



Education Committee

Tuesday, February 21, 2012

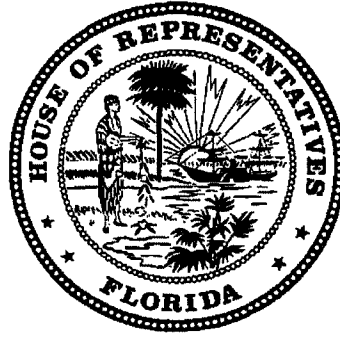
10:30 am – 2:30 pm

Reed Hall – 102 HOB

Meeting Packet

**Dean Cannon
Speaker**

**William Proctor
Chair**



AGENDA

Education Committee
Tuesday, February 21, 2012
10:30 am – 2:30 pm
Reed Hall – 102 HOB

- I. Call to Order/Roll Call
- II. Opening Remarks
- III. Update on the implementation of CS/CS/SB 736 (2011), Chapter 2011-1, L.O.F.
- IV. Consideration of the following proposed committee bill(s):
 - PCB EDC 12-01 -- School Improvement and Accountability
 - PCB EDC 12-02 -- State Universities of Academic and Research Excellence and National Preeminence Act
- V. Consideration of the following bill(s):
 - CS/CS/HB 1115 Teachers by Justice Appropriations Subcommittee, Civil Justice Subcommittee, Brandes, Grant
 - CS/HB 1465 Florida College System Personnel Records by K-20 Innovation Subcommittee, Caldwell
- VI. Closing Remarks and Adjournment

29 Secretary of Education; requiring the Department of
 30 Education to annually identify each school in need of
 31 intervention and support to improve student academic
 32 performance; basing the need for intervention and
 33 support on school grades; providing requirements for
 34 state board rules for intervention and support
 35 strategies for school improvement; deleting department
 36 duties relating to the categorization of low-
 37 performing schools; providing state board, school
 38 district, and school requirements for implementing
 39 strategies and turnaround options to improve school
 40 performance; revising turnaround options available to
 41 a school district and requiring state board approval
 42 of the option selected for implementation; providing
 43 certain exceptions; requiring the state board to adopt
 44 rules relating to plans for implementing school
 45 turnaround options; amending s. 1008.34, F.S.;
 46 revising provisions relating to the school grading
 47 system; revising the contents of the annual report of
 48 the results of the statewide assessment program;
 49 revising certain criteria upon which school grades are
 50 based; revising the basis for calculating a school
 51 district's grade; amending ss. 1008.345, 1012.07,
 52 1012.22, and 1012.2315, F.S.; conforming provisions;
 53 providing an effective date.

54
 55 Be It Enacted by the Legislature of the State of Florida:
 56

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57 Section 1. Paragraph (a) of subsection (18) and subsection
58 (20) of section 1001.42, Florida Statutes, are amended to read:

59 1001.42 Powers and duties of district school board.—The
60 district school board, acting as a board, shall exercise all
61 powers and perform all duties listed below:

62 (18) IMPLEMENT SCHOOL IMPROVEMENT AND ACCOUNTABILITY.—
63 Maintain a state system of school improvement and education
64 accountability as provided by statute and State Board of
65 Education rule. This system of school improvement and education
66 accountability shall be consistent with, and implemented
67 through, the district's continuing system of planning and
68 budgeting required by this section and ss. 1008.385, 1010.01,
69 and 1011.01. This system of school improvement and education
70 accountability shall comply with the provisions of ss. 1008.33,
71 1008.34, 1008.345, and 1008.385 and include the following:

72 (a) School improvement plans.—The district school board
73 shall annually approve and require implementation of a new,
74 amended, or continuation school improvement plan for each school
75 in the district. If a school has a significant gap in
76 achievement on statewide assessments under s. 1008.34(3)(b) by
77 one or more student subgroups, as defined in the federal
78 Elementary and Secondary Education Act, 20 U.S.C. s.
79 6311(b)(2)(C)(v)(II); has not significantly decreased the
80 percentage of students scoring below satisfactory on statewide
81 assessments; or has significantly lower graduation rates for a
82 subgroup when compared to the state's graduation rate, that
83 school's improvement plan shall include strategies for improving
84 these results. The state board shall adopt rules establishing

85 thresholds for determining compliance with this paragraph.

86 (20) OPPORTUNITY SCHOLARSHIPS.—Adopt policies allowing
 87 students attending schools that have earned a grade of "F" or
 88 three consecutive grades ~~been designated with a grade of "D" or~~
 89 ~~"F" pursuant to s. 1008.34 and that are in one of the two~~
 90 ~~lowest-performing categories pursuant to s. 1008.33~~ to attend a
 91 higher-performing school in the district or any other district
 92 in the state, in conformance with s. 1002.38 and State Board of
 93 Education rule.

94 Section 2. Paragraphs (n), (o), and (p) of subsection (9)
 95 of section 1002.33, Florida Statutes, are amended to read:

96 1002.33 Charter schools.—

97 (9) CHARTER SCHOOL REQUIREMENTS.—

98 (n)1. The director and a representative of the governing
 99 board ~~body~~ of a charter school that has earned ~~received~~ a school
 100 grade of "D" or "F" pursuant to ~~under~~ s. 1008.34(2) shall appear
 101 before the sponsor ~~or the sponsor's staff at least once a year~~
 102 to present information concerning each contract component having
 103 noted deficiencies. ~~The sponsor shall communicate at the~~
 104 ~~meeting, and in writing to the director, the services provided~~
 105 ~~to the school to help the school address its deficiencies.~~

106 ~~(o) Upon notification that a charter school receives a~~
 107 ~~school grade of "D" for 2 consecutive years or a school grade of~~
 108 ~~"F" under s. 1008.34(2), The charter school sponsor or the~~
 109 ~~sponsor's staff shall require the director and a representative~~
 110 of the governing board shall ~~body~~ to submit to the sponsor for
 111 approval a school improvement plan to raise student achievement
 112 ~~and to implement the plan. Upon approval by the sponsor, the~~

113 charter school shall begin implementation of the ~~has the~~
 114 ~~authority to approve a school improvement plan that the charter~~
 115 ~~school will implement in the following school year. The sponsor~~
 116 ~~may also consider the State Board of Education's recommended~~
 117 ~~action pursuant to s. 1008.33(1) as part of the school~~
 118 ~~improvement plan. The department of Education shall offer~~
 119 technical assistance and training to the charter school and its
 120 governing board ~~body~~ and establish guidelines for developing,
 121 submitting, and approving such plans.

122 2.a.1. If a the charter school earns three consecutive
 123 grades of "D," two consecutive grades of "D" followed by a grade
 124 of "F," or two nonconsecutive grades of "F" within a 3-year
 125 period fails to improve its student performance from the year
 126 immediately prior to the implementation of the school
 127 improvement plan, the sponsor shall place the charter school on
 128 probation and shall require the charter school governing board
 129 shall choose body to take one of the following corrective
 130 actions:

131 (I)a. Contract for the educational services to be provided
 132 directly to students, instructional personnel, and school
 133 administrators, as prescribed in state board rule of the charter
 134 school;

135 (II) Contract with an outside entity that has a
 136 demonstrated record of effectiveness to operate the school;

137 (III)b. Reorganize the school at the end of the school
 138 year under a new director or principal who is authorized to hire
 139 new staff and implement a plan that addresses the causes of
 140 inadequate progress; or

141 ~~(IV)e.~~ Voluntarily close Reconstitute the charter school.
 142 b. The charter school must implement the corrective action
 143 in the school year following receipt of a third consecutive
 144 grade of "D," a grade of "F" following two consecutive grades of
 145 "D," or a second nonconsecutive grade of "F" within a 3-year
 146 period.
 147 c. The sponsor may annually waive corrective actions if it
 148 determines that the charter school is likely to improve a letter
 149 grade if additional time is provided to implement the
 150 intervention and support strategies prescribed by the school
 151 improvement plan.
 152 d.2. A charter school is no longer required to implement
 153 that is placed on probation shall continue the corrective
 154 actions if it required under subparagraph 1. until the charter
 155 school improves by at least one letter grade its student
 156 performance from the year prior to the implementation of the
 157 school improvement plan. However, the charter school must
 158 continue to implement strategies identified in the school
 159 improvement plan. The sponsor must annually review
 160 implementation of the school improvement plan to monitor the
 161 school's continued improvement pursuant to subparagraph 5.
 162 e. A charter school implementing a corrective action that
 163 does not improve by at least one letter grade after 2 full
 164 school years of implementing the corrective action must select a
 165 different corrective action. Implementation of the new
 166 corrective action must begin in the school year following the
 167 implementation period of the existing corrective action, unless
 168 the sponsor determines that the charter school is likely to

169 improve a letter grade if additional time is provided to
 170 implement the existing corrective action. Notwithstanding this
 171 sub-subparagraph, a charter school that earns a second
 172 consecutive grade of "F" while implementing a corrective action
 173 is subject to subparagraph 4.

174 3. A charter school graded "D" or "F" that improves by at
 175 least one letter grade must continue to implement the strategies
 176 identified in the school improvement plan. The sponsor must
 177 annually review implementation of the school improvement plan to
 178 monitor the school's continued improvement pursuant to
 179 subparagraph 5.

180 4. The sponsor shall terminate the charter if the charter
 181 school earns two consecutive grades of "F" unless:

182 a. The charter school is established to turnaround the
 183 performance of a district public school pursuant to s.
 184 1008.33(4)(b)3. Such charter schools shall be governed by s.
 185 1008.33;

186 b. The charter school serves a student population the
 187 majority of which resides in a school zone served by a district
 188 public school that earned a grade of "F" in the year before the
 189 charter school opened and the charter school earns at least a
 190 grade of "D" in its third year of operation. The exception
 191 provided under this sub-subparagraph does not apply to a charter
 192 school in its fourth year of operation and thereafter; or

193 c. The state board grants the charter school a waiver of
 194 termination. The charter school must request the waiver within
 195 30 days of completion of school grade appeals. The state board
 196 may waive termination if the charter school demonstrates that

197 the learning gains of its students on statewide assessments are
 198 comparable or better than the learning gains of similarly
 199 situated students enrolled in nearby district public schools.
 200 The waiver is valid for 1 year and may only be granted once.
 201 Charter schools that have been in operation for more than 5
 202 years are not eligible for a waiver under this sub-subparagraph.

203 ~~3. Notwithstanding any provision of this paragraph, the~~
 204 ~~sponsor may terminate the charter at any time pursuant to~~
 205 ~~subsection (8).~~

206 5. (p) The director and a representative of the governing
 207 board body of a graded charter school that has implemented
 208 ~~submitted~~ a school improvement plan ~~or has been placed on~~
 209 ~~probation~~ under this paragraph ~~(e)~~ shall appear before the
 210 sponsor ~~or the sponsor's staff~~ at least once a year to present
 211 information regarding the progress of intervention and support
 212 ~~corrective~~ strategies ~~that are being~~ implemented by the school
 213 pursuant to the school improvement plan and corrective actions,
 214 if applicable. The sponsor shall communicate at the meeting, and
 215 in writing to the director, the services provided to the school
 216 to help the school address its deficiencies.

217 6. Notwithstanding any provision of this paragraph except
 218 sub-subparagraphs 4.a.-c., the sponsor may terminate the charter
 219 at any time pursuant to subsection (8).

220 Section 3. Paragraph (b) of subsection (1) of section
 221 1002.332, Florida Statutes, is amended to read:

222 1002.332 High-performing charter school system.—

223 (1) For purposes of this section, the term:

224 (b) "High-performing charter school system" means an

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225 entity that:

226 1. Operates at least three high-performing charter schools
227 in the state;

228 2. Operates a system of charter schools in which at least
229 50 percent of the charter schools are high-performing charter
230 schools pursuant to s. 1002.331 and no charter school earned
231 ~~received~~ a school grade of "D" or "F" pursuant to s. 1008.34,
232 except that:

233 a. If the entity has assumed operation of a public school
234 pursuant to s. 1008.33(4)(b)3. ~~1008.33(5)(a)3.~~ with a school
235 grade of ~~"D" or "F,"~~ that school's grade may ~~shall~~ not be
236 considered in determining high-performing charter school system
237 status for a period of 3 years.

238 b. If the entity establishes a new charter school that
239 serves a student population the majority of which resides in a
240 school zone served by a public school that earned a grade of "F"
241 or three consecutive grades of "D" pursuant to s. 1008.34 ~~is~~
242 ~~identified as lowest performing under s. 1008.33(4)(b),~~ that
243 charter school's grade may ~~shall~~ not be considered in
244 determining high-performing charter school system status if it
245 attains and maintains a school grade that is higher than that of
246 the public school serving that school zone within 3 years after
247 establishment; and

248 3. Has not received a financial audit that revealed one or
249 more of the financial emergency conditions set forth in s.
250 218.503(1) for any charter school assumed or established by the
251 entity.

252 Section 4. Paragraph (a) of subsection (2) of section

253 1002.38, Florida Statutes, is amended to read:

254 1002.38 Opportunity Scholarship Program.—

255 (2) OPPORTUNITY SCHOLARSHIP ELIGIBILITY.—

256 (a) ~~For purposes of this section, a school's grade shall~~
 257 ~~be based upon statewide assessments administered pursuant to s.~~

258 ~~1008.22.~~ A public school student's parent may request and
 259 receive an opportunity scholarship for the student to enroll in
 260 and attend a public school in accordance with the provisions of
 261 this section if:

262 1. By assigned school attendance area or by special
 263 assignment, the student has spent the prior school year in
 264 attendance at a public school that has earned a grade of "F" or
 265 three consecutive grades of "D" pursuant to s. 1008.34 ~~been~~
 266 ~~designated as performance grade category "D" or "F" and that is~~
 267 ~~in one of the two lowest performing categories pursuant to s.~~
 268 ~~1008.33,~~ and the student's attendance occurred during a school
 269 year in which such designation was in effect;

270 2. The student has been in attendance elsewhere in the
 271 public school system and has been assigned to such school for
 272 the next school year; or

273 3. The student has been notified that he or she has been
 274 assigned to such school for the next school year.

275 Section 5. Subsections (3) and (7) and paragraph (a) of
 276 subsection (8) of section 1008.22, Florida Statutes, are amended
 277 to read:

278 1008.22 Student assessment program for public schools.—

279 (3) STATEWIDE ASSESSMENT PROGRAM.—The commissioner shall
 280 design and implement a statewide program of educational

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281 assessment that provides information for the improvement of the
 282 operation and management of the public schools, including
 283 schools operating for the purpose of providing educational
 284 services to youth in Department of Juvenile Justice programs.
 285 The commissioner may enter into contracts for the continued
 286 administration of the assessment, ~~testing, and evaluation~~
 287 programs authorized and funded by the Legislature. Contracts may
 288 be initiated in 1 fiscal year and continue into the next and may
 289 be paid from the appropriations of either or both fiscal years.
 290 The commissioner is authorized to negotiate for the sale or
 291 lease of tests, scoring protocols, test scoring services, and
 292 related materials developed pursuant to law. Pursuant to the
 293 statewide assessment program, the commissioner shall:

294 (a) Submit proposed Next Generation Sunshine State
 295 Standards to the State Board of Education for adoption and
 296 periodic review and revision under s. 1003.41.

297 (b) Develop and implement a uniform system of indicators
 298 to describe the performance of public school students and the
 299 characteristics of the public school districts and the public
 300 schools. These indicators must include, ~~without limitation,~~
 301 information gathered by the comprehensive management information
 302 system created pursuant to s. 1008.385 and student achievement
 303 information obtained pursuant to this section.

304 (c) Develop and implement a student achievement assessment
 305 ~~testing~~ program as follows:

306 1. The Florida Comprehensive Assessment Test (FCAT)
 307 measures a student's content knowledge and skills in reading,
 308 writing, science, and mathematics. The content knowledge and

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309 skills assessed by the FCAT must be aligned to the core
 310 curricular content established in the Next Generation Sunshine
 311 State Standards. ~~FCAT Other content areas may be included as~~
 312 ~~directed by the commissioner. Comprehensive assessments of~~
 313 Reading and Mathematics shall be administered annually in grades
 314 3 through 10 except, beginning with the 2010-2011 school year,
 315 the administration of grade 9 FCAT Mathematics shall be
 316 discontinued, and beginning with the 2011-2012 school year, the
 317 administration of grade 10 FCAT Mathematics shall be
 318 discontinued, except as required for students who have not
 319 attained minimum performance expectations for graduation as
 320 provided in paragraph (9)(c). FCAT Writing and FCAT Science
 321 shall be administered at least once at the elementary, middle,
 322 and high school levels except, beginning with the 2011-2012
 323 school year, the administration of FCAT Science at the high
 324 school level shall be discontinued. Students enrolled in an
 325 Algebra I, Geometry, or Biology I course or an equivalent course
 326 with a statewide, standardized end-of-course assessment are not
 327 required to take the corresponding grade-level FCAT assessment.

328 ~~2.a. End-of-course assessments for a subject shall be~~
 329 ~~administered in addition to the comprehensive assessments~~
 330 ~~required under subparagraph 1.~~ End-of-course assessments must be
 331 rigorous, statewide, standardized, and developed or approved by
 332 the department. The content knowledge and skills assessed by
 333 end-of-course assessments must be aligned to the core curricular
 334 content established in the Next Generation Sunshine State
 335 Standards.

336 (I) Statewide, standardized end-of-course assessments in

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337 mathematics shall be administered according to this sub-sub-
 338 subparagraph. Beginning with the 2010-2011 school year, all
 339 students enrolled in Algebra I or an equivalent course must take
 340 the Algebra I end-of-course assessment. For students entering
 341 grade 9 during the 2010-2011 school year and who are enrolled in
 342 Algebra I or an equivalent, each student's performance on the
 343 end-of-course assessment in Algebra I shall constitute 30
 344 percent of the student's final course grade. Beginning with
 345 students entering grade 9 in the 2011-2012 school year, a
 346 student who is enrolled in Algebra I or an equivalent must earn
 347 a passing score on the end-of-course assessment in Algebra I or
 348 attain an equivalent score as described in subsection (11) in
 349 order to earn course credit. Beginning with the 2011-2012 school
 350 year, all students enrolled in geometry or an equivalent course
 351 must take the geometry end-of-course assessment. For students
 352 entering grade 9 during the 2011-2012 school year, each
 353 student's performance on the end-of-course assessment in
 354 geometry shall constitute 30 percent of the student's final
 355 course grade. Beginning with students entering grade 9 during
 356 the 2012-2013 school year, a student must earn a passing score
 357 on the end-of-course assessment in geometry or attain an
 358 equivalent score as described in subsection (11) in order to
 359 earn course credit.

360 (II) Statewide, standardized end-of-course assessments in
 361 science shall be administered according to this sub-sub-
 362 subparagraph. Beginning with the 2011-2012 school year, all
 363 students enrolled in Biology I or an equivalent course must take
 364 the Biology I end-of-course assessment. For the 2011-2012 school

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365 | year, each student's performance on the end-of-course assessment
 366 | in Biology I shall constitute 30 percent of the student's final
 367 | course grade. Beginning with students entering grade 9 during
 368 | the 2012-2013 school year, a student must earn a passing score
 369 | on the end-of-course assessment in Biology I in order to earn
 370 | course credit.

371 | b. During the 2012-2013 school year, an end-of-course
 372 | assessment in civics education shall be administered as a field
 373 | test at the middle school level. During the 2013-2014 school
 374 | year, each student's performance on the statewide, standardized
 375 | end-of-course assessment in civics education shall constitute 30
 376 | percent of the student's final course grade. Beginning with the
 377 | 2014-2015 school year, a student must earn a passing score on
 378 | the end-of-course assessment in civics education in order to
 379 | pass the course and be promoted from the middle grades. The
 380 | school principal of a middle school shall determine, in
 381 | accordance with State Board of Education rule, whether a student
 382 | who transfers to the middle school and who has successfully
 383 | completed a civics education course at the student's previous
 384 | school must take an end-of-course assessment in civics
 385 | education.

386 | c. The commissioner may select one or more nationally
 387 | developed comprehensive examinations, which may include, but
 388 | need not be limited to, examinations for a College Board
 389 | Advanced Placement course, International Baccalaureate course,
 390 | or Advanced International Certificate of Education course, or
 391 | industry-approved examinations to earn national industry
 392 | certifications identified in the Industry Certification Funding

393 List, pursuant to rules adopted by the State Board of Education,
 394 for use as end-of-course assessments under this paragraph, if
 395 the commissioner determines that the content knowledge and
 396 skills assessed by the examinations meet or exceed the grade
 397 level expectations for the core curricular content established
 398 for the course in the Next Generation Sunshine State Standards.
 399 The commissioner may collaborate with the American Diploma
 400 Project in the adoption or development of rigorous end-of-course
 401 assessments that are aligned to the Next Generation Sunshine
 402 State Standards.

403 d. Contingent upon funding provided in the General
 404 Appropriations Act, including the appropriation of funds
 405 received through federal grants, the Commissioner of Education
 406 shall establish an implementation schedule for the development
 407 and administration of additional statewide, standardized end-of-
 408 course assessments in English/Language Arts II, Algebra II,
 409 chemistry, physics, earth/space science, United States history,
 410 and world history. Priority shall be given to the development of
 411 end-of-course assessments in English/Language Arts II. The
 412 Commissioner of Education shall evaluate the feasibility and
 413 effect of transitioning from the grade 9 and grade 10 FCAT
 414 Reading and high school level FCAT Writing to an end-of-course
 415 assessment in English/Language Arts II. The commissioner shall
 416 report the results of the evaluation to the President of the
 417 Senate and the Speaker of the House of Representatives no later
 418 than July 1, 2011.

419 3. The assessment ~~testing~~ program shall measure student
 420 content knowledge and skills adopted by the State Board of

421 Education as specified in paragraph (a) and measure and report
 422 student performance levels of all students assessed in reading,
 423 writing, mathematics, and science. The commissioner shall
 424 provide for the tests to be developed or obtained, as
 425 appropriate, through contracts and project agreements with
 426 private vendors, public vendors, public agencies, postsecondary
 427 educational institutions, or school districts. The commissioner
 428 shall obtain input with respect to the design and implementation
 429 of the assessment ~~testing~~ program from state educators,
 430 assistive technology experts, and the public.

431 4. The assessment ~~testing~~ program shall be composed of
 432 criterion-referenced tests that shall, to the extent determined
 433 by the commissioner, include test items that require the student
 434 to produce information or perform tasks in such a way that the
 435 core content knowledge and skills he or she uses can be
 436 measured.

437 5. FCAT Reading, Mathematics, and Science and all
 438 statewide, standardized end-of-course assessments shall measure
 439 the content knowledge and skills a student has attained on the
 440 assessment by the use of scaled scores and achievement levels.
 441 Achievement levels shall range from 1 through 5, with level 1
 442 being the lowest achievement level, level 5 being the highest
 443 achievement level, and level 3 indicating satisfactory
 444 performance on an assessment. For purposes of FCAT Writing,
 445 student achievement shall be scored using a scale of 1 through 6
 446 and the score earned shall be used in calculating school grades.
 447 A score shall be designated for each subject area tested, below
 448 which score a student's performance is deemed inadequate. The

449 school districts shall provide appropriate remedial instruction
 450 to students who score below these levels.

451 6. The State Board of Education shall, by rule, designate
 452 a passing score for each part of the grade 10 assessment test
 453 and end-of-course assessments. Any rule that has the effect of
 454 raising the required passing scores may apply only to students
 455 taking the assessment for the first time after the rule is
 456 adopted by the State Board of Education. Except as otherwise
 457 provided in this subparagraph and as provided in s.
 458 1003.428(8)(b) or s. 1003.43(11)(b), students must earn a
 459 passing score on grade 10 FCAT Reading and grade 10 FCAT
 460 Mathematics or attain concordant scores as described in
 461 subsection (10) in order to qualify for a standard high school
 462 diploma.

463 7. In addition to designating a passing score under
 464 subparagraph 6., the State Board of Education shall also
 465 designate, by rule, a score for each statewide, standardized
 466 end-of-course assessment which indicates that a student is high
 467 achieving and has the potential to meet college-readiness
 468 standards by the time the student graduates from high school.

469 8. Participation in the assessment ~~testing~~ program is
 470 mandatory for all students attending public school, including
 471 students served in Department of Juvenile Justice programs,
 472 except as otherwise prescribed by the commissioner. A student
 473 who has not earned passing scores on the grade 10 FCAT as
 474 provided in subparagraph 6. must participate in each retake of
 475 the assessment until the student earns passing scores or
 476 achieves scores on a standardized assessment which are

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477 concordant with passing scores pursuant to subsection (10). If a
478 student does not participate in the statewide assessment, the
479 district must notify the student's parent and provide the parent
480 with information regarding the implications of such
481 nonparticipation. A parent must provide signed consent for a
482 student to receive classroom instructional accommodations that
483 would not be available or permitted on the statewide assessments
484 and must acknowledge in writing that he or she understands the
485 implications of such instructional accommodations. The State
486 Board of Education shall adopt rules, based upon recommendations
487 of the commissioner, for the provision of test accommodations
488 for students in exceptional education programs and for students
489 who have limited English proficiency. Accommodations that negate
490 the validity of a statewide assessment are not allowable in the
491 administration of the FCAT or an end-of-course assessment.
492 However, instructional accommodations are allowable in the
493 classroom if included in a student's individual education plan.
494 Students using instructional accommodations in the classroom
495 that are not allowable as accommodations on the FCAT or an end-
496 of-course assessment may have the FCAT or an end-of-course
497 assessment requirement waived pursuant to the requirements of s.
498 1003.428(8)(b) or s. 1003.43(11)(b).

499 9. A student seeking an adult high school diploma must
500 meet the same testing requirements that a regular high school
501 student must meet.

502 10. District school boards must provide instruction to
503 prepare students in the core curricular content established in
504 the Next Generation Sunshine State Standards adopted under s.

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505 1003.41, including the core content knowledge and skills
 506 necessary for successful grade-to-grade progression and high
 507 school graduation. If a student is provided with instructional
 508 accommodations in the classroom that are not allowable as
 509 accommodations in the statewide assessment program, as described
 510 in the test manuals, the district must inform the parent in
 511 writing and must provide the parent with information regarding
 512 the impact on the student's ability to meet expected performance
 513 levels in reading, writing, mathematics, and science. The
 514 commissioner shall conduct studies as necessary to verify that
 515 the required core curricular content is part of the district
 516 instructional programs.

517 11. District school boards must provide opportunities for
 518 students to demonstrate an acceptable performance level on an
 519 alternative standardized assessment approved by the State Board
 520 of Education following enrollment in summer academies.

521 12. The Department of Education must develop, or select,
 522 and implement a common battery of assessment tools that will be
 523 used in all juvenile justice programs in the state. These tools
 524 must accurately measure the core curricular content established
 525 in the Next Generation Sunshine State Standards.

526 13. For students seeking a special diploma pursuant to s.
 527 1003.438, the Department of Education must develop or select and
 528 implement an alternate assessment tool that accurately measures
 529 the core curricular content established in the Next Generation
 530 Sunshine State Standards for students with disabilities under s.
 531 1003.438.

532 14. The Commissioner of Education shall establish

533 | schedules for the administration of statewide assessments and
 534 | the reporting of student test results. When establishing the
 535 | schedules for the administration of statewide assessments, the
 536 | commissioner shall consider the observance of religious and
 537 | school holidays. The commissioner shall, by August 1 of each
 538 | year, notify each school district in writing and publish on the
 539 | department's Internet website the testing and reporting
 540 | schedules for, at a minimum, the school year following the
 541 | upcoming school year. The testing and reporting schedules shall
 542 | require that:

543 | a. There is the latest possible administration of
 544 | statewide assessments and the earliest possible reporting to the
 545 | school districts of student test results which is feasible
 546 | within available technology and specific appropriations;
 547 | however, test results for the FCAT must be made available no
 548 | later than the week of June 8. Student results for end-of-course
 549 | assessments must be provided no later than 1 week after the
 550 | school district completes testing for each course. The
 551 | commissioner may extend the reporting schedule under exigent
 552 | circumstances.

553 | b. FCAT Writing may not be administered earlier than the
 554 | week of March 1, and a comprehensive statewide assessment of any
 555 | other subject may not be administered earlier than the week of
 556 | April 15.

557 | c. A statewide, standardized end-of-course assessment is
 558 | administered at the end of the course. The commissioner shall
 559 | select an administration period for assessments that meets the
 560 | intent of end-of-course assessments and provides student results

561 prior to the end of the course. School districts shall
 562 administer tests in accordance with the schedule determined by
 563 the commissioner. For an end-of-course assessment administered
 564 at the end of the first semester, the commissioner shall
 565 determine the most appropriate testing dates based on a review
 566 of each school district's academic calendar.

567
 568 The commissioner may, based on collaboration and input from
 569 school districts, design and implement student testing programs,
 570 for any grade level and subject area, necessary to effectively
 571 monitor educational achievement in the state, including the
 572 measurement of educational achievement of the Next Generation
 573 Sunshine State Standards for students with disabilities.
 574 Development and refinement of assessments shall include
 575 universal design principles and accessibility standards that
 576 will prevent any unintended obstacles for students with
 577 disabilities while ensuring the validity and reliability of the
 578 test. These principles should be applicable to all technology
 579 platforms and assistive devices available for the assessments.
 580 The field testing process and psychometric analyses for the
 581 statewide assessment program must include an appropriate
 582 percentage of students with disabilities and an evaluation or
 583 determination of the effect of test items on such students.

584 (d) Conduct ongoing research to develop improved methods
 585 of assessing student performance, including, without limitation,
 586 the use of technology to administer tests, score, or report the
 587 results of, the use of electronic transfer of data, the
 588 development of work-product assessments, and the development of

589 process assessments.

590 (e) Conduct ongoing research and analysis of student
 591 achievement data, including, without limitation, monitoring
 592 trends in student achievement by grade level and overall student
 593 achievement, identifying school programs that are successful,
 594 and analyzing correlates of school achievement.

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

598 (g) Beginning with the 2014-2015 school year, all
 599 statewide end-of-course assessments shall be administered
 600 online.

601 (7) REQUIRED ANALYSES.—The commissioner shall provide, at
 602 a minimum, for the following analyses of data produced by the
 603 student achievement assessment ~~testing~~ program:

604 (a) The statistical system for the annual assessments
 605 shall use measures of student learning, such as the FCAT, to
 606 determine teacher, school, and school district statistical
 607 distributions, which shall be determined using available data
 608 from the FCAT, and other data collection as deemed appropriate
 609 by the Department of Education, to measure the differences in
 610 student prior year achievement compared to the current year
 611 achievement for the purposes of accountability and recognition.

612 (b) The statistical system shall provide the best
 613 estimates of teacher, school, and school district effects on
 614 student progress. The approach used by the department shall be
 615 approved by the commissioner before implementation.

616 (c) The annual assessment ~~testing~~ program shall be

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617 administered to provide for valid statewide comparisons of
 618 learning gains to be made for purposes of accountability and
 619 recognition. District school boards shall not establish school
 620 calendars that jeopardize or limit the valid testing and
 621 comparison of student learning gains.

622 (8) LOCAL ASSESSMENTS.—

623 (a) Measurement of the learning gains of students in all
 624 subjects and grade levels other than subjects and grade levels
 625 required for the state student achievement assessment ~~testing~~
 626 program is the responsibility of the school districts.

627 Section 6. Section 1008.33, Florida Statutes, is amended
 628 to read:

629 1008.33 Authority to enforce public school improvement.—

630 (1) The State Board of Education shall comply with the
 631 federal Elementary and Secondary Education Act (ESEA), 20 U.S.C.
 632 ss. 6301 et seq., ~~and its implementing regulations, and the ESEA~~
 633 flexibility waiver approved for Florida by the United States
 634 Secretary of Education. The state board ~~of Education is~~
 635 ~~authorized to adopt rules in compliance with the ESEA and, after~~
 636 ~~evaluating and determining that the ESEA and its implementing~~
 637 ~~regulations are consistent with the statements of purpose set~~
 638 ~~forth in the ESEA (2002),~~ may adopt rules to maintain compliance
 639 with the ESEA and the ESEA flexibility waiver.

640 (2) (a) Pursuant to subsection (1) and ss. 1008.34,
 641 1008.345, and 1008.385, the State Board of Education shall hold
 642 all school districts and public schools accountable for student
 643 performance. The state board is responsible for a state system
 644 of school improvement and education accountability that assesses

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645 student performance by school, identifies schools in which
 646 students are not making adequate progress toward state
 647 standards, and institutes appropriate measures for enforcing
 648 improvement.

649 (b) The state system of school improvement and education
 650 accountability must provide for uniform accountability
 651 standards, provide assistance of escalating intensity to low-
 652 performing schools, direct support to schools in order to
 653 improve and sustain performance, focus on the performance of
 654 student subgroups, and enhance student performance.

655 (c) School districts must be held accountable for
 656 improving the academic achievement of all students and for
 657 identifying and turning around low-performing schools.

658 (3)(a) The academic performance of all students has a
 659 significant effect on the state school system. Pursuant to Art.
 660 IX of the State Constitution, which prescribes the duty of the
 661 State Board of Education to supervise Florida's public school
 662 system, the state board of ~~Education~~ shall equitably enforce the
 663 accountability requirements of the state school system and may
 664 impose state requirements on school districts in order to
 665 improve the academic performance of all districts, schools, and
 666 students based upon the provisions of the Florida K-20 Education
 667 Code, chapters 1000-1013; and the federal ESEA Elementary and
 668 Secondary Education Act, 20 U.S.C. ss. 6301 et seq., and its
 669 implementing regulations; and the ESEA flexibility waiver
 670 approved for Florida by the United States Secretary of
 671 Education.

672 (b) ~~For the purpose of determining whether a public school~~

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673 ~~requires action to achieve a sufficient level of school~~
 674 ~~improvement,~~ Beginning with the 2011-2012 ~~2010-2011~~ school year,
 675 the Department of Education shall annually identify each
 676 ~~categorize a public school~~ in need of intervention and support
 677 to improve student academic performance. All schools earning a
 678 grade of "D" or "F" pursuant to s. 1008.34 are schools in need
 679 of intervention and support ~~in one of six categories based on~~
 680 ~~the following:~~

681 1. ~~A school's grade based upon statewide assessments~~
 682 ~~administered pursuant to s. 1008.22; and~~

683 2. ~~The level and rate of change in student performance in~~
 684 ~~the areas of reading and mathematics, disaggregated into student~~
 685 ~~subgroups as described in the federal Elementary and Secondary~~
 686 ~~Education Act, 20 U.S.C. s. 6311(b)(2)(C)(v)(II).~~

687 (c) The state board shall adopt by rule a differentiated
 688 matrix of intervention and support strategies for assisting
 689 traditional public schools identified under this section and
 690 rules for implementing s. 1002.33(9)(n), relating to charter
 691 schools. ~~Appropriate intervention and support strategies shall~~
 692 ~~be applied to schools that require action to achieve a~~
 693 ~~sufficient level of improvement as described in paragraph (b).~~
 694 The intervention and support strategies must address student
 695 performance and may include, including, but not limited to,
 696 improvement planning, leadership quality improvement, educator
 697 quality improvement, professional development, curriculum
 698 alignment and pacing, and the use of continuous improvement and
 699 monitoring plans and processes. In addition, the state board of
 700 ~~Education~~ may prescribe reporting requirements to review and

701 | monitor the progress of the schools. The rule must define the
 702 | intervention and support strategies for school improvement for
 703 | schools earning a grade of "D" or "F" and the roles for the
 704 | district and department. The rule shall differentiate among
 705 | schools earning consecutive grades of "D" or "F," or a
 706 | combination thereof, and provide for more intense monitoring,
 707 | intervention, and support strategies for these schools.

708 | ~~(4) The Department of Education shall create a matrix that~~
 709 | ~~reflects intervention and support strategies to address the~~
 710 | ~~particular needs of schools in each category.~~

711 | ~~(a) Intervention and support strategies shall be applied~~
 712 | ~~to schools based upon the school categorization pursuant to~~
 713 | ~~paragraph (3) (b). The Department of Education shall apply the~~
 714 | ~~most intense intervention strategies to the lowest-performing~~
 715 | ~~schools. For all but the lowest category and "F" schools in the~~
 716 | ~~second lowest category, the intervention and support strategies~~
 717 | ~~shall be administered solely by the districts and the schools.~~

718 | ~~(b) The lowest-performing schools are schools that are~~
 719 | ~~categorized pursuant to paragraph (3) (b) and have received:~~

720 | ~~1. A grade of "F" in the most recent school year and in 4~~
 721 | ~~of the last 6 years; or~~

722 | ~~2. A grade of "D" or "F" in the most recent school year~~
 723 | ~~and meet at least three of the following criteria:~~

724 | ~~a. The percentage of students who are not proficient in~~
 725 | ~~reading has increased when compared to measurements taken 5~~
 726 | ~~years previously;~~

727 | ~~b. The percentage of students who are not proficient in~~
 728 | ~~mathematics has increased when compared to measurements taken 5~~

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729 ~~years previously;~~

730 ~~e. At least 65 percent of the school's students are not~~
 731 ~~proficient in reading; or~~

732 ~~d. At least 65 percent of the school's students are not~~
 733 ~~proficient in mathematics.~~

734 (4)-(5)(a) The state board shall apply the most intense
 735 intervention and support strategies to schools earning a grade
 736 of "F." In the first full school year after a school is
 737 initially earns a grade of "F," identified as a school in the
 738 lowest-performing category, the school district must implement
 739 intervention and support strategies prescribed in rule under
 740 paragraph (3)(c), select a turnaround option from those provided
 741 in subparagraphs (b)1.-5., and submit a plan for implementing
 742 the turnaround option to the department for approval by the
 743 state board. Upon approval by the state board, the turnaround
 744 option must be implemented in the following school year.

745 (b) Except as provided in subsection (5), the turnaround
 746 options available to a school district to address a school that
 747 earns a grade of "F" are a plan, which is subject to approval by
 748 the State Board of Education, for implementing one of the
 749 following options at the beginning of the next school year. The
 750 plan must be implemented unless the school moves from the
 751 lowest-performing category:

752 1. ~~Convert the school to a district-managed turnaround~~
 753 ~~school by means that include implementing a turnaround plan~~
 754 ~~approved by the Commissioner of Education which shall become the~~
 755 ~~school's improvement plan;~~

756 2. Reassign students to another school and monitor the

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757 progress of each reassigned student;

758 3. Close the school and reopen the school as one or more
759 charter schools, each with a governing board that has a
760 demonstrated record of effectiveness; ~~or~~

761 4. Contract with an outside entity that has a demonstrated
762 record of effectiveness to operate the school; or

763 5. Implement a hybrid of turnaround options set forth in
764 subparagraphs 1.-4. or other turnaround models that have a
765 demonstrated record of effectiveness.

766 (c) Except for schools required to implement a turnaround
767 option pursuant to subsection (5), a school earning a grade of
768 "F" shall have a planning year followed by 2 full school years
769 to implement the initial turnaround option selected by the
770 school district and approved by the state board. Implementation
771 of the turnaround option is no longer required if the school
772 improves by at least one letter grade, except as provided in
773 paragraph (d).

774 (d) A school earning a grade of "F" that improves its
775 letter grade must continue to implement strategies identified in
776 its school improvement plan pursuant to s. 1001.42(18)(a). The
777 department must annually review implementation of the school
778 improvement plan for 3 years to monitor the school's continued
779 improvement.

780 (e) ~~(b)~~ If a school earning a grade of "F" does not improve
781 by at least one letter grade after 2 full school years of
782 implementing the turnaround option selected by the school
783 district under ~~move from the lowest-performing category during~~
784 the initial year of implementing one of the options in paragraph

785 ~~(b)(a)~~, the school district must select a different option and
 786 submit another implementation a plan to the department for,
 787 ~~which is subject to approval by the state board. Implementation~~
 788 of the approved plan must begin the State Board of Education,
 789 ~~for implementing a different option in paragraph (a) at the~~
 790 beginning of the next school year following the implementation
 791 period of the existing turnaround option, unless the state board
 792 ~~of Education~~ determines that the school is likely to improve a
 793 letter grade ~~move from the lowest-performing category~~ if
 794 additional time is provided to implement the existing turnaround
 795 option ~~intervention and support strategies. The State Board of~~
 796 ~~Education shall determine whether a school district may continue~~
 797 ~~to implement an option beyond 1 year while a school remains in~~
 798 ~~the lowest-performing category.~~

799 ~~(6) In order to advance to a higher category, a school~~
 800 ~~must make significant progress by improving its school grade and~~
 801 ~~by increasing student performance in mathematics and reading.~~
 802 ~~Student performance must be evaluated for each student subgroup~~
 803 ~~as set forth in paragraph (3)(b).~~

804 ~~(5)(7)~~ A school that earns a grade of "F" within 2 years
 805 after raising its grade from a grade of "F" or that earns a
 806 grade of "F" within 2 years after exiting the lowest-performing
 807 category under s. 3, chapter 2009-144, Laws of Florida, must
 808 implement one of the turnaround options in subparagraphs
 809 (4)(b)2.-5. Beginning July 1, 2009, the Department of Education
 810 ~~shall commence its duties under this section.~~

811 ~~(6)~~ A school that earns a grade of "D" for 3 consecutive
 812 years must implement the district-managed turnaround option

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813 pursuant to subparagraph (4)(b)1. The school district must
 814 submit an implementation plan to the department for approval by
 815 the state board.

816 (7) A school classified in the lowest-performing category
 817 under s. 3, chapter 2009-144, Laws of Florida, before July 1,
 818 2012, is not required to continue implementing any turnaround
 819 option unless the school earns a grade of "F" or a third
 820 consecutive "D" for the 2011-2012 school year. A school earning
 821 a grade of "F" or a third consecutive "D" for the 2011-2012
 822 school year may not restart the number of years it has been low
 823 performing by virtue of the 2012 amendments to this section.

824 (8) ~~By July 1, 2010,~~ The state board ~~of Education~~ shall
 825 adopt rules pursuant to ss. 120.536(1) and 120.54 to administer
 826 this section. The rules shall include timelines for submission
 827 of implementation plans, approval criteria for implementation
 828 plans, and timelines for implementing intervention and support
 829 strategies. The state board shall consult with education
 830 stakeholders in developing the rules.

831 Section 7. Section 1008.34, Florida Statutes, is amended
 832 to read:

833 1008.34 School grading system; school report cards;
 834 district grade.—

835 (1) ANNUAL REPORTS.—The Commissioner of Education shall
 836 prepare annual reports of the results of the statewide
 837 assessment program which describe student achievement in the
 838 state, each district, and each school. The commissioner shall
 839 prescribe the design and content of these reports, which must
 840 include, ~~without limitation,~~ descriptions of the performance of

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841 all schools participating in the assessment program and all of
 842 their major student populations as determined by the
 843 commissioner. The report of Education, and must also include the
 844 percent of students performing at or above grade level and
 845 making a year's learning growth in a year's time in reading and
 846 mathematics. ~~the median scores of all eligible students who~~
 847 ~~scored at or in the lowest 25th percentile of the state in the~~
 848 ~~previous school year; provided, however, that~~ The provisions of
 849 s. 1002.22 pertaining to student records apply to this section.

850 (2) SCHOOL GRADES.—The annual report shall identify
 851 schools as having one of the following grades, defined according
 852 to rules of the State Board of Education:

- 853 (a) "A," schools making excellent progress.
- 854 (b) "B," schools making above average progress.
- 855 (c) "C," schools making satisfactory progress.
- 856 (d) "D," schools making less than satisfactory progress.
- 857 (e) "F," schools failing to make adequate progress.

858
 859 Each school that earns ~~designated with~~ a grade of "A," ~~making~~
 860 ~~excellent progress,~~ or improves ~~having improved~~ at least two
 861 letter grades ~~grade levels,~~ shall have greater authority over
 862 the allocation of the school's total budget generated from the
 863 FEFP, state categoricals, lottery funds, grants, and local
 864 funds, as specified in state board rule. The rule must provide
 865 that the increased budget authority shall remain in effect until
 866 the school's grade declines.

867 (3) DESIGNATION OF SCHOOL GRADES.—

- 868 (a) Each school that has students who are tested and

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869 included in the school grading system shall receive a school
870 grade, except as follows:

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

877 2. An alternative school may choose to receive a school
878 grade under this section or a school improvement rating under s.
879 1008.341. For charter schools that meet the definition of an
880 alternative school pursuant to State Board of Education rule,
881 the decision to receive a school grade is the decision of the
882 charter school governing board.

883 3. A school that serves any combination of students in
884 kindergarten through grade 3 which does not receive a school
885 grade because its students are not tested and included in the
886 school grading system shall receive the school grade designation
887 of a K-3 feeder pattern school identified by the Department of
888 Education and verified by the school district. A school feeder
889 pattern exists if at least 60 percent of the students in the
890 school serving a combination of students in kindergarten through
891 grade 3 are scheduled to be assigned to the graded school.

892 (b)1. A school's grade shall be based on a combination of:

893 a. Student achievement scores, including achievement as
894 measured by ~~on all~~ FCAT assessments ~~administered~~ under s.
895 1008.22(3)(c)1., statewide, standardized end-of-course
896 ~~assessments administered~~ under s. 1008.22(3)(c)2.a. and b.

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897 ~~1008.22(3)(c)2.a.~~, and achievement scores for students seeking a
 898 special diploma.

899 b. Student learning gains in reading and mathematics as
 900 measured by FCAT and statewide, standardized end-of-course
 901 assessments, as described in s. 1008.22(3)(c)1. and 2.a.,
 902 including learning gains for students seeking a special diploma,
 903 as measured by an alternate assessment ~~tool, shall be included~~
 904 ~~not later than the 2009-2010 school year.~~

905 c. Improvement of the lowest 25th percentile of students
 906 in the school in reading and mathematics on the FCAT or end-of-
 907 course assessments described in s. 1008.22(3)(c)2.a., unless
 908 these students are exhibiting satisfactory performance.

909 2. Beginning with the 2011-2012 school year, for schools
 910 comprised of middle school grades 6 through 8 or grades 7 and 8,
 911 the school's grade shall include the performance and
 912 participation of its students enrolled in high school level
 913 courses with end-of-course assessments administered under s.
 914 1008.22(3)(c)2.a. Performance and participation must be weighted
 915 equally. As valid data becomes available, the school grades
 916 shall include the students' attainment of national industry
 917 certification identified in the Industry Certification Funding
 918 List pursuant to rules adopted by the state board ~~of Education.~~

919 3. Beginning with the 2009-2010 school year for schools
 920 comprised of high school grades 9, 10, 11, and 12, or grades 10,
 921 11, and 12, at least 50 percent of the school grade shall be
 922 based on a combination of the factors listed in sub-
 923 subparagraphs 1.a.-c. and the remaining percentage ~~50 percent~~ on
 924 the following factors:

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- 925 a. The high school graduation rate of the school;
- 926 b. As valid data becomes available, the performance and
- 927 participation of the school's students in College Board Advanced
- 928 Placement courses, International Baccalaureate courses, dual
- 929 enrollment courses, and Advanced International Certificate of
- 930 Education courses; and the students' achievement of national
- 931 industry certification identified in the Industry Certification
- 932 Funding List, pursuant to rules adopted by the state board of
- 933 ~~Education;~~
- 934 c. Postsecondary readiness of all of the school's on-time
- 935 graduates ~~students~~ as measured by the SAT, the ACT, the
- 936 Postsecondary Education Readiness Test, or the common placement
- 937 test;
- 938 d. The high school graduation rate of at-risk students,
- 939 who are students scoring ~~who scored~~ at Level 1 or Level 2 ~~or~~
- 940 ~~lower~~ on the grade 8 FCAT Reading and FCAT Mathematics
- 941 ~~examinations;~~
- 942 e. As valid data becomes available, the performance of the
- 943 school's students on statewide, standardized end-of-course
- 944 assessments administered under s. 1008.22(3)(c)2.c. and d.; and
- 945 f. The growth or decline in the components listed in sub-
- 946 subparagraphs a.-e. from year to year.
- 947 (c) Student assessment data used in determining school
- 948 grades shall include:
- 949 1. The aggregate scores of all eligible students enrolled
- 950 in the school who have been assessed on the FCAT and statewide,
- 951 standardized end-of-course assessments in courses required for
- 952 high school graduation, including, beginning with the 2011-2012

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953 ~~2010-2011~~ school year, the end-of-course assessment in Algebra
 954 I; and beginning with the 2012-2013 ~~2011-2012~~ school year, the
 955 end-of-course assessments in Geometry and Biology; and beginning
 956 with the 2014-2015 ~~2013-2014~~ school year, on the statewide,
 957 standardized end-of-course assessment in Civics ~~education~~ at the
 958 middle school level.

959 2. The aggregate scores of all eligible students enrolled
 960 in the school who have been assessed on the FCAT and statewide,
 961 standardized end-of-course assessments as described in s.
 962 1008.22(3)(c)2.a., and who have scored at or in the lowest 25th
 963 percentile of students in the school in reading and mathematics,
 964 unless these students are exhibiting satisfactory performance.

965 3. The achievement scores and learning gains of eligible
 966 students attending alternative schools that provide dropout
 967 prevention and academic intervention services pursuant to s.
 968 1003.53. The term "eligible students" in this subparagraph does
 969 not include students attending an alternative school who are
 970 subject to district school board policies for expulsion for
 971 repeated or serious offenses, who are in dropout retrieval
 972 programs serving students who have officially been designated as
 973 dropouts, or who are in programs operated or contracted by the
 974 Department of Juvenile Justice. The student performance data for
 975 eligible students identified in this subparagraph shall be
 976 included in the calculation of the home school's grade. As used
 977 in this subparagraph and s. 1008.341, the term "home school"
 978 means the school to which the student would be assigned if the
 979 student were not assigned to an alternative school. If an
 980 alternative school chooses to be graded under this section,

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981 student performance data for eligible students identified in
 982 this subparagraph shall not be included in the home school's
 983 grade but shall be included only in the calculation of the
 984 alternative school's grade. A school district that fails to
 985 assign the FCAT and statewide, standardized end-of-course
 986 assessment as described in s. 1008.22(3)(c)2.a. scores of each
 987 of its students to his or her home school or to the alternative
 988 school that receives a grade shall forfeit Florida School
 989 Recognition Program funds for 1 fiscal year. School districts
 990 must require collaboration between the home school and the
 991 alternative school in order to promote student success. This
 992 collaboration must include an annual discussion between the
 993 principal of the alternative school and the principal of each
 994 student's home school concerning the most appropriate school
 995 assignment of the student.

996 4. The achievement scores and learning gains of students
 997 designated as hospital- or homebound. Student assessment data
 998 for students designated as hospital- or homebound shall be
 999 assigned to their home school for the purposes of school grades.
 1000 As used in this subparagraph, the term "home school" means the
 1001 school to which a student would be assigned if the student were
 1002 not assigned to a hospital- or homebound program.

1003 5. For schools comprised of high school grades 9, 10, 11,
 1004 and 12, or grades 10, 11, and 12, the data listed in
 1005 subparagraphs 1.-3. and the following data as the Department of
 1006 Education determines such data are valid and available:

1007 a. The high school graduation rate of the school as
 1008 calculated by the department ~~of Education;~~

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1009 b. The participation rate of all eligible students
 1010 enrolled in the school and enrolled in College Board Advanced
 1011 Placement courses; International Baccalaureate courses; dual
 1012 enrollment courses; Advanced International Certificate of
 1013 Education courses; and courses or sequences of courses leading
 1014 to national industry certification identified in the Industry
 1015 Certification Funding List, pursuant to rules adopted by the
 1016 State Board of Education;

1017 c. The aggregate scores of all eligible students enrolled
 1018 in the school in College Board Advanced Placement courses,
 1019 International Baccalaureate courses, and Advanced International
 1020 Certificate of Education courses;

1021 d. Earning of college credit by all eligible students
 1022 enrolled in the school in dual enrollment programs under s.
 1023 1007.271;

1024 e. Earning of a national industry certification identified
 1025 in the Industry Certification Funding List, pursuant to rules
 1026 adopted by the State Board of Education;

1027 f. The aggregate scores of all eligible students enrolled
 1028 in the school in reading, mathematics, and other subjects as
 1029 measured by the SAT, the ACT, the Postsecondary Education
 1030 Readiness Test, and the common placement test for postsecondary
 1031 readiness;

1032 g. The high school graduation rate of all eligible at-risk
 1033 students enrolled in the school who scored at Level 2 or lower
 1034 on ~~the~~ grade 8 FCAT Reading and FCAT Mathematics examinations;

1035 h. The performance of the school's students on statewide,
 1036 standardized end-of-course assessments administered under s.

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1037 1008.22(3)(c)2.c. and d.; and
 1038 i. The growth or decline in the data components listed in
 1039 sub-subparagraphs a.-h. from year to year.

1040
 1041 The State Board of Education shall adopt appropriate criteria
 1042 for each school grade. The criteria must also give added weight
 1043 to student achievement in reading. Schools earning ~~designated~~
 1044 ~~with~~ a grade of "C," making satisfactory progress, shall be
 1045 required to demonstrate that adequate progress has been made by
 1046 students in the school who are in the lowest 25th percentile in
 1047 reading and mathematics on the FCAT and end-of-course
 1048 assessments as described in s. 1008.22(3)(c)2.a., unless these
 1049 students are exhibiting satisfactory performance. ~~Beginning with~~
 1050 ~~the 2009-2010 school year for~~ Schools comprised of high school
 1051 grades 9, 10, 11, and 12, or grades 10, 11, and 12, the criteria
 1052 for school grades must also give added weight to the graduation
 1053 rate of all eligible at-risk students, ~~as defined in this~~
 1054 ~~paragraph. Beginning in the 2009-2010 school year,~~ In order for
 1055 a high school to earn ~~be designated as having~~ a grade of "A,"
 1056 ~~making excellent progress,~~ the school must demonstrate that its
 1057 at-risk students, as defined in this paragraph, ~~in the school~~
 1058 are making adequate progress.

1059 (4) SCHOOL IMPROVEMENT RATINGS.—The annual report shall
 1060 identify each school's performance as having improved, remained
 1061 the same, or declined. This school improvement rating shall be
 1062 based on a comparison of the current year's and previous year's
 1063 student and school performance data. A school ~~Schools~~ that
 1064 improves its rating by ~~improve~~ at least one grade level ~~is~~ are

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1065 eligible for school recognition awards pursuant to s. 1008.36.

1066 (5) SCHOOL REPORT CARD.—The Department of Education shall
 1067 annually develop, in collaboration with the school districts, a
 1068 school report card to be provided by the school district
 1069 ~~delivered~~ to parents within the ~~throughout each school~~ district.
 1070 The report card shall include the school's grade, information
 1071 regarding school improvement, an explanation of school
 1072 performance as evaluated by the federal Elementary and Secondary
 1073 Education Act (ESEA), 20 U.S.C. ss. 6301 et seq. ~~No Child Left~~
 1074 ~~Behind Act of 2001~~, and indicators of return on investment. Each
 1075 school's report card shall be published annually by the
 1076 department on its website, ~~and the school district shall provide~~
 1077 ~~the school report card to each parent.~~

1078 (6) PERFORMANCE-BASED FUNDING.—The Legislature may factor
 1079 in the performance of schools in calculating any performance-
 1080 based funding policy that is provided for annually in the
 1081 General Appropriations Act.

1082 (7) DISTRICT GRADE.—The annual report required by
 1083 subsection (1) shall include the school district's grade. A
 1084 school district's grade shall be calculated using student
 1085 performance and learning gains data on statewide assessments
 1086 used for determining school grades under subparagraph (3)(b)1.
 1087 for each eligible full-year enrolled student in the district.
 1088 This calculation methodology captures each eligible student in
 1089 the district who may have transferred among schools within the
 1090 district or is enrolled in a school that does not receive a
 1091 grade ~~district grades, which shall consist of weighted district~~
 1092 ~~average grades, by level, for all elementary schools, middle~~

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1093 ~~schools, and high schools in the district. A district's weighted~~
 1094 ~~average grade shall be calculated by weighting individual school~~
 1095 ~~grades determined pursuant to subsection (2) by school~~
 1096 ~~enrollment.~~

1097 (8) RULES.—The State Board of Education shall adopt rules
 1098 under ss. 120.536(1) and 120.54 to administer this section.

1099 Section 8. Paragraph (d) of subsection (6) and paragraph
 1100 (b) of subsection (7) of section 1008.345, Florida Statutes, are
 1101 amended to read:

1102 1008.345 Implementation of state system of school
 1103 improvement and education accountability.—

1104 (6)

1105 (d) The commissioner shall assign a community assessment
 1106 team to each school district or governing board with a school
 1107 that earned a grade of graded "F" or three consecutive grades of
 1108 "D" pursuant to s. 1008.34 ~~a school in the lowest performing~~
 1109 ~~category pursuant to s. 1008.33~~ to review the school performance
 1110 data and determine causes for the low performance, including the
 1111 role of school, area, and district administrative personnel. The
 1112 community assessment team shall review a high school's
 1113 graduation rate calculated without GED tests for the past 3
 1114 years, disaggregated by student ethnicity. The team shall make
 1115 recommendations to the school board or the governing board and
 1116 to the State Board of Education which address the causes of the
 1117 school's low performance and may be incorporated into the school
 1118 improvement plan. The assessment team shall include, but not be
 1119 limited to, a department representative, parents, business
 1120 representatives, educators, representatives of local

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1121 governments, and community activists, and shall represent the
 1122 demographics of the community from which they are appointed.

1123 (7) As a part of the system of educational accountability,
 1124 the Department of Education shall:

1125 (b) Administer the statewide assessment ~~testing~~ program
 1126 created by s. 1008.22.

1127 Section 9. Section 1012.07, Florida Statutes, is amended
 1128 to read:

1129 1012.07 Identification of critical teacher shortage
 1130 areas.—The term "critical teacher shortage area" means high-need
 1131 content areas and high-priority location areas identified by the
 1132 State Board of Education. The State Board of Education shall
 1133 adopt rules pursuant to ss. 120.536(1) and 120.54 necessary to
 1134 annually identify critical teacher shortage areas. The state
 1135 board must consider current and emerging educational
 1136 requirements and workforce demands in determining critical
 1137 teacher shortage areas. School grade levels may also be
 1138 designated critical teacher shortage areas. Individual district
 1139 school boards may identify and submit other critical teacher
 1140 shortage areas. Such submissions must be aligned to current and
 1141 emerging educational requirements and workforce demands in order
 1142 to be approved by the State Board of Education. High-priority
 1143 location areas shall be in high-density, low-economic urban
 1144 schools; low-density, low-economic rural schools; and schools
 1145 that earned a grade of "F" or three consecutive grades of "D"
 1146 pursuant to s. 1008.34 identified as lowest performing under s.
 1147 1008.33 (4) (b).

1148 Section 10. Paragraph (c) of subsection (1) of section

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1149 1012.22, Florida Statutes, is amended to read:

1150 1012.22 Public school personnel; powers and duties of the
 1151 district school board.—The district school board shall:

1152 (1) Designate positions to be filled, prescribe
 1153 qualifications for those positions, and provide for the
 1154 appointment, compensation, promotion, suspension, and dismissal
 1155 of employees as follows, subject to the requirements of this
 1156 chapter:

1157 (c) Compensation and salary schedules.—

1158 1. Definitions.—As used in this paragraph:

1159 a. "Adjustment" means an addition to the base salary
 1160 schedule that is not a bonus and becomes part of the employee's
 1161 permanent base salary and shall be considered compensation under
 1162 s. 121.021(22).

1163 b. "Grandfathered salary schedule" means the salary
 1164 schedule or schedules adopted by a district school board before
 1165 July 1, 2014, pursuant to subparagraph 4.

1166 c. "Instructional personnel" means instructional personnel
 1167 as defined in s. 1012.01(2)(a)-(d), excluding substitute
 1168 teachers.

1169 d. "Performance salary schedule" means the salary schedule
 1170 or schedules adopted by a district school board pursuant to
 1171 subparagraph 5.

1172 e. "Salary schedule" means the schedule or schedules used
 1173 to provide the base salary for district school board personnel.

1174 f. "School administrator" means a school administrator as
 1175 defined in s. 1012.01(3)(c).

1176 g. "Supplement" means an annual addition to the base

1177 salary for the term of the negotiated supplement as long as the
 1178 employee continues his or her employment for the purpose of the
 1179 supplement. A supplement does not become part of the employee's
 1180 continuing base salary but shall be considered compensation
 1181 under s. 121.021(22).

1182 2. Cost-of-living adjustment.—A district school board may
 1183 provide a cost-of-living salary adjustment if the adjustment:

1184 a. Does not discriminate among comparable classes of
 1185 employees based upon the salary schedule under which they are
 1186 compensated.

1187 b. Does not exceed 50 percent of the annual adjustment
 1188 provided to instructional personnel rated as effective.

1189 3. Advanced degrees.—A district school board may not use
 1190 advanced degrees in setting a salary schedule for instructional
 1191 personnel or school administrators hired on or after July 1,
 1192 2011, unless the advanced degree is held in the individual's
 1193 area of certification and is only a salary supplement.

1194 4. Grandfathered salary schedule.—

1195 a. The district school board shall adopt a salary schedule
 1196 or salary schedules to be used as the basis for paying all
 1197 school employees hired before July 1, 2014. Instructional
 1198 personnel on annual contract as of July 1, 2014, shall be placed
 1199 on the performance salary schedule adopted under subparagraph 5.
 1200 Instructional personnel on continuing contract or professional
 1201 service contract may opt into the performance salary schedule if
 1202 the employee relinquishes such contract and agrees to be
 1203 employed on an annual contract under s. 1012.335. Such an
 1204 employee shall be placed on the performance salary schedule and

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1205 may not return to continuing contract or professional service
 1206 contract status. Any employee who opts into the performance
 1207 salary schedule may not return to the grandfathered salary
 1208 schedule.

1209 b. In determining the grandfathered salary schedule for
 1210 instructional personnel, a district school board must base a
 1211 portion of each employee's compensation upon performance
 1212 demonstrated under s. 1012.34 and shall provide differentiated
 1213 pay for both instructional personnel and school administrators
 1214 based upon district-determined factors, including, but not
 1215 limited to, additional responsibilities, school demographics,
 1216 critical shortage areas, and level of job performance
 1217 difficulties.

1218 5. Performance salary schedule.—By July 1, 2014, the
 1219 district school board shall adopt a performance salary schedule
 1220 that provides annual salary adjustments for instructional
 1221 personnel and school administrators based upon performance
 1222 determined under s. 1012.34. Employees hired on or after July 1,
 1223 2014, or employees who choose to move from the grandfathered
 1224 salary schedule to the performance salary schedule shall be
 1225 compensated pursuant to the performance salary schedule once
 1226 they have received the appropriate performance evaluation for
 1227 this purpose. However, a classroom teacher whose performance
 1228 evaluation utilizes student learning growth measures established
 1229 under s. 1012.34(7)(e) shall remain under the grandfathered
 1230 salary schedule until his or her teaching assignment changes to
 1231 a subject for which there is an assessment or the school
 1232 district establishes equally appropriate measures of student

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1233 learning growth as defined under s. 1012.34 and rules of the
 1234 State Board of Education.

1235 a. Base salary.—The base salary shall be established as
 1236 follows:

1237 (I) The base salary for instructional personnel or school
 1238 administrators who opt into the performance salary schedule
 1239 shall be the salary paid in the prior year, including
 1240 adjustments only.

1241 (II) Beginning July 1, 2014, instructional personnel or
 1242 school administrators new to the district, returning to the
 1243 district after a break in service without an authorized leave of
 1244 absence, or appointed for the first time to a position in the
 1245 district in the capacity of instructional personnel or school
 1246 administrator shall be placed on the performance salary
 1247 schedule.

1248 b. Salary adjustments.—Salary adjustments for highly
 1249 effective or effective performance shall be established as
 1250 follows:

1251 (I) The annual salary adjustment under the performance
 1252 salary schedule for an employee rated as highly effective must
 1253 be greater than the highest annual salary adjustment available
 1254 to an employee of the same classification through any other
 1255 salary schedule adopted by the district.

1256 (II) The annual salary adjustment under the performance
 1257 salary schedule for an employee rated as effective must be equal
 1258 to at least 50 percent and no more than 75 percent of the annual
 1259 adjustment provided for a highly effective employee of the same
 1260 classification.

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1261 (III) The performance salary schedule shall not provide an
 1262 annual salary adjustment for an employee who receives a rating
 1263 other than highly effective or effective for the year.

1264 c. Salary supplements.—In addition to the salary
 1265 adjustments, each district school board shall provide for salary
 1266 supplements for activities that must include, but are not
 1267 limited to:

1268 (I) Assignment to a Title I eligible school.

1269 (II) Assignment to a school that earned a grade of "F" or
 1270 three consecutive grades of "D" pursuant to s. 1008.34 ~~in the~~
 1271 ~~bottom two categories of the school improvement system under s.~~
 1272 ~~1008.33~~ such that the supplement remains in force for at least 1
 1273 year following improved performance in that school.

1274 (III) Certification and teaching in critical teacher
 1275 shortage areas. Statewide critical teacher shortage areas shall
 1276 be identified by the State Board of Education under s. 1012.07.
 1277 However, the district school board may identify other areas of
 1278 critical shortage within the school district for purposes of
 1279 this sub-sub-subparagraph and may remove areas identified by the
 1280 state board which do not apply within the school district.

1281 (IV) Assignment of additional academic responsibilities.

1282
 1283 If budget constraints in any given year limit a district school
 1284 board's ability to fully fund all adopted salary schedules, the
 1285 performance salary schedule shall not be reduced on the basis of
 1286 total cost or the value of individual awards in a manner that is
 1287 proportionally greater than reductions to any other salary
 1288 schedules adopted by the district.

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1289 Section 11. Subsection (2) of section 1012.2315, Florida
 1290 Statutes, is amended to read:
 1291 1012.2315 Assignment of teachers.-
 1292 (2) ASSIGNMENT TO SCHOOLS GRADED "D" or "F" ~~CATEGORIZED AS~~
 1293 ~~IN NEED OF IMPROVEMENT.~~-School districts may not assign a higher
 1294 percentage than the school district average of temporarily
 1295 certified teachers, teachers in need of improvement, or out-of-
 1296 field teachers to schools graded "D" or "F" pursuant to s.
 1297 1008.34 ~~in one of the three lowest performing categories under~~
 1298 ~~s. 1008.33(3)(b).~~ Each school district shall annually certify to
 1299 the Commissioner of Education that this requirement has been
 1300 met. If the commissioner determines that a school district is
 1301 not in compliance with this subsection, the State Board of
 1302 Education shall be notified and shall take action pursuant to s.
 1303 1008.32 in the next regularly scheduled meeting to require
 1304 compliance.
 1305 Section 12. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB EDC 12-01 School Improvement and Accountability
SPONSOR(S): Education Committee
TIED BILLS: IDEN./SIM. BILLS: CS/SB 1522

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Education Committee		Beagle <i>GB</i>	Klebacha <i>KB</i>

SUMMARY ANALYSIS

On February 9, 2012, the U.S. Department of Education approved Florida’s Elementary and Secondary Education Act (ESEA) Flexibility Waiver request. Rather than the combined use of state and federal measures required by ESEA, the waiver authorizes Florida to use its school grading system to identify low-performing schools for intervention. The bill substantially revises Florida’s differentiated accountability system to align state law with the waiver.

The bill eliminates existing criteria for identifying public schools for intervention and classification of schools into six categories, five of which require intervention. Instead, the Florida Department of Education (FDOE) must identify public schools for interventions based upon a school earning a grade of “D” or “F.” The most intense strategies must be provided to schools earning recurring letter grades of “D” or “F.” Traditional public schools that earn a grade of “F” or three consecutive “D’s” must implement school turnaround options. Charter schools that earn a grade of “D” or “F” must implement a school improvement plan. Those that earn recurring grades of “D” or that fluctuate between “D” and “F” over a period of years must implement corrective actions. A charter school’s sponsor must terminate a charter school that earns two consecutive grades of “F,” with certain exceptions. The bill provides eligibility for Opportunity Scholarships to students attending schools that earning a grade of “F” or three consecutive “D’s.”

Currently, traditional public schools and charter schools that fail to meet state and federal accountability requirements are required to implement differentiated accountability interventions. Under differentiated accountability, a school is placed in one of six categories based upon the school’s grade and declines in student performance. A school’s categorization determines the type and intensity of the intervention and whether the intervention is directed by the school, school district, or FDOE. The lowest performing schools receive the most intensive interventions and may be restructured if initial interventions fail to improve student performance at the school. Certain low-performing charter schools must implement school improvement plans and corrective actions. A charter school sponsor is authorized, but not required, to terminate the charter if poor performance persists. Students attending a public school graded "D" or "F" that is categorized in one of the two lowest performing categories are eligible for Opportunity Scholarships.

The bill also increases the percentage of a high school’s grade that may be based upon the statewide assessment components. The calculation of school district grades is revised to capture students who transfer among district schools and students attending ungraded schools. Middle school students enrolled in courses which require passage of a statewide, standardized end-of-course (EOC) assessment will no longer be required to take the corresponding grade level FCAT.

Currently, 50 percent of a high school’s grade is based upon statewide assessments and 50 percent is based upon other factors. School district grades are determined based upon the weighted average grade of schools in the district. Thus, students who transfer schools or attend ungraded schools are not reflected in the grade. Middle school students enrolled in courses requiring passage of an EOC assessment must also take the corresponding grade level FCAT.

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

The bill takes effect July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

School Improvement and Accountability

Overview

The Elementary and Secondary Education Act (ESEA) of 1965, as reauthorized and substantially revised by the No Child Left Behind Act of 2001 (NCLB), provides federal grants to states and school districts to improve educational opportunities for economically disadvantaged students.¹ Among other things, ESEA requires each state to develop and implement a single, statewide education accountability system.²

Each state must demonstrate that its schools and school districts are making adequate yearly progress (AYP) based upon state-adopted annual measurable objectives for student achievement on statewide assessments in mathematics and reading/language arts.³ The objectives must identify a minimum percentage of students who are required to meet or exceed the "proficient" level on such assessments.⁴ ESEA sets the 2001-02 school year as the starting point by which states must meet the objectives, with annual increases in the objectives through the 2013-14 school year, at which time all students must achieve proficiency.⁵

States must identify Title I schools⁶ that fail to make AYP for two consecutive years as "schools in need of improvement" (SINI).⁷ ESEA prescribes a series of school improvement interventions which gradually increase in intensity with each consecutive year a school is identified as a SINI. These interventions must be applied to all SINIs, regardless of whether a SINI barely misses making AYP or is in need of dramatic intervention.⁸

Florida is one of nine states participating in a U.S. Department of Education (U.S. DOE) pilot project that enables states to implement a more nuanced system of school improvement interventions than that prescribed by ESEA.⁹ This system is known as differentiated accountability because the lowest performing schools receive more comprehensive interventions, while schools that are closer to meeting student achievement goals receive less intensive interventions.¹⁰

The results of the differentiated accountability pilot project were to be used by U.S. DOE as a model for congressional reauthorization of ESEA, which was due to occur in 2007.¹¹ Because congressional reauthorization of ESEA is over four years past due, U.S. DOE is allowing states to apply for a flexibility

¹ Pub. L. No. 107-110, 115 Stat. 1425 (Jan. 8, 2002)(NCLB); Pub. L. No. 89-10, 79 Stat. 27 (April 11, 1965)(ESEA).

² 20 U.S.C. s. 6311(b)(2)(A).

³ 20 U.S.C. s. 6311(b)(2)(G).

⁴ 20 U.S.C. s. 6311(b)(2)(G)(iii).

⁵ 20 U.S.C. s. 6311(b)(2)(E), (F) and (G)(iv).

⁶ Generally speaking, Title I schools are high-poverty schools. See 20 U.S.C. s. 6301(2)-(3).

⁷ 20 U.S.C. s. 6316(b)(1)(A).

⁸ See 20 U.S.C. s. 6316(b)(1)(E)-(8). These interventions include school improvement plans, public school transfers, technical assistance, supplemental educational services, corrective actions, and restructuring. *Id.*

⁹ U.S. Department of Education, Press Release, *U.S. Education Secretary Margaret Spellings Announces Approval of Three Additional States to Use Differentiated Accountability Under NCLB* (Jan. 8, 2009), available at <http://www2.ed.gov/news/pressreleases/2009/01/01082009b.html>.

¹⁰ Section 1008.33(2)(b) and (4), F.S.

¹¹ 20 U.S.C. s. 6302 (authorizing appropriations through FY 2007); see U.S. Department of Education, *Differentiated Accountability: Targeting Resources to Schools with the Greatest Need* (May 2008), available at

<http://www.ed.gov/nclb/accountability/differentiated/factsheet02.pdf> [hereinafter *U.S. DOE Differentiated Accountability Fact Sheet*]. To participate in the pilot project, a state must agree to provide data to U.S. DOE for comparing school improvement results under differentiated accountability with those achieved under the system mandated by NCLB. *U.S. DOE Differentiated Accountability Fact Sheet*.

waiver that relieves the state from compliance with certain ESEA requirements. To obtain a waiver states must, among other things, agree to implement a differentiated accountability system.¹² Such waivers will allow states to discontinue use of AYP in identifying schools for intervention and instead use state-determined factors. Waivers will also relieve states from meeting the ESEA's goal of 100 percent student proficiency in mathematics and reading/language arts by the 2013-14 school year.¹³

On February 9, 2012, the Florida Department of Education's (FDOE) ESEA waiver request was approved by U.S. DOE. Among other things, Florida's waiver request proposes use of school grades as the sole factor in identifying schools for intervention. Changes to statutes governing Florida's differentiated accountability system are necessary to align state law with the reforms proposed in the waiver request.¹⁴

Statewide Assessments

Present Situation

Florida's statewide assessment program consists of the Florida Comprehensive Assessment Test (FCAT) and statewide, standardized end-of-course (EOC) assessments.¹⁵ The FCAT consists of comprehensive grade-level assessments in reading, writing, mathematics, and science. Reading is tested annually in grades 3 through 10. Mathematics is tested annually in grades 3 through 8. Science is tested at least once at the elementary and middle school levels. Writing is tested at least once at the elementary, middle, and high school levels.¹⁶

Statewide, standardized EOC assessments are course-specific assessments.¹⁷ Currently, statewide, standardized EOC assessments are required in high school Algebra I, Geometry, and Biology I courses.¹⁸ The Algebra I EOC assessment was first administered in the 2010-11 school year and administration of the Geometry and Biology I EOC assessments begins this school year.¹⁹ Middle school students who are enrolled in high school Algebra I, Geometry, or Biology I courses are required to take both the EOC assessment and the corresponding grade-level FCAT mathematics or science examination.²⁰

Effect of Proposed Changes

The bill eliminates the requirement that middle school students enrolled in a high school Algebra I, Geometry, or Biology I course with a statewide, standardized EOC assessment also take the corresponding grade-level FCAT mathematics or science examination. This change eliminates duplicative testing of middle school students enrolled in these courses.

¹² U.S. Department of Education, *ESEA Flexibility*, at 1 (Sept. 23, 2011), available at <http://www.ed.gov/esea/flexibility/documents/esea-flexibility.doc>.

¹³ Florida Department of Education, *Florida ESEA Flexibility Request*, at 4 (Nov. 14, 2011), available at <http://www.fldoe.org/esea/pdf/ffr.pdf>.

¹⁴ *Id.*

¹⁵ Section 1008.22(3)(c)1. and 2., F.S.

¹⁶ Section 1008.22(3)(c)1., F.S. Beginning with students entering 9th grade in the 2010-11 school year, the administration of grade 9 FCAT Mathematics was discontinued. Beginning with the 2011-12 school year, the administration of grade 10 FCAT Mathematics is discontinued, except for prior-year test-takers who must retake the exam to fulfill graduation requirements. Beginning with the 2011-12 school year, the administration of FCAT Science at the high school level is discontinued. *Id.*

¹⁷ Section 1008.22(3)(c)2.a., F.S.

¹⁸ Section 8, ch. 2010-22, L.O.F., *codified at s. 1008.22(3)(c)2.a.(I) and (II)*, F.S.; s. 3, ch. 2010-48, L.O.F., *codified at s. 1008.22(3)(c)2.b.*, F.S. An EOC assessment in Civics Education is required at the middle school level. Administration of the Civics EOC assessment will begin in the 2012-13 school year. Section 1008.22(3)(c)2.b., F.S.

¹⁹ Section 1008.22(3)(c)2.a. and b., F.S.

²⁰ Section 1008.22(3)(c)2.(I), F.S.; rule 6A-1.09422(3)(c)-(f), F.A.C.

The Florida School Grading System

Present Situation

Florida law establishes the Florida School Grading System to measure the performance of Florida's public schools. Subject to certain exceptions, each public school is assigned an "A" through "F" letter grade.²¹ Each school's grade is based upon a combination of:

- Student achievement scores on statewide assessments and achievement scores for students with disabilities seeking a special diploma.
- Student learning gains on statewide reading and mathematics assessments and learning gains for students seeking a special diploma.
- Improvement of the lowest 25th percentile of students in the school on statewide reading and mathematics assessments, unless these students are exhibiting satisfactory performance.²²

The statewide assessments used to determine a school's grade are FCAT reading, writing, mathematics, and science; the Algebra I EOC (beginning 2010-11); the Geometry and Biology I EOCs (beginning 2011-12); and the middle school Civics EOC (beginning 2013-14).²³

The factors used to determine a high school's grade differ from those used for elementary and middle schools. Fifty percent of a high school's grade is based upon student achievement and annual learning gains on statewide assessments.²⁴ The other half is based upon the:

- High school's graduation rate;
- High school's graduation rate of at-risk students scoring at achievement level 1 or 2 in reading and mathematics on the grade 8 FCAT;
- Performance and participation of the school's students in Advanced Placement (AP), International Baccalaureate (IB), dual enrollment, and Advanced International Certificate of Education (AICE) courses (as valid data becomes available);²⁵
- Achievement by the school's students of industry certifications;²⁶
- Postsecondary readiness of the school's students, as measured by the SAT, ACT, or the Common Placement Test;²⁷
- Performance of the school's students on statewide standardized EOC assessments approved by the commissioner, that are administered, for example, in AP, IB, and AICE courses²⁸ and on EOCs in English/Language Arts II, Algebra II, Chemistry, Physics, Earth/Space Science/ U.S. History, and World History if and when those EOCs are developed and administered; and

²¹ Section 1008.34(2), F.S. School letter grades are defined as follows: "A," schools making excellent progress; "B," schools making above average progress; "C," schools making satisfactory progress; "D," schools making less than satisfactory progress; and "F," schools failing to make adequate progress. *Id.* An alternative school may choose to receive a school improvement rating instead of a school grade. Section 1008.34(3)(a)2., F.S. A school serving any combination of students in kindergarten through grade three which does not receive a school grade because its students are not tested may be assigned the grade of a school in its feeder pattern, if certain requirements are met. Section 1008.34(3)(a)3., F.S.

²² Section 1008.34(3)(b)1., F.S.

²³ Section 1008.34(3)(b)1. and (c)1., F.S. In the first school year of administration, the EOC assessment counts as 30 percent of a student's course grade. Thereafter, passage of the EOC assessment is required to earn credit in the course. *Id.*

²⁴ Section 1008.34(3)(b)3., F.S.

²⁵ See ss. 1007.27 and 1007.271, F.S. (articulated acceleration mechanisms, dual enrollment); College Board, *Advanced Placement Program*, <http://www.collegeboard.com/student/testing/ap/about.html> (last visited Feb. 3, 2012); International Baccalaureate, <http://www.ibo.org> (last visited Feb. 3, 2012); University of Cambridge, International Examinations, *Cambridge Advanced International Certificate of Education Diploma*, <http://www.cie.org.uk/qualifications/academic/uppersec/aice> (last visited Feb. 3, 2012).

²⁶ See s. 1003.493, F.S.

²⁷ See s. 1008.30, F.S. (common placement test assesses the basic computation and communication skills of students who intend to enter a degree program at any public postsecondary educational institution); College Board, *SAT*, <http://www.collegeboard.org/> (last visited Feb. 3, 2012); ACT, Inc., *The ACT Test*, <http://www.act.org/aap> (last visited Feb. 3, 2012).

²⁸ To date, no such assessments have been approved.

- Growth or decline in these components.²⁹

The Commissioner of Education must annually report statewide assessment results for the state, school districts, and schools. The annual report must describe the performance of each public school and their major student populations, and the median scores of all eligible students who scored at or in the lowest 25th percentile of the state in the previous school year.³⁰

School district grades are calculated using the weighted average, by grade level, for each elementary, middle, and high school. A district's weighted average grade is calculated by weighting individual school grades by school enrollment. This calculation does not capture students who transfer among district schools or attend an ungraded school.³¹

Effect of Proposed Changes

The bill makes several changes to the factors considered in determining a high school's grade. The bill provides statutory authority to the State Board of Education to increase the percentage of a high school's grade that is based upon statewide assessments above 50 percent. Should the state board decide to increase the percentage above 50 percent, the remaining grading factors, e.g., graduation rates; performance in AP, IB, dual enrollment, and AICE; and postsecondary readiness, would comprise the remaining percentage. This change allows the state board to assign greater weight to the statewide assessments over other grading factors, thereby increasing the rigor of the high school grading formula.

Additionally, the bill specifies that the postsecondary readiness of a high school's students be based upon "on time" graduates, rather than all graduates. The Postsecondary Education Readiness Test is added as a measurement tool for determining postsecondary readiness. Currently, postsecondary readiness may be measured by the SAT, ACT, or the Common Placement Test.

The bill delays use of student achievement data from the Algebra I, Geometry, Biology I, and middle school Civics EOC assessments to calculate school grades by one year. This change aligns use of these assessments for calculating school grades with the year in which passage of the EOC assessment is required to earn credit in the course. The bill revises the calculation of school district grades to include each student's performance and learning gains on statewide assessments, rather than averaging the grades of individual district schools. Thus, a district's grade will reflect each student in the district. Unlike the existing calculation, the new calculation captures students who transfer among district schools or attend an ungraded school.

Lastly, the bill revises the contents of the commissioner's annual report to include the percent of students performing at or above grade level and making a year's worth of progress in reading and mathematics. This change replaces inclusion of "the median scores of all eligible students who scored at or in the lowest 25th percentile of the state in the previous school year" in the report.

Differentiated Accountability

Present Situation

State law provides the framework for Florida's differentiated accountability system. The law requires the state board to comply with ESEA and empowers it to enforce the state system of school improvement and intervention.³² The law directs FDOE to categorize each public school in one of six categories based upon progress towards AYP, the statewide assessment components for school grading, and the

²⁹ Section 1008.34(3)(b)2. and (c)4., F.S.

³⁰ Section 1008.34(1), F.S.

³¹ Section 1008.34(7), F.S. A school does not receive a grade unless it has at least 30 students with valid FCAT scores in both reading and mathematics for the current and previous years. Section 1008.34(3)(a)1., F.S.; rule 6A-1.09981(4), F.A.C.

³² Section 1008.33(1) and (2)(a), F.S.

level and rate of change in student performance in reading and mathematics.³³ The categories are established in rule and, from highest to lowest, are:

- Schools Not Required to Participate in Differentiated Accountability Strategies;
- Prevent I;
- Correct I;
- Prevent II;
- Correct II; and
- Intervene.

Placement in all but the highest category identifies a school for interventions.³⁴ In order to advance to a higher category, a school must make significant progress by improving its school grade and by increasing student performance in mathematics and reading. Student performance must be evaluated for each subgroup. Subgroups include economically disadvantaged students, students from major racial and ethnic groups, students with disabilities, and students with limited English proficiency.³⁵

Florida law specifies seven general types of school interventions. These interventions include school improvement planning, leadership and educator quality improvement, professional development, curriculum alignment and pacing, continuous improvement, and monitoring plans and processes.³⁶ A school's categorization determines which interventions a school must implement. The specific actions that a school must take to implement a particular intervention vary depending on the school's categorization.³⁷ FDOE administers interventions for schools in the lowest two categories, i.e., Correct II and Intervene. Interventions for all other schools are administered by the school or school district.³⁸

The most intensive interventions are applied to the lowest performing schools, i.e., Intervene schools.³⁹ The Intervene category includes schools that have received:

- A grade of "F" in the most recent school year and in four of the last six years; or
- A grade of "D" or "F" in the most recent school year and meet at least three of the following criteria:
 - The percentage of students who are not proficient in reading has increased when compared to measurements taken five years previously;
 - The percentage of students who are not proficient in mathematics has increased when compared to measurements taken five years previously;
 - At least 65 percent of the school's students are not proficient in reading; or
 - At least 65 percent of the school's students are not proficient in mathematics.⁴⁰

In the school year following classification of a school in the Intervene category, the school district must submit a plan to the state board for implementing a school turnaround option at the beginning of the next school year. The school district may select one of the following turnaround options:

- Convert the school to a district-managed turnaround school;
- Reassign students to another school and monitor the progress of each reassigned student;
- Close the school and reopen it as one or more charter schools, each with a governing board with a demonstrated record of effectiveness; or
- Contract with an outside entity that has a demonstrated record of effectiveness to operate the school.

³³ Section 1008.33(3)(b), F.S.; rule 6A-1.099811(2)-(3), F.A.C.

³⁴ Rule 6A-1.099811(3), F.A.C.

³⁵ Section 1008.33(6), F.S.; see 20 U.S.C. s. 6311(b)(2)(C)(v).

³⁶ Section 1008.33(3)(c) and (5), F.S.; rule 6A-1.099811(5)-(6), F.A.C.

³⁷ See generally Florida Department of Education, *Differentiated Accountability Strategies and Support*, Form DA-3 (June 2011), available at http://www.flbsi.org/pdf/Final_2011-2012_Strategies_and_Support_Document_for_Regular_Schools.pdf.

³⁸ Section 1008.33(4)(a), F.S.

³⁹ Section 1008.33(4)(a), F.S.; rule 6A-1.099811(5)(e), F.A.C.

⁴⁰ Section 1008.33(4)(b), F.S.

The turnaround option must be implemented if the school does not exit the Intervene category in that school year.⁴¹ If the school does not exit the Intervene category during the first year of implementing a turnaround option, the school district must submit another plan for implementing a different option at the beginning of the next school year. The plan is subject to state board approval. In considering the plan, the state board has discretion to allow the school district to continue implementing the existing turnaround option, if it finds that the school is likely to improve with additional time.⁴²

Implementation Timeline for School Turnaround Options⁴³
Current Law

Year 1	School is classified as Intervene.
Year 2	Planning year. School district selects a turnaround option and plans for implementation of the option in Year 3.
Year 3	School implements first turnaround option (if it does not exit intervene in Year 2).
Year 4	School implements second turnaround option (if it does not exit intervene in Year 3).
Year 5	School implements third turnaround option (if it does not exit intervene in Year 4).
Year 6	School implements fourth turnaround option (if it does not exit intervene in Year 5). If school does not exit intervene in Year 6, the district must close the school, reassign students, and monitor their progress.

Effect of Proposed Changes

The bill makes several changes to Florida’s differentiated accountability system to align state law with reforms proposed in the ESEA waiver. The bill directs the state board to comply with and enforce the ESEA waiver. Classification of schools into six intervention categories, criteria for identifying the lowest performing schools, and identification of schools in need of intervention based upon progress towards AYP, statewide assessments, and the level and rate of change in student performance in reading and mathematics are eliminated. Instead, FDOE must identify schools for intervention based upon a school’s earning a letter grade of “D” or “F.”

The bill requires the state board to adopt by rule a differentiated matrix of intervention and support strategies for traditional public schools, which includes the strategies currently in law. The rule must define the strategies for schools earning a letter grade of “D” or “F” and the roles of school districts and FDOE. The most intense strategies must be provided to schools earning recurring letter grades of “D” or “F.” The state board must also adopt rules for implementing differentiated accountability for charter schools.⁴⁴

School turnaround options are required when a traditional public school earns:

- A grade of “F;”
- Three consecutive grades of “D;” or
- A grade of “F” within two years of improving from a grade of “F” or exiting the Intervene category (under current law).

The bill leaves intact the four turnaround options currently in law and adds a fifth option, which enables districts to develop a hybrid version of the four existing options or use another school turnaround model demonstrated to be effective in improving school performance. School districts may select any of these options for schools earning a grade of “F.”

For traditional public schools graded “F,” the first full school year following receipt of the grade is a planning year. The school district must implement school improvement interventions, select a school turnaround option, and submit a plan for implementing the option to FDOE for state board approval. If

⁴¹ Section 1008.33(5)(a), F.S.; rule 6A-1.099811(8)(b), F.A.C.

⁴² Section 1008.33(5)(b), F.S.

⁴³ Section 1008.33(5), F.S.; rules 6A-1.099811(8), F.A.C. The state board has authority to extend the implementation period for a turnaround option beyond one year. This chart presumes that no such extension is granted. *See s. 1008.33(5)(b), F.S.*

⁴⁴ Differentiated accountability interventions for charter schools are discussed under the heading “Charter Schools.”

the school does not improve by at least one letter grade during the planning year, the turnaround option must be implemented the following school year. The bill increases the implementation period for turnaround options from one school year to “two full school years.” Unless the state board grants an extension, a school that does not improve by at least one letter grade during the implementation period must select and implement a different turnaround option the following school year. Increasing the implementation period for turnaround options will give school districts time to fully implement options before a different option is required. This will increase the likelihood that turnaround options result in improved performance. “Two full school years” for implementation takes into consideration that school grades for elementary and middle schools are released in the summer, whereas high school grades are released in late fall or early winter.

**School Turnaround Option Implementation Timeline for “F” Schools
PCB EDC 12-01**

School Year	Required Action
Year 1	School earns a grade of “F”
Year 2	Planning Year. School district selects turnaround option and plans for implementation in Year 3.
Years 3 and 4	School implements first turnaround option (if it earns an “F” in Year 2).
Years 5 and 6	School implements a different option (if it earns an “F” in Years 3 and 4).

Schools earning three consecutive grades of “D” must implement the district-managed turnaround option. A school that earns a grade of “F” within two years of improving from an “F” must implement the turnaround option that was planned for before the school improved its grade. These schools do not get a planning year before implementing a turnaround option. Requiring turnaround options for these schools ensures that they are not able to persist at a low level of performance over time.

**Schools that earn a grade of “F”
within two years of improving from a grade of “F”**

	Year Before School Improves Grade above “F”	Year School Improves Grade Above “F”	Year 1 After Improving Grade	Year 2 After Improving Grade	Year 3 After Improving Grade
School Grade	“F”	“D” or Higher	“F”	Turnaround Option Required	N/A
			“D” or Higher	“F”	Turnaround Option Required

A traditional public school is no longer required to implement a turnaround option if it improves by at least one letter grade; however, it must continue implementing strategies prescribed in the school improvement plan. Continued implementation of the plan must be monitored by the school district for three years. A school currently classified as Intervene is not required to implement a turnaround option in the 2012-13 school year unless it earns a grade of “F” for this school year.

Because schools will no longer be identified for interventions based upon categories, the bill makes conforming changes to several statutes referencing intervention categories. Such changes are made to statutes related to:

- *Opportunity Scholarships:* Currently, students attending a public school graded “D” or “F” and that is a Correct II or Intervene school are eligible for scholarships. The bill provides eligibility to students attending schools earning a grade of “F” or three consecutive “D’s.”
- *High-performing charter school systems:* Currently, a charter school established by a system in a school zone served by an Intervene school is not initially counted in determining the system’s eligibility for “high-performing” status. The bill provides this exception if the traditional public school earns a grade of “F” or three consecutive “D’s.”
- *Salary supplements for instructional personnel:* Currently, a supplement may be awarded for assignment to a Correct II or Intervene school. The bill allows a supplement for assignment to a school earning a grade of “F” or three consecutive “D’s.”

The bill adds a requirement that a school with achievement gaps on statewide assessments by student subgroups or significantly lower graduation rates for a subgroup when compared to the state's graduation rate or schools that fail to significantly decrease the percentage of students scoring below satisfactory on statewide assessments include strategies for improving these results in its school improvement plan. This change will require schools to specifically address achievement gaps or stagnant improvement rates for low-performing students.

Charter Schools

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.⁴⁵ Florida law states as guiding principles and purposes for charter schools:

- "Meet high standards of student achievement;"
- "Promote enhanced academic success [] by aligning responsibility with accountability;"
- "Improve student learning and academic achievement;"
- "Encourage the use of innovative learning methods;" and
- "Provide rigorous competition within the public school district to stimulate continual improvement in all public schools."⁴⁶

Charter schools are subject to the same academic accountability requirements applicable to traditional public schools.⁴⁷ Charter school students must participate in statewide assessments.⁴⁸ Like other public schools, charter schools receive school grades.⁴⁹

Legislation enacted in 2011 established criteria for classifying charter schools and charter school systems with a track record of exemplary academic performance and financial stability as "high-performing." Among other things, this legislation promotes the growth of academically successful charter schools by enabling them to expand enrollment and establish new charter schools that replicate the school's educational model in any school district in the state.⁵⁰

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."⁵¹ Charter schools are also subject to differentiated accountability.⁵²

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.⁵³

⁴⁵ Florida Department of Education, *Charter Schools Funding Report*, at 1 (Jan. 1, 2012)(on file with the committee).

⁴⁶ Section 1002.33(2), F.S.

⁴⁷ Section 1002.33(16)(a)2., F.S.

⁴⁸ 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.

⁴⁹ 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.

⁵⁰ Sections 1002.331 and 1002.332, F.S.; ss. 1 and 2, ch. 2011-232, L.O.F.

⁵¹ See s. 1002.33(9)(n)-(p), F.S.

⁵² 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).

⁵³ Section 1002.33(9)(n), F.S.

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.⁵⁴ 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.

The school must continue with corrective action until student performance improves.⁵⁵ 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.⁵⁶ If poor performance persists, the sponsor may terminate the school’s charter.⁵⁷

Unlike the interventions for charter schools graded “D” or “F,” differentiated accountability interventions are based upon the charter school’s category, as determined by its progress towards AYP, the statewide assessment components for school grading, and the level and rate of change in student performance in reading and mathematics.⁵⁸ FDOE has developed a matrix of differentiated accountability interventions for charter schools, many of which are similar to those provided to traditional public schools.⁵⁹ However, the school turnaround options required for Intervene schools, e.g., district-managed turnaround model, converting to a charter school, and contracting with an outside entity to manage the school, are not particularly suited for charter schools.⁶⁰

Effect of Proposed Changes

Currently, state law provides two separate processes for providing intervention and support to low-performing charter schools. The intervention process set forth in the charter school statute was enacted before the statutory amendments that created differentiated accountability and the two processes were never aligned. As a result, differentiated accountability interventions, which were primarily intended for traditional public schools, are not suited to the unique mission and purpose of charter schools.⁶¹

The bill aligns the school improvement interventions in the charter school statute with differentiated accountability, thereby creating a unified process for providing intervention and support to such schools. Similar to current law, the bill requires a charter school that earns a grade of “D” or “F” to develop a school improvement plan, which must be implemented upon approval by the sponsor.

The bill requires corrective actions for charter schools earning three consecutive grades of “D,” two consecutive grades of “D” followed by a grade of “F,” or two nonconsecutive grades of “F” within a three-year period. Such a charter school may choose to:

- Contract for educational services to be provided directly to students, instructional personnel, and school administrators;
- Contract with an outside entity with a track record of effectiveness to operate the school;

⁵⁴ Section 1002.33(9)(o), F.S.

⁵⁵ Section 1002.33(9)(o)2., F.S.

⁵⁶ Section 1002.33(9)(p), F.S.

⁵⁷ Section 1002.33(8) and (9)(o)3., F.S.

⁵⁸ Section 1008.33(3)(b), F.S.; rule 6A-1.099811(2)-(3), F.A.C.

⁵⁹ Florida Department of Education, *Differentiated Accountability Interventions and Support for Charter Schools, Form DA-5* (June 2010), available at http://www.flbsi.org/pdf/Final%202010-2011%20Strategies%20and%20Support%20Document%20for%20Charter%20Schools_June_18.pdf; see *supra* text accompanying note 36.

⁶⁰ See s. 1008.33(5)(a), F.S.

⁶¹ See s. 1, ch. 2006-190, L.O.F. (interventions for “D” and “F” charter schools, enacted 2006); see s. 3, ch. 2009-144, L.O.F. (differentiated accountability, enacted 2009).

- Hire a new headmaster who has authority to hire new staff; or
- Voluntarily close the school.

A charter school must implement the corrective action for two years. Corrective actions are no longer required if the charter school improves by at least one letter grade; however, the school must continue to implement the school improvement plan. If a charter school does not improve by at least one letter grade after two full school years of implementing a corrective action, the school must choose another action. The sponsor may waive corrective actions if it determines that the charter school is likely to improve its grade if additional time is given to implement the school improvement plan. The sponsor may also extend the implementation period for a corrective action based upon a similar standard.

**Charter Schools
In Corrective Action**

School Grade		
Year 1	Year 2	Year 3
D	D	D
D	D	F
F	D	F

The bill requires the sponsor to terminate a charter school that earns two consecutive grades of "F," unless:

- The charter school was established to turnaround the performance of a traditional public school under differentiated accountability. This exception allows the differentiated accountability turnaround process to run its course for the full two-year implementation period. If such a charter school continues to earn grades of "F," the school district must implement a different turnaround option.
- The charter school is in its first three years of operation and serves a student population in the same school zone as a failing public school. Such a charter school must earn at least a grade of "D" by year three. In year four and thereafter, the exception no longer applies to the charter school. This exception enables a charter school that is established to serve students in an underserved area time to implement its educational model.
- The state board grants the charter school a waiver of termination. To obtain a waiver, the charter school must demonstrate that the learning gains of its students on statewide assessments are comparable or better than the learning gains of similarly situated students enrolled in nearby district public schools. The waiver is valid for one year and may only be granted once. Charter schools that have been in operation for more than five years are not eligible for a waiver. This exception provides charter schools that target low-performing students with time to demonstrate improved student performance.

The sponsor continues to have discretion to, at any time, terminate the charter of a charter school that is required to implement a school improvement plan or corrective actions; however, this discretionary authority does not extend to charter schools that meet one of the three exceptions.

Requiring closure of double "F" charter schools is consistent with the statutory guiding principles and purpose of charter schools, e.g., meeting high standards of student achievement and accountability, innovation, and providing rigorous competition with public schools.⁶² It is also consistent with recent legislation promoting the expansion and replication of high-performing charter schools.

The director and a representative of a charter school that is required to implement a school improvement plan or corrective action must annually appear before the sponsor to report the progress of the corrective strategies being implemented by the school. Thus, the sponsor must monitor the progress of interventions.

⁶² Section 1002.33(2), F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 1001.42, F.S., relating to powers and duties of district school boards; revises the contents of school improvement plans; revises criteria for identifying eligible students for Opportunity Scholarships.

Section 2. Amends s. 1002.33, F.S., relating to charter schools; requires school improvement plans and corrective actions for certain charter schools; requires termination of certain charter schools and exceptions; requires sponsor review of school improvement strategies.

Section 3. Amends s. 1002.332, F.S., relating to high-performing charter school systems; revises an exception to eligibility criteria.

Section 4. Amends s. 1002.38, F.S., relating to Opportunity Scholarships; revises criteria for identifying eligible students.

Section 5. Amends s. 1008.22, F.S., relating to statewide assessments; provides that students enrolled in an Algebra I, Geometry, or Biology I course with a statewide, standardized EOC assessment are not required to take the corresponding grade level FCAT.

Section 6. Amends s. 1008.33, F.S., relating to authority to enforce public school improvement; requires the state board to comply with the ESEA flexibility waiver; requires identification of schools graded "D" or "F" for intervention; provides requirements for school improvement interventions and turnaround options; requires rulemaking.

Section 7. Amends s. 1008.34, F.S., relating to school and school district grading and school report cards; increases the percentage of a high school's grade that may be based upon the statewide assessment components; specifies use of certain assessments in school grading; revises the calculation of school district grades.

Section 8. Amends s. 1008.345, F.S., relating to implementation of the state system of school improvement and education accountability, makes conforming change regarding community assessment teams.

Section 9. Amends s. 1012.07, F.S., relating to critical teacher shortage areas; makes conforming change to selection criteria.

Section 10. Amends s. 1012.22, F.S., relating to public school personnel, school board powers; makes conforming change to criteria for salary supplements.

Section 11. Amends s. 1012.2315, F.S., relating to assignment of teachers; makes conforming change.

Section 12. 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:

The state board must adopt rules:

- Establishing a differentiated matrix of intervention and support strategies for traditional public schools;
- Specifying submission timelines and approval criteria for school turnaround option implementation plans and timelines for implementing intervention and support strategies;
- Implementing differentiated accountability interventions for charter schools; and
- Prescribing the services that must be provided to students, instructional personnel, and school administrators when a charter school chooses to contract for educational services as a corrective action.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
 2 An act relating to state universities of academic and
 3 research excellence and national preeminence; creating
 4 1001.765, F.S.; providing a short title; establishing
 5 a collaborative partnership between the Board of
 6 Governors of the State University System and the
 7 Legislature to elevate the academic and research
 8 excellence and national preeminence of the highest-
 9 performing state research universities; authorizing a
 10 state research university that meets specified
 11 criteria, verified by the Board of Governors, to
 12 establish student tuition and fees at differentiated
 13 and market rates; providing certain conditions for
 14 implementing tuition and fee increases; establishing
 15 academic and research excellence standards for state
 16 universities of national preeminence; specifying
 17 requirements relating to debt service obligations;
 18 establishing procedures to obtain certain budget
 19 authorization for the 2012-2013 fiscal year;
 20 establishing procedures for institutional legislative
 21 budget requests for certain tuition and fee increases;
 22 authorizing state universities of national preeminence
 23 to establish required courses for certain students;
 24 encouraging the Board of Governors to identify, grant,
 25 and recommend flexibilities to achieve goals and
 26 improve the national rankings of programs of
 27 excellence; requiring the Board of Governors to
 28 oversee implementation; providing an effective date.

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ORIGINAL

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

Section 1. Section 1001.765, Florida Statutes, is created to read:

1001.765 State universities of academic and research excellence and national preeminence.—

(1) This section may be cited as the "State Universities of Academic and Research Excellence and National Preeminence Act".

(2) A collaborative partnership is established between the Board of Governors and the Legislature to elevate the academic and research excellence and national preeminence of Florida's highest-performing state research universities in accordance with this section. The partnership stems from the State University System Governance Agreement executed on March 24, 2010, wherein the Board of Governors and leaders of the Legislature agreed to a framework for the collaborative exercise of their joint authority and shared responsibility for the State University System. Specifically, the governance agreement confirmed the commitment of the Board of Governors and the Legislature to continue collaboration on accountability measures, the use of data, and recommendations derived from such data.

(3) (a) Beginning with the 2012-2013 academic year, a state research university that has substantially met at least 11 of the academic and research excellence standards identified in subsection (4), as verified by the Board of Governors, may

57 establish student tuition and fees at differentiated and market
 58 rates in addition to the tuition differential fee,
 59 notwithstanding the percentages and dollar amount limitations in
 60 s. 1009.24, as approved by the university's board of trustees
 61 and the Board of Governors. Tuition and fee increases may occur
 62 no more than once each academic year and must be implemented
 63 beginning with the fall term.

64 (b) A qualified beneficiary having a prepaid advance
 65 payment contract pursuant to s. 1009.98(2)(b) that was in effect
 66 prior to the first year a state university receives tuition and
 67 fee authority under this subsection, and that remains in effect,
 68 is exempt from the payment of any increase to tuition and fees
 69 assessed pursuant to this subsection. A qualified beneficiary
 70 having a prepaid advance payment contract pursuant to s.
 71 1009.98(2)(b) that is entered into the first year a state
 72 university receives tuition and fee authority under this
 73 subsection, or thereafter, is liable for the difference between
 74 the highest rate of tuition and fees covered by the advance
 75 payment contract and the tuition and fees assessed pursuant to
 76 this subsection by the state university the student attends.

77 (4) Academic and research excellence standards for state
 78 universities of national preeminence are:

79 (a) An average weighted grade point average of 3.8 or
 80 higher on a 4.0 scale and an average SAT score of 1800 or higher
 81 for fall semester incoming freshman, as reported annually.

82 (b) A top 50 ranking on at least two well-known and highly
 83 respected national public university rankings, reflecting
 84 national preeminence, using most recent rankings.

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85 (c) A freshman retention rate of 90 percent or higher for
86 full-time first-time-in-college students, as reported annually
87 to the Integrated Postsecondary Education Data System (IPEDS).

88 (d) A 6-year graduation rate of 70 percent or higher for
89 full-time first-time-in-college students, as reported annually
90 to the IPEDS.

91 (e) Six or more faculty members at the state university
92 who are members of a national academy, as reported annually by
93 the Center for Measuring University Performance for the Top
94 American Research Universities (TARU).

95 (f) Total annual research expenditures, including federal
96 research expenditures, of \$200 million or more, as reported
97 annually by the TARU.

98 (g) Total annual research expenditures in diversified
99 nonmedical sciences of \$100 million or more, based on data
100 reported annually by the National Science Foundation (NSF).

101 (h) A top 100 public university national ranking for
102 research expenditures in five or more science, technology,
103 engineering, or mathematics fields of study, as reported
104 annually by the NSF.

105 (i) One hundred or more total patents awarded for the most
106 recent 3-year period, as reported annually to the IPEDS.

107 (j) Two hundred fifty or more doctoral degrees awarded
108 annually, as reported by the TARU.

109 (k) Two hundred or more post-doctoral appointees annually,
110 as reported by the TARU.

111 (l) A national quality ranking higher than predicted based
112 on available financial resources rankings, as reported annually

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113 by U.S. News and World Report.

114 (m) An endowment of \$400 million or more, as reported
 115 annually by the TARU.

116 (n) Annual giving of \$50 million or more, as reported
 117 annually by the TARU.

118 (5) Fees collected pursuant to s. 1009.24 that are used to
 119 pledge or secure revenue bonds or to secure debt shall be
 120 maintained at the appropriate level to meet all debt service
 121 obligations of the university.

122 (6) (a) For the 2012-2013 fiscal year, a state university
 123 that substantially meets the requirements of subsection (3), as
 124 of February 1, 2012, shall submit to the Board of Governors, no
 125 later than May 31, 2012, the university's proposal for
 126 increasing tuition and fee rates for the 2012-2013 academic year
 127 as provided for in this section. Upon approval of the
 128 university's proposal, the Board of Governors shall request an
 129 amendment to increase the budget authority in the Education and
 130 General Student and Other Fees Trust Fund necessary to
 131 accommodate the additional tuition and fee revenues generated by
 132 the university's approved rates. Notwithstanding the \$1 million
 133 limitation on increases to an approved operating budget
 134 contained in ss. 216.181(11) and 216.292(3), a budget amendment
 135 exceeding that dollar amount is subject to notice and objection
 136 procedures set forth in s. 216.177.

137 (b) A state university that substantially meets the
 138 requirements of subsection (3) shall annually submit to the
 139 Board of Governors, no later than May 31, the university's
 140 tuition and fee rate proposal as provided for in this section.

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141 Upon approval of the university's proposal, the Board of
142 Governors shall request, in the board's annual legislative
143 budget request, budget authority in the Education and General
144 Student and Other Fees Trust Fund necessary to accommodate
145 tuition and fee revenues generated by the university's approved
146 rates.

147 (7) In order to provide a jointly shared educational
148 experience, a state university that has substantially met the
149 requirements of subsection (3) may require its incoming first-
150 time-in college students to take a nine-to-twelve-credit set of
151 courses specifically determined by the state university. The
152 state university may require that this set of courses be taken
153 at the state university and may stipulate that credit for such
154 courses may not be earned through any acceleration mechanism,
155 pursuant to s. 1007.27 or s. 1007.271, or other transfer credit.

156 (8) The Board of Governors is encouraged to identify and
157 grant additional authority and flexibilities as may be
158 appropriate to achieve state university and State University
159 System goals. In addition, the Board of Governors is encouraged
160 to identify state university programs of academic and research
161 excellence and make recommendations to the Legislature for
162 flexibilities designed to move those programs higher in
163 appropriate nationally recognized rankings.

164 (9) The Board of Governors shall oversee implementation of
165 this section.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB EDC 12-02 State Universities of Academic and Research Excellence and National Preeminence Act

SPONSOR(S): Education Committee

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Education Committee		Graf <i>SG</i>	Klebacha <i>TK</i>

SUMMARY ANALYSIS

The bill establishes the State Universities of Academic and Research Excellence and National Preeminence Act (Act). The Act is a collaborative partnership between the Board of Governors (BOG) and the Legislature to raise the academic and research excellence and national preeminence of the highest performing state research universities in Florida.

A state research university that substantially meets 11 of the 14 academic and research excellence standards established in the bill may:

- Establish student tuition and fees at differentiated and market rates approved by that State University System (SUS) institution's board of trustees and the BOG, in addition to the tuition differential fee, notwithstanding the percentages and dollar amount limitations under current law.
- Raise tuition or fees once each academic year beginning with the fall term. However, a qualified Prepaid Program beneficiary is exempt from the payment of any increase in tuition and fees if an advance payment contract for such qualified beneficiary predates the first year a SUS institution receives tuition and fee authority; and if the advance payment contract for such qualified beneficiary remains in effect. A qualified Prepaid Program beneficiary who enters into an advance payment contract in the first year a SUS institution receives tuition and fee authority, or in the years thereafter, must pay the difference between the highest rate of tuition and fees covered by the advance payment contract and the tuition and fees assessed by the SUS institution of national preeminence that such qualified beneficiary attends.
- Require its incoming first-time-in-college students to take at that institution, a 9-12 credit set of courses specifically determined by that institution. Credit earned through such courses may not be earned through transfer credit or articulated acceleration mechanisms such as Advanced Placement (AP), the International Baccalaureate (IB) Program, the Advanced International Certificate of Education (AICE) Program, credit by examination, Dual Enrollment, and College Level Examination Program (CLEP).

Additionally, a state research university that meets the requirements of the bill must submit a fee proposal detailing the requested budget authority in the Education and General Student and Other Fees Trust Fund needed to implement the new tuition structure to the Board of Governors with the university work plans.

Finally, a state research university that meets the requirements of the bill and utilizes the tuition and fee flexibility must maintain fees, used to pledge or secure debt, at an appropriate fee level to meet all debt service obligations of the institution.

See FISCAL COMMENTS.

The bill shall take effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

State University System of Florida

The State University System of Florida (SUS) provides students with undergraduate and graduate level instruction leading to baccalaureate, masters, doctoral, and professional degrees. SUS institutions also conduct research and engage in public service.¹ The SUS is comprised of the following 11 institutions:

- Florida Agricultural and Mechanical University
- Florida Atlantic University
- Florida Gulf Coast University
- Florida International University
- Florida State University
- New College of Florida
- University of Central Florida
- University of Florida
- University of North Florida
- University of South Florida
- University of West Florida²

As set forth in the Florida Constitution, state-level governance of the SUS is provided by the Board of Governors (BOG) and Legislature.³ The BOG is comprised of 17 members – the Commissioner of Education, the chair of the Advisory Council of Faculty Senates (or the equivalent), the Florida Student Association president, and 14 citizen-appointments by the Governor. Governor appointees must be confirmed by the Florida Senate.⁴

Each institution in the SUS is governed locally by a board of trustees⁵ comprised of 13 members – the chair of the faculty senate or the equivalent, the president of the student body of that institution, six members appointed by the Governor, and five members appointed by the BOG. Governor and BOG appointees must be confirmed by the Florida Senate.⁶ Local boards must govern their institutions in accordance with BOG rules and regulations.⁷ Each local board's responsibilities include, but are not limited to, strategic planning and adopting policies regarding admissions, educational programming, administration, personnel, contracts, grants, and facilities.⁸

State University System Governance

Present Situation

Board of Governors

The BOG is the constitutionally created body required to operate, regulate, control, and be fully responsible for the management of the whole university system.⁹ The BOG's responsibilities include, but are not limited to, defining the distinctive mission of each SUS institution and its articulation with public schools and Florida College System (FCS) institutions, ensuring the well-planned coordination

¹ Art. IX, s. 7, Fla. Const.; part IV, ch. 1001, F.S.; part II, ch. 1004, F.S.

² Section 1000.21(6), F.S.

³ Art. IX, s. 7(d), Fla. Const.; s. 1001.71(2) and (3), F.S.

⁴ *Id.*

⁵ Art. IX, s. 7(c), Fla. Const.; s. 1001.71(1), F.S.

⁶ Section 1001.71(1), F.S.

⁷ Art. IX, s. 7(c), Fla. Const.; *see also* Florida Board of Governors Regulation 1.001 (Feb. 16, 2012).

⁸ Florida Board of Governors Regulation 1.001(3)-(7).

⁹ Art. IX, s. 7(d), Fla. Const.

and operation of the system, and avoiding wasteful duplication of facilities or programs.¹⁰ The BOG, or the BOG's designee has responsibility for:¹¹

- Defining the distinctive mission of each SUS institution.
- Defining the articulation of each SUS institution in conjunction with the Legislature's authority over the public schools and the FCS institutions.
- Ensuring the well-planned coordination and operation of the SUS.
- Accounting for expenditure of funds appropriated by the Legislature for the SUS as provided by law.
- Submitting a budget request for legislative appropriations for the institutions under the supervision of the BOG as provided by law.
- Adopting strategic plans for the SUS and each SUS institution.
- Approving, reviewing, and terminating degree programs for the SUS.
- Governing admissions to the SUS institutions.
- Serving as the public employer to all public employees of the state universities for collective bargaining purposes.
- Establishing a personnel system for SUS institutions' employees.¹²
- Complying with, and enforcing for institutions under the BOG's jurisdiction, all applicable local, state, and federal laws.

The BOG's oversight of the SUS is subject to the Legislature's power to appropriate funds, as well as the Legislature's responsibility to provide for the establishment, maintenance, and operation of institutions of higher learning and other public education programs that the needs of the people may require.¹³

Legislature

With regard to the SUS, the Legislature is responsible for:¹⁴

- Making provision by law for the establishment, maintenance, and operation of institutions of higher learning and other public education programs that the needs of the people may require.
- Appropriating state funds for the SUS through the General Appropriations Act.
- Establishing tuition and fees.
- Establishing policies relating to merit- and need-based student financial aid.
- Establishing policies relating to the expenditure of, accountability for, and management of funds appropriated by the Legislature or revenues authorized by the Legislature, including but not limited to, policies relating to: budgeting; deposit of funds; investments; accounting; purchasing, procurement, and contracting; insurance; audits; maintenance and construction of facilities; property; bond financing; leasing; and information reporting.
- Maintaining the actuarial and fiscal soundness of centrally administered state systems by requiring SUS institutions to participate in programs such as the Florida Retirement System, state group health insurance programs, and the state casualty insurance program.
- Establishing and regulating the use of state powers and protections, including, but not limited to, eminent domain, certified law enforcement, and sovereign immunity.
- Establishing policies relating to the health, safety, and welfare of students, employees, and the public while present on SUS campuses.

¹⁰ Art. IX, s. 7(d), Fla. Const.; ss. 1001.705 and 1001.706, F.S.

¹¹ Section 1001.705(2), F.S.

¹² Although the Florida Board of Governors are responsible for establishing a personnel system for all state universities, the Department of Management Services shall retain control over the state group insurance and retirement plans established in ss. 110.123, 110.1232, 110.1234, 110.1238, and 110.161, and in chapters 121, 122, and 238. Section 1001.705(2)(k), F.S.

¹³ Art. IX, s. 1(a) and 7(d), Fla. Const.; ss. 1001.705 and 1001.706, F.S.

¹⁴ Section 1001.705(3), F.S.

State University System Governance Agreement

In 2007, a group of citizens filed a lawsuit against the Legislature, which sought to clarify the scope of the BOG's constitutional authority and identify the entity that has the authority to set SUS tuition and fees. Subsequently, this lawsuit was joined by the BOG.

On March 24, 2010, the Chair of the BOG, the Chancellor of the SUS, legislative leaders and the Governor signed a SUS Governance Agreement acknowledging their shared constitutional authority for the state universities as set forth in the Constitution of the State of Florida. The components of the SUS Governance Agreement include master planning and coordination of Florida's higher education systems; strategic planning; university governance; financial aid; the Administrative Procedures Act and BOG regulations; tuition; and fees. As a result of the SUS Governance Agreement, the BOG filed a notice of dismissal, with prejudice, of their claims in the 2007 lawsuit filed against the Legislature. The presiding officers agreed to file legislation in accordance with the framework set forth in the governance agreement and to exercise their best efforts to accomplish the final passage of the legislation.¹⁵

Legislation enacted in 2010 amended various sections of Florida law to implement the provisions of the governance agreement by:¹⁶

- Creating the Higher Education Coordinating Council to identify unmet needs and to facilitate solutions to disputes regarding the creation of new degree programs and the establishment of new institutes, campuses, or centers; and serve as an advisory board to the Legislature.
- Expressing legislative intent that the BOG align the missions of each university with factors relating to students, faculty, research, and statutorily required strategic and accountability plans.
- Eliminating the requirement of legislative approval for certain programs that lead to licensure and repealing the specific statutory authority for certain programs at specified SUS institutions.
- Repealing section 1001.74, Florida Statutes, relating to the powers and duties of the university boards of trustees in recognition of the BOG's exclusive authority to delegate power and duties to the university boards of trustees.
- Acknowledging the BOG is responsible for the personnel programs for university employees, requires the BOG to confirm the presidential selection of a university board of trustees, and stating that the Department of Management Services will continue to control the state group insurance and retirement plans.
- Exempting state universities from certain requirements regarding communications and data processing.
- Allowing a university to participate in the state-maintained SUNCOM Network communications services at the university's discretion.
- Acknowledging the BOG's authority to adopt regulations when acting pursuant to its constitutional duties and responsibilities.
- Requiring the BOG to comply with the Administrative Procedure Act when acting pursuant to statutory authority, unless specifically authorized or required to adopt regulations.
- Authorizing the Department of State to remove from the Florida Administrative Code rules superseded by BOG and university boards of trustees' regulations adopted pursuant to their constitutional or specific statutory authority.
- Authorizing the BOG to approve university board of trustees' proposal to: implement flexible tuition policies¹⁷ as long as such policies are aligned to a university's mission and the policies do not increase the state's liability or obligations, including but not limited to the Bright Futures

¹⁵Florida Legislature, *State University System Governance Agreement* (March 24, 2010); see also ch. 2010-78, L.O.F.; staff of the Florida House of Representatives, *Legislative Bill Analysis for HB 7237* (2010).

¹⁶ Chapter. 2010-78, L.O.F.; staff of the Florida House of Representatives, *Legislative Bill Analysis for HB 7237* (2010).

¹⁷ Flexible tuition policies include block tuition, block tuition differential, market rate tuition for graduate level online courses, and market rate tuition for graduate level continuing education courses. Section 1009.24(15)(a)3., F.S.

Scholarship program and the Florida Prepaid Tuition Program; establish a fee not specifically authorized in law; and increase the cap for certain existing fees¹⁸.

- Requiring the BOG to consider certain factors when reviewing fee proposals and flexible tuition policies: the services or operations currently being funded by the fee; whether those services or operations can be performed more efficiently to reduce the need for an increase; the additional or enhanced services to be funded by the fee increase; whether alternative resources are available to meet the need; and whether the financial impact on students is warranted in light of other charges assessed to students.
- Requiring the BOG to submit an annual report to the President of the Senate, the Speaker of the House of Representatives, and the Governor summarizing the tuition and fee proposals received by the BOG during the preceding year and the actions taken by the BOG in response to such proposals.
- Requiring that fees for services be based on reasonable costs of services.
- Limiting an increase to an existing fee or a new fee established to a maximum of once each fiscal year and requires the fee increase to be implemented beginning with the fall term.

On December 30, 2010, the Second Judicial Circuit of Leon County entered summary judgment in favor of the Legislature in the 2007 lawsuit, holding among other things, that the Legislature's power to appropriate SUS funding includes the authority to establish tuition and fee levels.¹⁹

Conversations with SUS Institution Presidents

In January 2012, each SUS institution president participated in conversations with the House Education Committee regarding ideas to facilitate institutional and system excellence. The goal of these conversations was to elicit input and suggestions regarding actions that would best serve SUS institutions, while also strengthening Florida's state university system. The conversations included, but were not limited to, discussions on institutional mission, tuition flexibilities, and accountability standards to increase productivity, raise quality, and maximize state and student investments in higher education.

Representatives from the Southern Regional Education Board (SREB) and the Office of Program Policy Analysis and Government Analysis (OPPAGA) presented data to show how Florida's state university system and SUS institutions compare nationally based on widely used performance measures.²⁰

Effect of Proposed Changes

The bill creates the State Universities of Academic and Research Excellence and National Preeminence Act (Act) and establishes a collaborative partnership between the BOG and the Legislature to raise the academic and research excellence and national preeminence of the highest performing state research universities in Florida. This partnership is based on the SUS Governance Agreement that affirmed the commitment of the BOG and the Legislature to continue collaboration on accountability measures, the use of data, and recommendations derived from such data.

Tuition and Fees

Present Situation

SUS institutions generate revenues by assessing tuition²¹ and fees. Undergraduate tuition for Florida resident students is established by the Legislature²²; and tuition for graduate and professional students,

¹⁸ The cap may be increased for the following fees: an application fee; an orientation fee; a fee for security, access, or identification cards; a fee assessed for special types of registration; a fee assessed for late payment of tuition and fees; a fee for the replacement of transcripts and diplomas; and a nonrefundable admissions deposit. Section 1009.24(14)(a)-(g) and (15)(a)2., F.S.

¹⁹ *Graham, et al. v. Atwater and Cretul*, Final Summary Declaratory Judgment, Case No. 2007-CA-1818(2nd Cir. Ct. Dec. 30, 2010).

²⁰ Florida Legislature, *House Education Committee Meeting Packets* (Jan. 12, 2012; Jan 13, 2012; Jan. 18, 2012; and Jan. 19, 2012), available at

<http://myfloridahouse.gov/Sections/Documents/publications.aspx?CommitteeId=2591&PublicationType=Committees&DocumentType=Meeting%20Packets&Session=2012&SessionId=70> (last visited Feb. 17, 2012).

and out-of-state fees²³ for all programs are established by the board of trustees for each SUS institution and approved by the BOG.²⁴ The Legislature appropriates budget authority in the Education and General Student and Other Fees Trust Fund to authorize universities to expend the revenues collected from tuition and fees.

The board of trustees for each SUS institution may establish the following fees subject to the approval of the BOG: activity and service fee, health fee, athletic fee, and tuition differential fee²⁵. The Legislature establishes the Capital Improvement Trust Fund fee, student financial aid fee, and distance learning course fee as a specified dollar amount or percent of tuition²⁶. In addition, board of trustees for each SUS institution may assess the additional fees.²⁷ Revenue generated from these fees must be expended as provided in law.²⁸

Effect of Proposed Changes

Beginning with the 2012-2013 academic year, the bill authorizes a state research university that substantially meets the academic and research excellence standards established in the bill to establish student tuition and fees at differentiated and market rates approved by that SUS institution's board of trustees and the BOG, in addition to the tuition differential fee, notwithstanding the percentages and dollar amount limitations under current law²⁹. A state research university that meets eligibility requirements of the bill is authorized to raise tuition or fees once each academic year. Increases in tuition or fees must be implemented beginning with the Fall term.

The authority to establish student tuition and fees at differentiated and market rates is contingent upon the BOG verifying that the SUS institution substantially meets at least 11 of the following 14 academic and research excellence standards:

- An average weighted grade point average of 3.8 or higher on a 4.0 scale and an average SAT score of 1800 or higher for fall semester incoming freshman, as reported annually.
- A top 50 ranking on at least two well-known and highly respected national public university rankings, reflecting national preeminence, using most recent rankings.
- A freshman retention rate of 90 percent or higher for full-time first-time-in-college students, as reported annually to the Integrated Postsecondary Education Data System (IPEDS).
- A 6-year graduation rate of 70 percent or higher for full-time first-time-in-college students, as reported annually to the IPEDS.
- Six or more faculty members at the state university who are members of a national academy, as reported annually by the Center for Measuring University Performance for the Top American Research Universities (TARU).
- Total annual research expenditures, including federal research expenditures, of \$200 million or more, as reported annually by the TARU.

²¹ Tuition is defined as the "basic fee charged to a student for instruction provided by a public postsecondary educational institution in the state. A charge for any other purpose shall not be included within this fee." Section 1009.01(1), F.S.

²² Effective July 1, 2011, the resident undergraduate tuition for lower-level and upper-level coursework shall be \$103.32 per credit hour. Section 1009.24(4)(a), F.S.

²³ Out-of-state fee is defined as the "additional fee for instruction provided by a public postsecondary educational institution in this state, which fee is charged to a student who does not qualify for the in-state tuition rate pursuant to s. 1009.21. A charge for any other purpose shall not be included in this fee." Section 1009.01(2), F.S.

²⁴ Section 1009.24(4)(c), F.S.

²⁵ Tuition differential is defined as the "supplemental fee charged to a student by a public university in this state." The amount of this fee for undergraduate courses is limited to the extent that the "aggregate sum of undergraduate tuition and fees, including the tuition differential fee at a state university system institution may not exceed the national average of undergraduate tuition and fees at 4-year degree-granting public postsecondary educational institutions." Sections 1009.01(3) and 1009.24(16)(b)4., F.S.

²⁶ Section 1009.24(4), (7), (8)-(13), and (15)-(17), F.S.; Florida Board of Governors Regulations 7.001(6) and (14) (Nov. 4, 2010) and 7.003(4), (5), (16), (17), and (23) (Nov. 4, 2010).

²⁷ Section 1009.24 (14), F.S.

²⁸ Section 1009.24, F.S.

²⁹ Section 1009.24, F.S.

- Total annual research expenditures in diversified nonmedical sciences of \$100 million or more, as reported annually by the National Science Foundation (NSF).
- A top 100 public university national ranking for research expenditures in five or more science, technology, engineering, or mathematics fields of study, as reported annually by the NSF.
- One hundred or more total patents awarded for the most recent 3-year period, as reported annually to the IPEDS.
- Two hundred fifty or more doctoral degrees awarded annually, as reported by TARU.
- Two hundred or more post-doctoral appointed annually, as reported by TARU.
- A national ranking in quality better than predicted by available financial resources, as reported annually by U.S. News and World Report.
- An endowment of \$400 million or more, as reported annually by the TARU.
- Annual giving of \$50 million or more, as reported annually by the TARU.

To ensure uniformity and objectivity, the bill requires that data for the academic and research excellence standards be obtained from the following nationally recognized sources:

Integrated Postsecondary Education Data System

IPEDS is a "system of interrelated surveys conducted annually by the U.S. Department of Education's National Center for Education Statistics (NCES). IPEDS gathers information from every college, university, and technical and vocational institution that participates in the federal student financial aid programs. The Higher Education Act of 1965³⁰, as amended, requires institutions that participate in federal student aid programs [to] report data on enrollments, program completions, graduation rates, faculty and staff, finances, institutional prices, and student financial aid. These data are made available to students and parents through the *College Navigator* college search Web site and to researchers and others through the *IPEDS Data Center*."³¹

IPEDS data are categorized in seven areas: institutional characteristics, institutional prices, enrollment, student financial aid, degrees and certificates conferred, student persistence and success, and institutional human and fiscal resources. These data are commonly used as the foundation of state and national reports.

The Center for Measuring University Performance

The Center for Measuring University Performance (Center) is a research enterprise focused on comparative performance of major research universities.³² The Center publishes an annual report, *The Top American Research Universities* (TARU), which provides analysis and data to assess the performance of research universities based on nine research-specific measures.³³ The TARU report includes institutions with a certain level of federal research expenditures.³⁴ These data are the same or similar to data used by nationally recognized ranking systems.

The National Science Foundation (NSF)

NSF is an independent federal agency created by Congress in 1950 "to promote the progress of

³⁰ The Higher Education Opportunity Act (HEOA) was enacted on August 14, 2008, and reauthorizes the Higher Education Act (HEA) of 1965, as amended. U.S. Department of Education, *Higher Education Opportunity Act-2008*, available at <http://www2.ed.gov/policy/highered/leg/hea08/index.html#ipeds> (last visited Feb. 15, 2012).

³¹ Integrated Postsecondary Education Data System, About IPEDS, available at <http://nces.ed.gov/ipeds/about/> (last visited Feb. 15, 2012); see also Pub. L. No. 110-315, 122 Stat. 3102 (Aug. 14, 2008).

³² The Center for Measuring University Performance, *The Center for Measuring University Performance*, available at <http://mup.asu.edu/index.html> (last visited Feb. 16, 2012).

³³ The Top American Research Universities, *2010 Annual Report*, available at <http://mup.asu.edu/research.html>, (last visited Feb. 15, 2012).

³⁴ The 2010 report used \$40 million as the cutoff for federal research expenditures in fiscal year 2008. The same dollar cutoff was used for fiscal year 2007 federal research expenditures. The Top American Research Universities, *2010 Annual Report*, available at <http://mup.asu.edu/research.html>, (last visited Feb. 15, 2012).

science; to advance the national health, prosperity, and welfare; to secure the national defense; and for other purposes.³⁵ NSF ranks institutions based on research and development (R&D) expenditures in science and engineering fields.³⁶

U.S. News and World Report

The U.S. News and World Report publishes a report ranking colleges and universities on sixteen key measures of quality. The measures fall into seven broad categories: peer assessment; graduation and retention rates; faculty resources (e.g., class size); student selectivity (e.g., average admissions test scores of incoming students); financial resources³⁷; alumni giving; and only for national universities and national liberal arts colleges, graduation rate performance and high school counselor undergraduate academic reputation ratings.³⁸ One particular ranking identified in the bill compares each university's national ranking on available financial resources to each university's national quality ranking.

Florida Prepaid College Program

Present Situation

The Stanley G. Tate Florida Prepaid College Program (Prepaid Program³⁹) is offered to assist families in planning and saving for a college education.⁴⁰ The program is administered by the Florida Prepaid College Board (Board).⁴¹

The Prepaid Program is a qualified tuition plan, which is a tax advantaged college plan authorized by section 529 of the Internal Revenue Code. Contributions to these plans grow tax-deferred, and when the beneficiary (student) is ready for college, withdrawals for qualified higher education expenses are exempt from federal income and State of Florida taxes.⁴²

The Prepaid Program provides for the purchase of advanced payment contracts (Prepaid Contracts) for postsecondary education. These contracts lock in many of the costs associated with attendance at institutions in the FCS and SUS at the time the contract is purchased. For a contract beneficiary to attend a FCS or SUS institution, the locked-in costs include registration and local fees. Additionally, a SUS contract includes the tuition differential fee and a separate contract may also be purchased for SUS dormitory costs.⁴³

The benefits of a Prepaid Contract activate automatically in the beneficiary's projected year of high school graduation.⁴⁴

³⁵ 42 U.S.C.A. s. 1861; *see also* National Science Foundation, *About the National Science Foundation*, available at <http://www.nsf.gov/about/> (last visited Feb. 15, 2012).

³⁶ National Science Foundation, *Academic Research and Development Expenditures: Fiscal Year 2009*, available at http://www.nsf.gov/statistics/nsf11313/content.cfm?pub_id=4065&id=2 (last visited Feb. 15, 2012).

³⁷ Financial resources are measured by the average spending per full-time-equivalent student on instruction, research, public service, academic support, student services, and institutional support for specified years. U.S. News and World Report, *Methodology: Undergraduate Ranking Criteria and Weights*, available at <http://www.usnews.com/education/best-colleges/articles/2011/09/12/methodology-undergraduate-ranking-criteria-and-weights-2012> (last visited Feb. 15, 2012).

³⁸ U.S. News and World Report, *Methodology: Undergraduate Ranking Criteria and Weights*, available at <http://www.usnews.com/education/best-colleges/articles/2011/09/12/methodology-undergraduate-ranking-criteria-and-weights-2012> (last visited Feb. 15, 2012).

³⁹ Section 1009.97(3)(d), F.S.

⁴⁰ Section 1009.98(1), F.S.; Florida Prepaid College Plans, *Compare Plans*, <http://www.myfloridaprepaid.com/compare-plans/> (last visited Oct. 18, 2010).

⁴¹ Section 1009.971(1), F.S.

⁴² 26 U.S.C. s. 529(b)(1); Florida Prepaid College Plans, *Comparing 529 Plans*, available at <http://www.myfloridaprepaid.com/newsroom/media-kit.aspx>.

⁴³ Rule 19B-5.001, F.A.C.

⁴⁴ A Prepaid Contract may be utilized up to three years prior to the projected college enrollment date if the child graduates from high school early. Additionally, if a beneficiary does not start college immediately after his or her high school graduation, the beneficiary's

Effect of Proposed Changes

The bill exempts a qualified beneficiary⁴⁵ from the payment of any increase in tuition and fees if an advance payment contract⁴⁶ for such qualified beneficiary predates the first year a state research university eligible under the bill receives tuition and fee authority; and if the advance payment contract for such qualified beneficiary remains in effect.

If, however, a qualified beneficiary enters into an advance payment contract in the first year a state research university eligible under this bill receives tuition and fee authority, or in the years thereafter, such qualified beneficiary must pay the difference between the highest rate of tuition and fees covered by the advance payment contract and the tuition and fees assessed by the university that such qualified beneficiary attends.

Acceleration Mechanisms

Present Situation

Articulated acceleration mechanisms are available to secondary and postsecondary students attending public educational institutions and serve to shorten the time necessary for a student to complete the requirements for a high school diploma and a postsecondary degree. Such mechanisms allow Florida schools to increase the depth of study in a particular subject and expand available curricular options.⁴⁷ Articulated acceleration mechanisms include, but are not limited to, dual enrollment, early admission, Advanced Placement (AP), the International Baccalaureate (IB) Program, the Advanced International Certificate of Education (AICE) Program, and credit by examination. Credit earned through the Florida Virtual School also provides additional opportunities for early graduation and acceleration.⁴⁸

Effect of Proposed Changes

The bill authorizes a state research university eligible under the bill to require its incoming first-time-in-college students to take at that institution, a 9-12 credit set of courses specifically determined by that institution and at that institution. Credit earned through such courses may not be earned through transfer credit or articulated acceleration mechanisms such as AP, IB, AICE, credit by examination, Dual Enrollment, or College Level Examination Program (CLEP).

BOG responsibilities

The bill encourages the BOG to identify and grant additional authority and flexibilities, as appropriate, to facilitate achievement of institutional and system goals. In addition, the BOG is encouraged to identify state university programs of academic and research excellence and make recommendations to the Legislature for flexibilities designed to elevate such programs on national rankings.

Finally, the bill requires the BOG to oversee the implementation of this section.

account stays current for 10 years from the date of graduation and may be extended by written request to the Board. Rule 19B-5.003(4) and (5), F.A.C.

⁴⁵ A qualified beneficiary is "a resident of [Florida] at the time a purchaser enters into an advance payment contract on behalf of the resident; a nonresident who is the child of a noncustodial parent who is a resident of [Florida] at the time that such parent enters into an advance payment contract on behalf of the child;" or "a graduate of an accredited high school in [Florida] who is a resident of [Florida] at the time he or she is designated to receive benefits of the advance payment contract." Section 1009.97(3)(f), F.S.

⁴⁶ Advance payment contract is defined as a contract entered into by the Florida Prepaid College Board and a purchaser. A purchaser is person who makes or is obligated to make advance registration or dormitory residence payments in accordance with an advance payment contract. Section 1009.97 (3)(a), (b), and (e), F.S.

⁴⁷ Section 1007.27(1), F.S.

⁴⁸ *Id.*; s. 1007.22(2), F.S.

STORAGE NAME: pcb02.EDC.DOCX

DATE: 2/17/2012

B. SECTION DIRECTORY:

Section 1. Creates s. 1001.7065, state universities of academic and research excellence and national preeminence; to establish the State Universities of Academic and Research Excellence and National Preeminence Act, establish a collaborative partnership between the BOG and the Legislature, establish authorities for tuition and fee flexibilities, establish academic and research excellence standards, outline requirements regarding bonding of fees, establish procedures for obtaining budget authority, establish requirements related to specified courses; and establish BOG responsibilities.

Section 2. Provides that the bill shall take effect upon becoming a 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:

The bill authorizes universities that are determined eligible under this bill to submit tuition and fee proposals detailing the requested budget authority needed to implement the proposals to the BOG with university work plans. Upon approval by the BOG, a budget amendment must be provided to increase the budget authority in the Education and General Student and Other Fees Trust Fund necessary for the eligible institutions to expend the revenue generated by their tuition and fee plans. Eligible institutions must include the amount of budget authority for the Education and General Student and Other Fees Trust Fund required to administer the tuition proposal in their annual work plans. The BOG must approve the request and include approved additional authority in the Legislative Budget Request.

The bill requires institutions that utilize the tuition and fee flexibility provided by the bill to maintain fees that are used to pledge or secure debt to maintain an appropriate fee level to meet all debt service obligations of the institution.

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
 2 An act relating to teachers; amending s. 447.203,
 3 F.S.; excluding certain professional teacher
 4 associations from the definition of "employee
 5 organization" for purposes of provisions relating to
 6 public employee organizations unless such associations
 7 apply for registration under specified provisions;
 8 providing an effective date.

9
 10 Be It Enacted by the Legislature of the State of Florida:

11
 12 Section 1. Subsection (11) of section 447.203, Florida
 13 Statutes, is amended to read:

14 447.203 Definitions.—As used in this part:

15 (11) "Employee organization" or "organization" means any
 16 labor organization, union, association, fraternal order,
 17 occupational or professional society, or group, however
 18 organized or constituted, that ~~which~~ represents, or seeks to
 19 represent, any public employee or group of public employees
 20 concerning any matters relating to their employment relationship
 21 with a public employer, except that a "professional teacher
 22 association" as defined in s. 1001.03(4) shall not be included
 23 in this definition until it applies for registration pursuant to
 24 s. 447.305.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1115 Teacher Protection

SPONSOR(S): Justice Appropriations Subcommittee; Civil Justice Subcommittee; Brandes and others

TIED BILLS: None **IDEN./SIM. BILLS:** SB 1698

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	8 Y, 6 N, As CS	Cary	Bond
2) Justice Appropriations Subcommittee	9 Y, 5 N, As CS	McAuliffe	Jones Darity
3) Education Committee		Muller <i>SM</i>	Klebacha <i>JK</i>
4) Judiciary Committee			

SUMMARY ANALYSIS

An employee organization is any labor organization, union, association, fraternal order, occupational or professional society, or group, however organized or constituted, that represents, or seeks to represent, any public employee or group of public employees concerning any matters relating to their employment relationship with a public employer. Employee organizations seeking to become a certified bargaining agent for public employees must register with the Public Employees Relation Commission.

Recent decisions by the Florida Public Employees Relations Commission, however, have expanded the scope of the definition of employee organization to include professional teacher associations that do not perform collective bargaining functions, allowing unions to challenge non-collective bargaining teacher associations for unfair labor practices.

The bill modifies the definition of "employee organization" for purposes of collective bargaining to exclude professional teacher associations that do not seek registration as a collective bargaining agent.

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

The bill provides an effective date of July 1, 1012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

An employee organization is any "labor organization, union, association, fraternal order, occupational or professional society, or group, however organized or constituted, that represents, or seeks to represent, any public employee or group of public employees concerning any matters relating to their employment relationship with a public employer."¹

Employee organizations seeking to become a certified bargaining agent for public employees must register with the Public Employees Relation Commission (PERC).² If an employee organization is not registered, they may not be certified as an exclusive bargaining agent.³ Generally, when an employee's organization is certified as the bargaining agent for a unit of an employer's employees, the employer is prohibited from deducting dues from employees in the bargaining unit for another employee organization.⁴ Public employers are prohibited from interfering with, restraining, or coercing public employees in the exercise of any rights guaranteed to those employees by law.⁵

A professional teacher association is a not-for-profit teacher association that offers membership to all teachers, noninstructional personnel, and administrators, and offers teacher training and staff development at no fee to the district.⁶ The State Board of Education must ensure that these associations are given equal access to voluntary teacher meetings, are provided access to teacher mailboxes for distribution of professional literature, and are authorized to collect voluntary membership fees through payroll deduction.⁷

Recent decisions by PERC have expanded the definition of employee organization to include professional teacher associations that do not perform collective bargaining functions, allowing unions to challenge non-collective bargaining teacher associations for unfair labor practices.⁸ In *Duval Teachers United*, PERC explained that there was no authority that prohibited PERC from defining a group as both a professional teacher association and an employee organization.⁹

Effect of Proposed Changes

This bill amends the definition of "employee organization" in s. 447.203, F.S., to specifically exclude any "professional teacher association" as defined in s. 1001.03(4), F.S., until such organization seeks registration as a collective bargaining agent.

This language clarifies the definition of professional teacher associations, so that there is no allegation of unfair labor practices when a professional teacher association engages in activities for which it is statutorily authorized.

B. SECTION DIRECTORY:

¹ Section 447.203(11), F.S.

² Section 447.305(1), F.S.

³ *Id.*

⁴ *Osceola Classroom Teachers Assoc. v. School District of Osceola County*, Case No. CA-2009-068 (PERC Final Order, Oct. 29, 2010)

⁵ Section 447.501(1), F.S.

⁶ Section 1001.03(4), F.S.

⁷ Section 1001.03(4), F.S.

⁸ *See, e.g., Osceola Classroom Teachers Assoc. v. School District of Osceola County*, Case No. CA-2009-068 (PERC Final Order, Oct. 29, 2010) and *Duval Teachers United v. School District of Duval County*, Case No. CA-2010-134 (PERC Final Order, May 23, 2011).

⁹ *Duval Teachers United v. School District of Duval County*, Case No. CA-2010-134 (PERC Final Order, May 23, 2011).

Section 1. Amends s. 447.203, F.S., relating to definition of employee organization, to exclude professional teachers associations from the definition of an employee organization.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to have any impact on local government revenues.

2. Expenditures:

This bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 18, 2012, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment provided that the OAG must defend the teacher unless the teacher has not been subjected to disciplinary proceedings by the school district or the Education Practices Commission. The amendment removed the OAG's discretion to decide to take a case if the teacher acted in a good faith belief that the act was within the scope of the teacher's duties in enforcing discipline policies.

On February 14, 2012, the Justice Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment removed sections one and two of the bill that allowed a teacher to request that the Office of the Attorney General represent the teacher in a civil lawsuit arising out of disciplinary issues.

1 A bill to be entitled
 2 An act relating to Florida College System personnel
 3 records; amending s. 1012.81, F.S.; specifying records
 4 which constitute limited-access records; providing an
 5 effective date.

6
 7 Be It Enacted by the Legislature of the State of Florida:

8
 9 Section 1. Section 1012.81, Florida Statutes, is amended
 10 to read:

11 1012.81 Personnel records.—

12 (1) Rules of The State Board of Education shall adopt
 13 rules prescribing ~~prescribe~~ the content and custody of limited-
 14 access records that ~~which~~ a Florida College System institution
 15 may maintain on its employees. ~~Such records shall be limited to~~
 16 ~~information reflecting evaluations of employee performance and~~
 17 ~~shall be open to inspection only by the employee and by~~
 18 ~~officials of the college who are responsible for supervision of~~
 19 ~~the employee.~~ Such Limited-access employee records are
 20 confidential and exempt from the provisions of s. 119.07(1).
 21 Limited-access records include only the following:

22 (a) Records containing information reflecting academic
 23 evaluations of employee performance; however, the employee and
 24 officials of the institution responsible for supervision of the
 25 employee shall have access to such records.

26 (b) Records maintained for the purposes of any
 27 investigation of employee misconduct, including, but not limited
 28 to, a complaint against an employee and all information obtained

29 pursuant to the investigation of such complaint; however, these
 30 records become public after the investigation ceases to be
 31 active or when the institution provides written notice to the
 32 employee who is the subject of the complaint that the
 33 institution has either:

- 34 1. Concluded the investigation with a finding not to
 35 proceed with disciplinary action;
- 36 2. Concluded the investigation with a finding to proceed
 37 with disciplinary action; or
- 38 3. Issued a letter of discipline.

39
 40 For the purpose of this paragraph, an investigation shall be
 41 considered active as long as it is continuing with a reasonable,
 42 good faith anticipation that a finding will be made in the
 43 foreseeable future. An investigation shall be presumed to be
 44 inactive if no finding is made within 90 days after the
 45 complaint is filed.

46 (c) Records maintained for the purposes of any
 47 disciplinary proceeding brought against an employee; however,
 48 these records shall be open to inspection by the employee and
 49 shall become public after a final decision is made in the
 50 proceeding.

51 (d) Records maintained for the purposes of any grievance
 52 proceeding brought by an employee for enforcement of a
 53 collective bargaining agreement or contract; however, these
 54 records shall be open to inspection by the employee and by
 55 officials of the institution conducting the grievance proceeding
 56 and shall become public after a final decision is made in the

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57 proceeding.

58 (2) Except as required for use by the president in the
59 discharge of his or her official responsibilities, the custodian
60 of limited-access employee records may release information from
61 such records only upon authorization in writing from the
62 employee or the president or upon order of a court of competent
63 jurisdiction.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1465 Florida College System Personnel Records

SPONSOR(S): K-20 Innovation Subcommittee; Caldwell

TIED BILLS: IDEN./SIM. BILLS: SB 878

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) K-20 Innovation Subcommittee	10 Y, 0 N, As CS	Valenstein	Sherry
2) State Affairs Committee	15 Y, 0 N	Thompson	Hamby
3) Education Committee		Valenstein <i>jo</i>	Klebacha <i>JK</i>

SUMMARY ANALYSIS

Currently, limited-access records maintained by a Florida College System (FCS) institution are afforded a broad exemption from public records requests. The law exempts these records to the extent the records contain information reflecting evaluations of employee performance. The limited-access records are only open to inspection by the employee and by officials of the college who are responsible for supervision of the employee.

The bill amends the public records exemption for FCS institution limited-access personnel records to mirror the public records exemption for State University System institution limited-access personnel records. The bill limits an existing public records exemption; therefore, more records will be available to the public. The bill does not create a public records exemption or expand an existing exemption; therefore, the constitutionally required 2/3 vote is not applicable. Likewise, the bill does not need a statement of public necessity.

The bill maintains the current public records exemption for limited-access records; therefore, limited-access records maintained by a FCS institution remain confidential and exempt. However, the bill restricts the contents of limited-access records to include only the following:

- Records containing information reflecting academic evaluations of employee performance; however, the employee and institution officials responsible for supervision of the employee have access to such records.
- Records relating to an investigation of employee misconduct; however, these records become public at the conclusion of the investigation or the investigation ceases to be active as defined by law.
- Records maintained for the purpose of any disciplinary proceeding against the employee or records maintained for any grievance proceeding brought by an employee for enforcement of a collective bargaining agreement or contract; however, these records shall be open to inspection by the employee and become public after a final decision is made.

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

The bill takes effect July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Public Records Law

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose. A bill enacting an exemption or substantially amending an existing exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.¹

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.²

Personnel Records

Limited-access records maintained by a Florida College System (FCS) institution on its employees are currently afforded a broad exemption from public records requests. The law provides these records are confidential and exempt³ from the provisions of s. 119.07(1), F.S., to the extent the records contain information reflecting evaluations of employee performance. The limited-access records are only open to inspection by the employee and by officials of the college who are responsible for supervision of the employee.⁴

The law requires the State Board of Education (state board), through rule, to prescribe the content and custody of limited-access records. The rule adopted by the state board does not prescribe the content of limited-access records; instead it provides an expansive general definition of what is confidential and

¹ Art. I, s. 24(c), Fla. Const.

² Section 119.15(6)(b), F.S.

³ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (See Attorney General Opinion 85-62, August 1, 1985).

⁴ Section 1012.81, F.S.

exempt.⁵ This allows FCS institutions wide latitude in determining if a document is exempt from public records.

Prior to 1995, State University System (SUS) institutions had an identical exemption. The broad exemption authorized state universities to prescribe the content and custody of the limited-access records maintained on their employees, provided the records were limited to information reflecting evaluations of employee performance. Courts held this exemption applied to copies of minutes and other documentation indicating votes on tenure or promotion applications of university employees and also to investigative reports about university athletic staff.⁶

In 1995, the Legislature restricted the contents of limited-access records maintained by a SUS institution as follows:

- Records containing information reflecting academic evaluations of employee performance that are open to inspection only by the employee and university officials responsible for supervision of the employee;
- Records relating to an investigation of employee misconduct which are confidential until the conclusion of the investigation or the investigation ceases to be active as defined by law;
- Records maintained for the purpose of any disciplinary proceeding against the employee or records maintained for any grievance proceeding brought by an employee for enforcement of a collective bargaining agreement or contract until a final decision is made.
- For sexual harassment investigations, portions of the records that identify or reasonably could lead to the identification of the complainant or a witness also constitute limited-access records.
- Records which comprise the common core items contained in the State University System Student Assessment of Instruction instrument may not be prescribed as limited-access records.⁷

Effect of Proposed Changes

The bill amends the public records exemption for limited-access records maintained by a FCS institution on its employees to mirror the public records exemption for limited-access records maintained by a SUS institution on its employees. The bill limits an existing public records exemption; therefore, more records will be available to the public. The bill does not create a public records exemption or expand an existing exemption; therefore, the constitutionally required 2/3 vote is not applicable. Likewise, the bill does not need a statement of public necessity.

The bill maintains the current public records exemption for limited-access records; therefore, limited-access records maintained by a FCS institution remain confidential and exempt. However, the bill restricts the contents of limited-access records to include only the following:

- Records containing information reflecting academic evaluations of employee performance; however, the employee and institution officials responsible for supervision of the employee have access to such records.
- Records relating to an investigation of employee misconduct; however, these records become public at the conclusion of the investigation or the investigation ceases to be active as defined by law.
- Records maintained for the purpose of any disciplinary proceeding against the employee or records maintained for any grievance proceeding brought by an employee for enforcement of a collective bargaining agreement or contract; however, these records shall be open to inspection by the employee and become public after a final decision is made.⁸

⁵ According to Rule 6A-14.047, F.A.C., personnel records must contain information for efficient personnel administration, which must include, but not be limited to, dates of appointment, periods of employment, contract status, duties performed, records of leave, and evidence of factors used to calculate salary, retirement system records, and related documentation as determined by the college.

⁶ See *Cantanese v. Ceros-Livingston*, 599 So.2d 1021 (Fla. 4th DCA 1992), *review denied*, 613 So.2d 2 (Fla. 1992); *Tallahassee Democrat, Inc. v. Florida Board of Regents*, 314 So.2d 164 (Fla. 1st DCA 1975).

⁷ Section 1, ch. 95-246, L.O.F.; codified as s. 1012.91, F.S.

⁸ While the law related to SUS personnel files includes records maintained for the purposes of any sexual harassment investigations that identify the complainant or witness, this exemption is unnecessary as it is already provided in law. Section 119.071(2)(g), F.S.,

By limiting the existing public records exemption, the bill allows the public to access records of investigations, disciplinary proceedings, and grievance proceedings, once completed. Additionally, the bill allows the public to access personnel performance evaluations, except for those records reflecting academic evaluations.

B. SECTION DIRECTORY:

Section 1. Amends s. 1012.81, F.S., relating to personnel records; to specify records which constitute limited-access records.

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:

According to the Department of Education, Florida College System institutions may incur minor expenses relating to the provision of public records; however, current law⁹ authorizes agencies to charge modest fees for copies of public records.¹⁰

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:

None.

provides an exemption for all complaints and other records in the custody of any agency which relate to a complaint of discrimination. See also s. 110.1221, F.S. (establishes "sexual harassment" as a form of discrimination).

⁹ See s. 119.07(4), F.S.

¹⁰ Department of Education, HB 1465 Analysis (Jan. 15, 2012) at 3; on file with the House Government Operations Subcommittee.

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 of the Education Committee reported the proposed committee substitute (PCS) for HB 1465 favorably as a committee substitute. The K-20 Innovation Subcommittee adopted two technical amendments to the proposed committee substitute. The first amendment narrowed the scope of the title to better reflect the scope of the bill and the second amendment removed an unnecessary cross-reference to the State Constitution. The cross-reference was not needed because the PCS does not create or expand a public records exemption, but merely narrows an exemption that was established before 1993.

The amended PCS differs from HB 1465 in that it narrows the public records exemption for Florida College System (FCS) personnel records to mirror the exemption for State University System personnel records. Rather than just providing, upon request, public access to the performance evaluations of FCS institution presidents, as in HB 1465, the PCS provides greater public access to personnel records, including performance evaluations of FCS presidents, and also investigations, disciplinary proceedings, and grievance proceedings, once completed.