 1002.61.

150 (b) An early learning coalition shall submit to the Office
 151 of Early Learning each original, fully executed, and dated
 152 agreement. The coalition shall provide a copy of the executed
 153 agreement to the private prekindergarten provider, public
 154 school, or school district that executed the agreement. The
 155 coalition shall also maintain a copy of the executed agreement
 156 in the coalition's records.

157 (c) A private prekindergarten provider or public school
 158 may not deliver the Voluntary Prekindergarten Education Program
 159 until the statewide provider agreement is fully executed.

160 (4) In addition to the requirements of s. 120.54, at least
 161 30 days before publication in the Florida Administrative Weekly
 162 of notice of the proposed adoption, amendment, or repeal of any
 163 rule prescribing the statewide provider agreement, the Office of
 164 Early Learning must provide copies of the notice and the
 165 proposed rule to the President of the Senate and the Speaker of
 166 the House of Representatives. The Office of Early Learning shall
 167 also publish a copy of the statewide provider agreement on its

168 Internet website and provide a copy of the agreement to each
 169 early learning coalition.

170 Section 5. Paragraph (c) of subsection (3) of section
 171 1002.71, Florida Statutes, is amended, and subsection (10) is
 172 added to that section, to read:

173 1002.71 Funding; financial and attendance reporting.—

174 (3)

175 (c) The initial allocation shall be based on estimated
 176 student enrollment in the Voluntary Prekindergarten Education
 177 Program in each coalition service area. The Office of Early
 178 Learning shall reallocate funds among the coalitions based on
 179 actual full-time equivalent student enrollment in the Voluntary
 180 Prekindergarten Education Program in each coalition service
 181 area. Each early learning coalition shall submit monthly reports
 182 of student enrollment to the Office of Early Learning in
 183 accordance with subsection (2). A student enrollment report may
 184 not be amended after December 31 of any year.

185 (10) The Auditor General shall conduct audits of early
 186 learning coalitions as provided in s. 11.45.

187 Section 6. Subsections (1) and (4) of section 1002.75,
 188 Florida Statutes, are amended to read:

189 1002.75 Office of Early Learning; powers and duties;
 190 operational requirements.—

191 (1) The Office of Early Learning shall:

192 (a) Administer the operational requirements of the
 193 Voluntary Prekindergarten Education Program at the state level.

194 (b) Monitor and evaluate the performance of each early
 195 learning coalition and of the coalition's finances and

196 | operations related to administration of the Voluntary
 197 | Prekindergarten Education Program.

198 | (4) The Office of Early Learning shall also adopt
 199 | procedures for the office's ~~agency's~~ distribution of funds to
 200 | early learning coalitions under s. 1002.71.

201 | Section 7. Paragraph (m) of subsection (4) and paragraph
 202 | (a) of subsection (5) of section 411.01, Florida Statutes, are
 203 | amended to read:

204 | 411.01 School readiness programs; early learning
 205 | coalitions.—

206 | (4) OFFICE OF EARLY LEARNING OF THE DEPARTMENT OF
 207 | EDUCATION.—

208 | (m) The Office of Early Learning shall submit an annual
 209 | report of its activities conducted under this section to the
 210 | Governor, the President of the Senate, the Speaker of the House
 211 | of Representatives, and the minority leaders of both houses of
 212 | the Legislature. In addition, the Office of Early Learning's
 213 | reports and recommendations shall be made available to ~~the~~
 214 | ~~Florida Early Learning Advisory Council and other~~ appropriate
 215 | state agencies and entities. The annual report must provide an
 216 | analysis of school readiness activities across the state,
 217 | including the number of children who were served in the
 218 | programs.

219 | (5) CREATION OF EARLY LEARNING COALITIONS.—

220 | (a) Early learning coalitions.—

221 | 1. Each early learning coalition shall maintain direct
 222 | enhancement services at the local level and ensure access to
 223 | such services in all 67 counties.

224 2. The Office of Early Learning shall establish the
 225 minimum number of children to be served by each early learning
 226 coalition through the coalition's school readiness program. The
 227 Office of Early Learning may only approve school readiness plans
 228 in accordance with this minimum number. The minimum number must
 229 be uniform for every early learning coalition and must:

- 230 a. Permit 31 or fewer coalitions to be established; and
- 231 b. Require each coalition to serve at least 2,000 children
 232 based upon the average number of all children served per month
 233 through the coalition's school readiness program during the
 234 previous 12 months.

235 3. If an early learning coalition would serve fewer
 236 children than the minimum number established under subparagraph
 237 2., the coalition must merge with another county to form a
 238 multicounty coalition. The Office of Early Learning shall adopt
 239 procedures for merging early learning coalitions, including
 240 procedures for the consolidation of merging coalitions, and for
 241 the early termination of the terms of coalition members which
 242 are necessary to accomplish the mergers. However, the Office of
 243 Early Learning shall grant a waiver to an early learning
 244 coalition to serve fewer children than the minimum number
 245 established under subparagraph 2., if:

- 246 a. The Office of Early Learning has determined during the
 247 most recent review of the coalition's school readiness plan, or
 248 through monitoring and performance evaluations conducted under
 249 paragraph (4)(1), that the coalition has substantially
 250 implemented its plan;
- 251 b. The coalition demonstrates to the Office of Early

252 Learning the coalition's ability to effectively and efficiently
 253 implement the Voluntary Prekindergarten Education Program; and
 254 c. The coalition demonstrates to the Office of Early
 255 Learning that the coalition can perform its duties in accordance
 256 with law.

257
 258 If an early learning coalition fails or refuses to merge as
 259 required by this subparagraph, the Office of Early Learning may
 260 dissolve the coalition and temporarily contract with a qualified
 261 entity to continue school readiness and prekindergarten services
 262 in the coalition's county or multicounty region until the office
 263 reestablishes the coalition and a new school readiness plan is
 264 approved by the office.

265 4. Each early learning coalition shall be composed of at
 266 least 15 members but not more than 30 members. The Office of
 267 Early Learning shall adopt standards establishing within this
 268 range the minimum and maximum number of members that may be
 269 appointed to an early learning coalition and procedures for
 270 identifying which members have voting privileges under
 271 subparagraph 6. These standards must include variations for a
 272 coalition serving a multicounty region. Each early learning
 273 coalition must comply with these standards.

274 5. The Governor shall appoint the chair and two other
 275 members of each early learning coalition, who must each meet the
 276 same qualifications as private sector business members appointed
 277 by the coalition under subparagraph 7.

278 6. Each early learning coalition must include the
 279 following member positions; however, in a multicounty coalition,

280 each ex officio member position may be filled by multiple
 281 nonvoting members but no more than one voting member shall be
 282 seated per member position. If an early learning coalition has
 283 more than one member representing the same entity, only one of
 284 such members may serve as a voting member:

285 a. A Department of Children and Family Services circuit
 286 administrator or his or her designee who is authorized to make
 287 decisions on behalf of the department.

288 b. A district superintendent of schools or his or her
 289 designee who is authorized to make decisions on behalf of the
 290 district.

291 c. A regional workforce board executive director or his or
 292 her designee.

293 d. A county health department director or his or her
 294 designee.

295 e. A children's services council or juvenile welfare board
 296 chair or executive director, if applicable.

297 f. An agency head of a local licensing agency as defined
 298 in s. 402.302, where applicable.

299 g. A president of a community college or his or her
 300 designee.

301 h. One member appointed by a board of county commissioners
 302 or the governing board of a municipality.

303 i. A central agency administrator, where applicable.

304 j. A Head Start director.

305 k. A representative of private for-profit child care
 306 providers, including private for-profit family day care homes.

307 l. A representative of faith-based child care providers.

308 m. A representative of programs for children with
 309 disabilities under the federal Individuals with Disabilities
 310 Education Act.

311 7. Including the members appointed by the Governor under
 312 subparagraph 5., more than one-third of the members of each
 313 early learning coalition must be private sector business members
 314 who do not have, and none of whose relatives as defined in s.
 315 112.3143 has, a substantial financial interest in the design or
 316 delivery of the Voluntary Prekindergarten Education Program
 317 created under part V of chapter 1002 or the coalition's school
 318 readiness program. To meet this requirement an early learning
 319 coalition must appoint additional members. The Office of Early
 320 Learning shall establish criteria for appointing private sector
 321 business members. These criteria must include standards for
 322 determining whether a member or relative has a substantial
 323 financial interest in the design or delivery of the Voluntary
 324 Prekindergarten Education Program or the coalition's school
 325 readiness program.

326 8. A majority of the voting membership of an early
 327 learning coalition constitutes a quorum required to conduct the
 328 business of the coalition. An early learning coalition board may
 329 use any method of telecommunications to conduct meetings,
 330 including establishing a quorum through telecommunications,
 331 provided that the public is given proper notice of a
 332 telecommunications meeting and reasonable access to observe and,
 333 when appropriate, participate.

334 9. A voting member of an early learning coalition may not
 335 appoint a designee to act in his or her place, except as

336 otherwise provided in this paragraph. A voting member may send a
 337 representative to coalition meetings, but that representative
 338 does not have voting privileges. When a district administrator
 339 for the Department of Children and Family Services appoints a
 340 designee to an early learning coalition, the designee is the
 341 voting member of the coalition, and any individual attending in
 342 the designee's place, including the district administrator, does
 343 not have voting privileges.

344 10. Each member of an early learning coalition is subject
 345 to ss. 112.313, 112.3135, and 112.3143. For purposes of s.
 346 112.3143(3)(a), each voting member is a local public officer who
 347 must abstain from voting when a voting conflict exists.

348 11. For purposes of tort liability, each member or
 349 employee of an early learning coalition shall be governed by s.
 350 768.28.

351 12. An early learning coalition serving a multicounty
 352 region must include representation from each county.

353 13. Each early learning coalition shall establish terms
 354 for all appointed members of the coalition. The terms must be
 355 staggered and must be a uniform length that does not exceed 4
 356 years per term. Coalition chairs shall be appointed for 4 years
 357 ~~in conjunction with their membership on the Early Learning~~
 358 ~~Advisory Council under s. 20.052.~~ Appointed members may serve a
 359 maximum of two consecutive terms. When a vacancy occurs in an
 360 appointed position, the coalition must advertise the vacancy.

361 Section 8. Sections 1002.65 and 1002.77, Florida Statutes,
 362 are repealed.

363 Section 9. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7085 Voluntary Prekindergarten Education Program
SPONSOR(S): K-20 Competitiveness Subcommittee, Fresen
TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: K-20 Competitiveness Subcommittee	11 Y, 0 N	Graf	Ahearn
1) Education Committee		Graf <i>Seg</i>	Klebacha <i>JK</i>

SUMMARY ANALYSIS

The bill increases Voluntary Prekindergarten (VPK) Program accountability by requiring:

- The Auditor General to conduct audits of the early learning coalitions (ELC). In addition, the bill requires the Office of Early Learning (OEL) to monitor and evaluate the performance of each ELC, review each ELC's finances, and evaluate each ELC's operations and administration of the VPK Program.
- The OEL to adopt by rule, a statewide provider agreement that must be used by each ELC when contracting with a VPK provider and specifying the terms that must be included in the agreement:
 - Child eligibility and enrollment procedures;
 - Student reenrollment requirements;
 - Provider eligibility requirements;
 - Program performance and accountability requirements;
 - Requirements for the maintenance of records and data, and the confidentiality of such information;
 - Provisions requiring compliance with antidiscrimination laws;
 - Provisions prohibiting a private prekindergarten provider or public school from requiring payment of any fee or charge inconsistent with law;
 - Provisions prohibiting a private prekindergarten provider or public school from requiring a child's enrollment in or payment of any fee or charge for supplemental services in a manner inconsistent with the law;
 - Requirements for notifications between the ELC, the private prekindergarten provider or public school and the parent, which may include, for example, student withdrawal from the program and temporary closure of the facility;
 - Procedures for reporting and certification of student attendance;
 - Specific grounds for termination of the provider agreement;
 - Dispute resolution procedures; and
 - Provision under which the private prekindergarten provider, public school, or school district indemnifies the ELC from liability arising under the provider agreement.

The bill also repeals s. 1002.65, F.S., which states aspirational goals regarding VPK instructor credentials and s. 1002.77, F.S., which establishes the Florida Early Learning Advisory Council.

Finally, the bill requires that a VPK provider amend its student enrollment count by December 31.

The bill may have minimal fiscal impact. See FISCAL COMMENTS.

The bill takes effect July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background – Voluntary Prekindergarten (VPK) Program

In 2004, the Legislature established the VPK program, a voluntary, free prekindergarten program offered to eligible four-year old children in the year before admission to kindergarten.¹ A child must be a Florida resident and attain four years of age on or before September 1 of the academic year to be eligible for the VPK Program.² Parents may choose either a school-year or summer program offered by either a private VPK provider or public school or a specialized instructional services program for children who have disabilities, if the child has been evaluated and determined eligible and has a current individual educational plan.³ The child remains eligible for the VPK Program until he or she is eligible for kindergarten in a public school or is admitted to kindergarten, whichever occurs first.⁴ A child may not attend the summer VPK Program earlier than the summer immediately before the academic year in which the child becomes eligible for kindergarten.⁵

Local oversight of the VPK Program is provided by early learning coalitions (ELC) and school districts. Each ELC is the single point of entry for VPK student registration and enrollment in its county or multi-county service area.⁶ Each ELC must coordinate with each school district in its service area to develop procedures for enrolling children in public school VPK Program.⁷ Local oversight of individual VPK providers is split, with ELCs providing administration over privately provided programs and school districts administering public school programs.⁸

The Office of Early Learning (OEL), Department of Education (DOE), and Department of Children and Family Services (DCF) each play a role in state level oversight of the VPK Program. As lead agency for Florida's school readiness system, OEL governs the day-to-day operations of the VPK Program.⁹ OEL oversees each ELC regarding child enrollment, attendance reporting, and payment of VPK providers as well as monitors VPK providers for compliance with program requirements.¹⁰

DOE adopts kindergarten readiness standards, approves VPK curricula, oversees statewide kindergarten readiness screening, calculates kindergarten readiness rates, approves emergent literacy

¹ Section 1, ch. 2004-484, L.O.F.; part V, ch. 1002, F.S.; Art. IX, s. 1(b) and (c), Fla. Const. The VPK program originated from a ballot initiative proposing an amendment to the Florida Constitution in the November 2002 general election. The amendment required the Legislature to establish a free prekindergarten education program for every four-year old child residing in Florida by the 2005 academic year. Voters approved the amendment: 59 percent for to 41 percent against. Florida Department of State, Division of Elections, *Voluntary Universal Prekindergarten Education*, <http://election.dos.state.fl.us/initiatives/initdetail.asp?account=34708&seqnum=1> (last visited Jan. 26, 2012).

² Section 1002.53(2), F.S.

³ Section 1002.53(3), F.S.; s. 1002.66, F.S., (Specialized instructional services for children with disabilities).

⁴ Section 1002.53(2), F.S. Children who attain five years of age on or before September 1 of the academic year are eligible for admission to public kindergarten. Section 1003.21(1)(a)2., F.S.

⁵ Section 1002.61(2)(c), F.S.

⁶ Sections 411.01(5)(c)1.e. and 1002.53(4)(a)-(b), F.S. Each ELC must serve at least 2,000 children based upon the average number of all children served per month through the ELC's school readiness program during the previous 12 months. There are currently 31 ELCs, which is the maximum permitted by law. Section 411.01(5)(a)2., F.S. Office of Early Learning, *Early Learning Coalition Directory*, http://www.floridaearlylearning.com/EarlyLearning/OEL_Coalitions_CoalitionsDirectory.html (last visited Jan. 26, 2012).

⁷ Section 1002.53(4)(c), F.S.

⁸ Sections 1002.53(6), 1002.55(1), 1002.61(1)(a)-(b), and 1002.63(1), F.S.

⁹ Sections 411.01(4)(a) and 1002.75(1)-(2), F.S. In 2011, the Legislature transferred the Office of Early Learning from the Agency for Workforce Innovation to the Department of Education as a separate budget entity, not subject to control, supervision, or direction by the Department of Education or the State Board of Education. Sections 12 and 305, ch. 2011-142, L.O.F.

¹⁰ Section 1002.75(2), F.S.

training courses and VPK director credentials, and specifies Child Development Associate (CDA) credentials¹¹ that qualify for articulation into college credit.¹²

DCF administers the state's child care provider licensing program and posts VPK provider profiles on its Internet website.¹³

VPK Program Accountability

Present Situation

Current law requires OEL to monitor and evaluate the performance of each ELC in administering the VPK Program. OEL must, at a minimum, review each ELC's finances, management, operations, and program administration.¹⁴

In 2011, the Legislature required the Auditor General to conduct a financial and performance audit of OEL's programs and related delivery systems.¹⁵ The audit focused on the governance structure of the state's early learning programs, statewide administration and oversight of the School Readiness and VPK programs, and operations of the ELCs. The audit disclosed that notwithstanding the adequacy of design of the early learning program governance structure, "OEL did not always provide the oversight necessary for the effective and efficient administration of the School Readiness and VPK Education programs."¹⁶ In addition, the audit also disclosed deficiencies in ELCs' financial management, operations, program administration, information technology practices, and noncompliance with state and federal regulations. The audit pointed out that several control deficiencies at OEL and at the ELCs contributed to ineffective program administration.¹⁷

Audit findings regarding ELCs' administration of the VPK Program are as follows:

- Some ELCs did not always ensure that VPK Program eligibility and enrollment files were maintained in accordance with applicable provisions of State law and OEL rules or that data contained in Enhanced Field System (EFS) database accurately reflected the information documented in the child eligibility files.
- Some ELCs did not always document that parents were informed of their rights and responsibilities or that VPK Program provider profiles were made available as required by State law.
- Some ELCs did not always maintain documentation demonstrating that, prior to delivering VPK Program instruction or receiving payment, VPK Program providers submitted complete and signed Statewide Provider Registration Applications.
- Some ELCs did not always maintain documentation to demonstrate that background screenings had been properly performed and reviewed for all VPK instructors.
- Some ELCs did not always maintain documentation to demonstrate that VPK instructor requirements, including education and training requirements, had been satisfied.
- ELC payments to VPK Program providers were not always supported by appropriate documentation.

¹¹ The CDA credential is a child care credential issued by the Council for Professional Recognition. Council for Professional Recognition, *How to Earn a CDA*, <http://www.cdacouncil.org/the-cda-credential/how-to-earn-a-cda> (last visited Jan. 26, 2012).

¹² Sections 1002.57(1), 1002.59, 1002.67(1) and (2), 1002.73(2), and 1007.23(5), F.S.

¹³ Sections 402.301-402.319, F.S.; see Florida Department of Children and Family Services, *Provider Search*, <http://dcfsanswrite.state.fl.us/Childcare/provider> (last visited Jan. 26, 2012).

¹⁴ Section 411.01(4)(I), F.S.

¹⁵ Section 2, ch. 2011-142, L.O.F.

¹⁶ Florida Auditor General, *Early Learning Programs and Related Delivery Systems*, Report No. 2012-061 (Dec. 2011), at 1, available at http://www.myflorida.com/audgen/pages/pdf_files/2012-061.pdf.

¹⁷ *Id.*

- Some ELCs did not utilize comprehensive monitoring schedules to track the results of School Readiness and VPK Program provider monitoring efforts.¹⁸

Effect of Proposed Changes

The bill requires the Auditor General to conduct audits of the ELCs. In addition, the bill requires OEL to monitor and evaluate the performance of each ELC, review each ELC's finances, and evaluate each ELC's operations and administration of the VPK Program. These oversight functions are currently required of OEL in Chapter 411, F.S., regarding early childhood assistance.¹⁹ The bill reiterates those same requirements in the section of law addressing OEL's powers and duties regarding the VPK Program. By so doing, some of the concerns identified in the Auditor General's financial and performance audit of OEL, as discussed above, are addressed.

Provider Agreement

Present Situation

Current law requires OEL to adopt procedures for ELCs to register public schools and private prekindergarten providers to deliver the VPK Program. Each public school and private prekindergarten provider delivering the school-year or summer term VPK Program must register with an ELC on forms prescribed by OEL.²⁰

OEL has adopted a Statewide Provider Registration Application that a public school or a private kindergarten provider must use to register with an ELC to participate in the VPK Program.²¹ In addition, OEL has adopted, in rule, a Statewide Provider Agreement, the terms and conditions of which must be identically contained in a provider agreement that each ELC must use when contracting with a school district or a private kindergarten provider to deliver VPK Program services.²²

Each ELC must maintain a fully executed copy of each provider agreement. The provider agreement may not omit, supplement, include attachments, addenda or exhibits, or amend the terms and conditions of the provider agreement unless:

- The ELC submits the agreement to the OEL in writing; and
- The Deputy Director for OEL approves the agreement before the ELC and a VPK provider execute the agreement.

An ELC is not authorized to execute a provider agreement with a VPK provider before the VPK provider registers on forms prescribed by the OEL and the ELC determines eligibility of the provider to offer VPK services.²³

A school district is authorized to sign a single provider agreement on behalf of all public school VPK providers in the district. Similarly, the owner or manager of multiple private VPK providers is authorized, on their behalf, to sign a single provider agreement with an ELC. An ELC must be a party to a provider agreement.²⁴

The audit conducted by the Auditor General, discussed above, disclosed that files maintained at some ELCs did not always contain a completed and signed Statewide Provider Registration Application. In addition, a review of ELCs' agreements and contracts including contractual service contracts for provider and child eligibility determinations, provider monitoring, data entry, bookkeeping, and issuance

¹⁸ *Id.*, at 2-3.

¹⁹ Section 411.01, F.S., deals with school readiness programs and ELCs. Subsection (4) addresses OEL's oversight functions.

²⁰ Sections 1002.75(2)(c), 1002.55(3)(h), 1002.61 (2)(b) and (8)(a), and 1002.63 (8)(a), F.S.

²¹ Rule 60BB-8.300, F.A.C.

²² Rule 60BB-8.301, F.A.C.

²³ *Id.*

²⁴ *Id.*

of provider payments revealed that some ELCs “did not always include important provisions, such as provisions allowing for unilateral cancellation of contract should a contractor refuse to allow public access to applicable documents, identifying the contract renewal or extension terms, or specifying the financial consequences should a contractor fail to perform in accordance with the contract.”²⁵

Effect of Proposed Changes

The bill requires OEL to adopt by rule, a statewide provider agreement that must be used by each ELC when contracting with a VPK provider. The provider agreement must include:

- Child eligibility and enrollment procedures;
- Student reenrollment requirements;
- Provider eligibility requirements;
- Program performance and accountability requirements;
- Requirements for the maintenance of records and data, and the confidentiality of such information;
- Provisions requiring compliance with antidiscrimination laws;
- Provisions prohibiting a private prekindergarten provider or public school from requiring payment of any fee or charge inconsistent with law;
- Provisions prohibiting a private prekindergarten provider or public school from requiring a child’s enrollment in or payment of any fee or charge for supplemental services in a manner inconsistent with the law;
- Requirements for notifications between the ELC, the private prekindergarten provider or public school and the parent, which may include, for example, student withdrawal from the program and temporary closure of the facility;
- Procedures for reporting and certification of student attendance;
- Specific grounds for termination of the provider agreement;
- Dispute resolution procedures; and
- Provision under which the private prekindergarten provider, public school, or school district indemnifies the ELC from liability arising under the provider agreement.

Currently, VPK Program provider agreements vary from one ELC to another and vary among the providers within an ELC area of service. Some ELCs, either with or without OEL approval, add many additional requirements to the agreement. These additional requirements create lack of uniformity across the state and establish additional standards for some providers. The overall goal of a provider agreement is to establish necessary accounting and procedural requirements and program outcome and accountability standards, not to add provisions in excess of that goal. Furthermore, additional requirements that focus on inputs not outcomes often create fiscal impacts.²⁶

The bill prohibits an ELC from omitting, supplementing, or amending provisions in the statewide provider agreement. In addition, the bill prohibits an ELC from inserting or including attachments, addenda, or exhibits to the provider agreement. Unlike existing law, the bill does not allow for exceptions to this requirement; i.e., no ability to append pursuant to OEL’s approval.

Instructor Credentials

Present Situation

A private prekindergarten provider or public school offering a school-year VPK Program must have for each class at least one instructor with the following credentials:

²⁵ Florida Auditor General, *Early Learning Programs and Related Delivery Systems*, Report No. 2012-061 (Dec. 2011), available at http://www.myflorida.com/audgen/pages/pdf_files/2012-061.pdf.

²⁶ See emails, Smith, Bryan and Myers, (Oct. 27-28, 2011) (providing copies of provider agreements with attachments and addenda).

- A CDA credential issued by the National Credentialing Program of the Council for Professional Recognition, plus five hours of training in emergent literacy;²⁷ or
- A credential approved by the DCF as being equivalent to or greater than the CDA, plus “five clock hours” of training in emergent literacy.²⁸

In addition, a public school or private prekindergarten provider offering a school-year VPK Program must have a second adult instructor for each class of 12 or more students; however, the second instructor is not required to have the same qualifications as the lead instructor.²⁹

A private prekindergarten provider or public school offering a summer VPK Program must have for each class a Florida-certified teacher or at least one instructor with the following credentials:

- Bachelor’s or higher degree in early childhood education, prekindergarten or primary education, preschool education, or family and consumer science, or
- Bachelor’s or higher degree in elementary education, if the instructor has been certified to teach children any age from birth through grade 6, regardless of whether the teaching certificate is current.³⁰

Section 1002.65, F.S., enacted in 2004,³¹ states that the aspirational goal for the 2010-11 academic year is to have at least one prekindergarten instructor holding an associate’s or higher degree in the field of early childhood education or child development and meet other requirements.

The law does not require these standards and the 2010-11 academic year has passed.

Section 1002.65, F.S., also provides an aspirational goal for the 2013-14 academic year: That each VPK class have at least one prekindergarten instructor who holds a bachelor’s or higher degree in the field of early childhood education or child development. Research does not support requiring bachelor degrees at this level of instruction because student learning outcomes are not statistically better for instructors with a CDA credential as opposed to a bachelor’s degree.³²

Effect of Proposed Changes

The bill repeals s. 1002.65, F.S., which states aspirational goals regarding VPK instructor credentials. This section is unnecessary because the statute is only a statement of aspirational goals and not a requirement. In addition, research does not support the additional degree requirements aspired to under s. 1002.65, F.S.³³ Also, implementation of these goals may increase the cost to employ VPK instructors. Finally, even though the bill repeals s. 1002.65, F.S., both private prekindergarten providers and public schools, on their own volition, are not prohibited from employing instructors with these additional credentials.

²⁷ Sections 1002.55(3)(c)1.a. and 2., F.S. Emergent literacy includes oral communication, knowledge of print and letters, phonemic and phonological awareness (recognition that words are made up of sounds), and vocabulary and comprehension development. See ss. 1002.59 and 1002.67(1)(b), F.S.

²⁸ Sections 1002.55(3)(c)1.b. and 2. and (4) and 1002.59, F.S.

²⁹ Sections 1002.55(3)(f) and 1002.63(7), F.S.

³⁰ Section 1002.61(4), F.S.; see also s. 1002.55(4)(a) and (b), F.S. (list of educational credentials authorized for instructors in summer VPK Program).

³¹ Section 1, ch. 2004-484, L.O.F.

³² Howes, Carolle, *Children’s experiences in center-based child care as a function of teacher background and adult:child ratio*, Merrill-Palmer Quarterly: Journal of Developmental Psychology, Vol. 43(3), July 1997, at 404-425, available at <http://psycnet.apa.org/psycinfo/1997-07143-004>; Early, D.M., Maxwell, K.L., and Burchinal, M., *Teachers’ Education, Classroom Quality, and Young Children’s Academic Skills: Results From Seven Studies of Preschool Programs*, Child Development, Vol. 78(2), March/April 2007, at 558-580, available at <http://onlinelibrary.wiley.com/doi/10.1111/j.1467-8624.2007.01014.x/full>; see also Fixing Checker Finn’s Preschool Bandwagon, Early Ed Watch (May 15, 2009)(“Pre-K advocates have been ... too focused on inputs as measures of quality. Many of the criteria currently used to evaluate quality in pre-k programs – adult:child ratios, whether or not teachers have a bachelor’s degree – are pure input measures.”)

³³ See *infra* text accompanying notes 26-32 for a discussion of the aspirational goals.

Student Enrollment Count

Present Situation

OEL has established payment procedures and a uniform attendance policy used for funding purposes.³⁴ Funds are distributed monthly to ELCs for payments to private prekindergarten providers and public schools.³⁵ Each ELC is advanced funds based on projected attendance. Once school begins, parents certify attendance each month for the prior month.³⁶ Subsequent funds are reconciled based on actual attendance.³⁷

Effect of Proposed Changes

The bill requires that a VPK provider amend its student enrollment count by December 31.

Each VPK provider is required to submit its student enrollment count to the ELC to receive payment for VPK services. Currently, a VPK provider can amend its student enrollment count at any time. The bill establishes a deadline by which a provider may amend its student enrollment count. Allowing amendment of student enrollment counts at any time is inefficient and may contribute to ineffective, untimely record-keeping.

Florida Early Learning Advisory Council

Present Situation

In 2004, the Legislature established the Florida Early Learning Advisory Council.³⁸ The purpose of the advisory council is to submit recommendations to DOE on early learning policy of the state including recommendations regarding administration of the VPK Program. The chair of the council is appointed by the Governor. The members of the council include the chair of each ELC, a member appointed by the President of the Senate, and a member appointed by the Speaker of the House of Representatives.³⁹

The chair of the council and its appointed members are required to have a background in early learning. Council members serve without compensation, but are entitled to receive reimbursement for per diem and travel expenses, and must meet at least quarterly. OEL provides administrative support.⁴⁰

Effect of Proposed Changes

The bill repeals s. 1002.77, F.S., which establishes the Florida Early Learning Advisory Council. Any such "early learning council" would be more appropriately established in Chapter 411, F.S., dealing with early learning.

In addition, a similar advisory council, called the State Advisory Council on Early Childhood Education and Care, exists in the Florida Children and Youth Cabinet in the Office of the Governor.

Federal law requires that the Governor establish a State Advisory Council on Early Childhood Education and Care (State Advisory Council).⁴¹ The Governor is authorized to "designate an existing entity to serve as the State Advisory Council." The Governor designated the State Advisory Council on

³⁴ Section 1002.71(5)(b) and (6)(d), F.S.; rule 60BB-8.204, F.A.C.

³⁵ Section 1002.71(5)(b), F.S.

³⁶ Section 1002.71(6)(b)1. and 2., F.S.

³⁷ Section 1002.71(5)(b), F.S.

³⁸ Section 1, ch. 2004-484, L.O.F.

³⁹ Section 1002.77(1) and (2), F.S.

⁴⁰ Section 1002.77(2) and (3), F.S.

⁴¹ 42 U.S.C. 9831 (Improving Head Start for School Readiness Act of 2007) s. 642B(b)(1)(A).

Early Childhood Education and Care as the State Advisory Council and appointed members as required by federal law.⁴²

The purpose of the State Advisory Council on Early Childhood Education and Care is to “lead the development of a high quality, comprehensive system of early childhood education and care that ensures statewide coordination and collaboration among the wide array of early childhood programs and services in the State, including Head Start, child care and pre-kindergarten programs and services.”⁴³

B. SECTION DIRECTORY:

Section 1. Amends s. 1002.55(3), F.S., relating to school-year prekindergarten program delivered by private prekindergarten providers; to require a private VPK provider to execute the statewide provider agreement.

Section 2. Amends s. 1002.61, F.S., relating to summer prekindergarten program delivered by public schools and private prekindergarten providers; to require a VPK provider to execute the statewide provider agreement.

Section 3. Amends s. 1002.63, F.S., relating to school-year prekindergarten program delivered by public schools; to require the public school VPK provider to execute the statewide provider agreement.

Section 4. Creates s. 1002.64, relating to statewide provider agreement; to require OEL to adopt by rule, a statewide provider agreement, specifying requirements for the content and use of the agreement, requiring submission to the Legislature of the draft rule 30 days before publication to the Legislature, and prohibiting an ELC from executing agreements with private VPK providers until the ELC determines that the providers are eligible to deliver the program.

Section 5. Amends s. 1002.71(3), F.S., relating to funding; financial and attendance reporting; to revise requirements for the calculation of student enrollment for purposes of initial allocations of funds for the VPK Program, provide for the monthly reporting of student enrollment, and require the Auditor General to conduct audits of ELCs.

Section 6. Amends s. 1002.75, F.S., relating to Office of Early Learning, powers and duties, operational requirements; to require OEL to monitor and evaluate the performance, finances, and operations of ELCs.

Section 7. Amends s. 411.01, F.S., relating to school readiness programs, early learning coalitions; ELCs; to repeal references to the Florida Early Learning Advisory Council.

Section 8. Repeals ss. 1002.65 and 1002.77, F.S., relating to professional credentials of prekindergarten instructors, aspirational goals, legislative intent; and the Florida Early Learning Advisory Council.

Section 9. Provides an effective date of July 1, 2012.

⁴² *Id.*

⁴³ Office of the Governor, *Florida Children and Youth Cabinet State Advisory Council on Early Education and Care*, available at http://www.flgov.com/child_advocacy_cyc_saceec/ (last visited Jan. 30, 2012).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill requires ELCs and VPK providers to use a statewide VPK provider agreement, to be adopted, in rule, by OEL. The bill restricts ELCs from adding, or removing, requirements to the agreement. Currently some providers are experiencing increased costs for program delivery because of certain ELC additions to the provider agreement. This bill should eliminate those additional costs.

D. FISCAL COMMENTS:

Repealing the Florida Early Learning Advisory Council eliminates the payment of per diem and travel to its members. The amount paid annually for per diem and travel is not known, but is minimal.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill requires OEL to adopt, by rule, a statewide VPK provider agreement that must be used by all ELCs and VPK providers.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.