



Education Committee

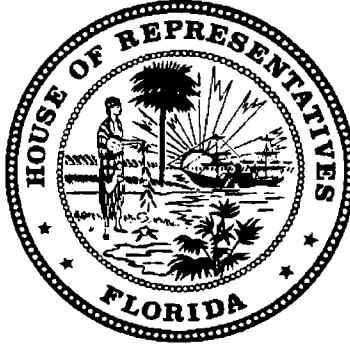
**Wednesday, April 1, 2015
8:30 a.m. – 10:30 a.m.**

102 HOB

Meeting Packet

**Steve Crisafulli
Speaker**

**H. Marlene O'Toole
Chair**



AGENDA

“Our number one priority in education is to ensure that our schools are focused on student success”

Education Committee
Wednesday, April 1, 2015
8:30 a.m. – 10:30 a.m.
102 HOB

- I. Call to Order and Roll Call
- II. Opening Remarks
- III. Consideration of the following bill(s):
 - CS/HB 35 Out-of-State Fee Waivers for Veterans and Dependents by Higher Education & Workforce Subcommittee, Stark
 - CS/CS/HB 41 Hazardous Working Conditions by Education Appropriations Subcommittee, Local Government Affairs Subcommittee, Metz
 - CS/CS/HB 223 Public Records and Meetings/Postsecondary Education Executive Search by Government Operations Subcommittee, Higher Education & Workforce Subcommittee, Combee
 - CS/CS/HB 587 Education Personnel by Education Appropriations Subcommittee, K-12 Subcommittee, Spano
 - CS/HB 759 Florida College System Boards of Trustees by Higher Education & Workforce Subcommittee, Hutson
 - CS/HB 7091 Postsecondary Options for Students with Disabilities by Education Appropriations Subcommittee, Higher Education & Workforce Subcommittee, Cortes, B.
- IV. Closing Remarks and Adjournment

1 A bill to be entitled
 2 An act relating to out-of-state fee waivers for
 3 veterans and dependents; amending s. 1009.26, F.S.;
 4 revising the Congressman C. W. "Bill" Young Veteran
 5 Tuition Waiver Program to include out-of-state fee
 6 waivers for certain individuals receiving specified
 7 federal educational benefits; requiring adoption of
 8 rules and regulations; revising a short title;
 9 providing an effective date.

10

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

12

13 Section 1. Subsection (13) of section 1009.26, Florida
 14 Statutes, is amended to read:

15 1009.26 Fee waivers.—

16 (13) (a) There is established the Congressman C. W. "Bill"
 17 Young Veteran Tuition Waiver Program. A state university,
 18 Florida College System institution, career center operated by a
 19 school district under s. 1001.44, or charter technical career
 20 center shall waive out-of-state fees for the following
 21 individuals:

22 1. An individual who has been ~~an~~ honorably discharged from
 23 ~~veteran~~ of the United States Uniformed Services ~~Armed Forces~~,
 24 the United States Reserve Forces, or the National Guard, and who
 25 physically resides in this state while enrolled in the
 26 institution, regardless of whether the individual is receiving

27 federal G.I. Bill educational benefits.

28 2. Beginning July 1, 2015, an individual receiving
29 educational benefits under 38 U.S.C. chapter 30, chapter 33, or
30 chapter 35, who physically resides in this state while enrolled
31 in the institution.

32 (b) Tuition and fees charged to an individual ~~a veteran~~
33 who qualifies for the out-of-state fee waiver under this
34 subsection may not exceed the tuition and fees charged to a
35 resident student.

36 (c) ~~The waiver is applicable for 110 percent of the~~
37 ~~required credit hours of the degree or certificate program for~~
38 ~~which the student is enrolled.~~ Each state university, Florida
39 College System institution, career center operated by a school
40 district under s. 1001.44, and charter technical career center
41 shall report to the Board of Governors and the State Board of
42 Education, respectively, the number and value of all fee waivers
43 granted annually under this subsection.

44 (d) The Board of Governors shall adopt regulations and the
45 State Board of Education shall adopt rules to administer this
46 subsection.

47 (e) ~~(b)~~ This subsection may be cited as the "Congressman
48 C.W. 'Bill' Young Veteran Tuition Waiver Act."

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 35 Out-of-State Fee Waivers for Veterans and Dependents
SPONSOR(S): Higher Education & Workforce Subcommittee, Stark and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 7028

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Higher Education & Workforce Subcommittee	7 Y, 0 N, As CS	Banner	Sherry
2) Veteran & Military Affairs Subcommittee	10 Y, 0 N	Thompson	Kiner
3) Education Appropriations Subcommittee	12 Y, 0 N	Butler	Heflin
4) Education Committee		Banner <i>(initials)</i>	Mizereck <i>(initials)</i>

SUMMARY ANALYSIS

The Congressman C.W. Bill Young Veteran Tuition Waiver Program (Florida G.I. Bill) provides for out-of-state fee waivers for honorably discharged veterans of the U.S Armed Forces, U.S. Reserve Forces or the National Guard that attend a state university, state college, career center, or charter technical career center.

The Veterans Access, Choice and Accountability Act of 2014 (VA Reform Bill) signed into law in August 2014, requires public postsecondary institutions to provide in-state tuition rates to veterans and eligible dependents as a condition of continuing to receive G.I. Bill educational benefits. The legislation applies to all individuals qualifying under Post-9/11 G.I. Bill or the Montgomery G.I. Bill-Active Duty.

This bill expands the Congressman C.W. Bill Young Veteran Tuition Waiver Program to include members of the commissioned corps of the Public Health Service (PHS) and the National Oceanic and Atmospheric Administration (NOAA), thereby providing out-of-state fee waivers to all veterans of the U.S. Uniformed Services.

The bill also implements the VA Reform Bill by providing out-of-state fee waivers to individuals residing in the state and receiving U.S. Department of Veterans Affairs education benefits under chapters 30, 33 or 35. These chapters include the G.I. Bill, and the Survivors' and Dependents', Reserve, and Veterans Educational Assistance Programs.

The bill allows specified veterans and their family members to pay in-state tuition rates at state universities, Florida College System institutions, career centers, and charter technical career centers, which will result in a significant savings to these students. Institutions currently serving these students will lose out-of-state fee revenues. The loss in revenue may be offset by revenues generated from increased enrollment due to lower tuition.

Significant increases in enrollment will require additional state funding in future years since tuition covers only a portion of a student's educational costs. See FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT.

This bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Background

More than 1.5 million veterans live in Florida, including more than 211,000 veterans of the Afghanistan and Iraq wars, and roughly 490,000 Vietnam-era veterans.¹ Additionally, there are approximately 190,000 military retirees who call Florida home.²

Florida has a large military population with more than 61,000 active duty military personnel.³ Another 25,000 civilian personnel are directly associated with the military presence in Florida.⁴

The Florida National Guard (Guard) has nearly 12,000 members, with 9,900 Guard personnel and 2,000 Air National Guard personnel.⁵ According to the Department of Military Affairs (DMA), since September 11, 2001, more than 16,000 Guard members have been deployed to support our nation's national security interests; of this total, roughly 5,760 remain active with the Guard.

Tuition and Out-of-State Fees and Waivers/Exemptions

Florida law defines "tuition" as "the basic fee charged to a student for instruction provided by a public postsecondary educational institution in the state".⁶ Students who are not classified as "residents for tuition purposes"⁷ are required to pay the full cost of instruction at a public postsecondary institution. This additional charge is known as the "out-of-state fee".⁸ Institutions are authorized to provide exemptions and/or waivers⁹ of the out-of-state fee to students who meet specified criteria.

Chapter 2014-1, L.O.F., also known as the Florida G.I. Bill, created an out-of-state tuition fee waiver for honorably discharged veterans who reside in the state while enrolled at a state college, state university, career center operated by a school district under s. 1001.44, F.S., or a charter technical center.¹⁰ Prior to the bill's passage, non-resident students, including non-resident student veterans, were required to be classified as residents for tuition purposes in order to pay in-state tuition rates.¹¹ Without a specifically authorized fee exemption or waiver, non-resident students had to pay out-of-state fees in addition to basic tuition rates.

Specifically, the Florida G.I. Bill created the "Congressman C.W. Bill Young Veteran Tuition Waiver Program"¹², directing the state universities, Florida College System institutions, career centers, and technical centers to waive out-of-state fees for honorably discharged veterans of the U.S. Armed Forces, U.S Reserve Forces, or the National Guard. In addition to being an honorably discharged

¹ DVA, Annual Report Fiscal Year 2012-2013, Facts and Figures.

² Id.

³ Florida Defense Factbook, EFI and Haas Center, January 2013, available at: <http://www.enterpriseflorida.com/the-florida-defense-support-task-force/resources/> (last viewed February 10, 2015).

⁴ Id.

⁵ Florida National Guard website, available at: http://www.floridaguard.army.mil/?page_id=7 (last viewed February 10, 2015).

⁶ Section 1009.01(1), F.S.

⁷ Section 1009.21(1)(g), F.S.

⁸ Section 1009.01(2), F.S.

⁹ Sections 1009.25 and 1009.26, F.S.

¹⁰ Ch. 2014-1, Laws of Fla.

¹¹ Section 1009.21, F.S.

¹² Section 1009.26(13), F.S.

veteran, the law requires the veteran student to physically reside in the state in order to receive the fee waiver.

U.S. Department of Veterans Affairs (USDVA) Education Benefit Programs

The USDVA offers several financial assistance programs for veterans and dependents pursuing postsecondary education.

Post-9/11 GI Bill

The Post-9/11 GI Bill¹³ is the newest education benefit program and is offered to individuals with at least 90 days of aggregate active duty service on or after September 11, 2001, or individuals discharged with a service-connected disability after 30 continuous days of active duty service. This program provides the cost of tuition and fees, up to that of the most expensive public in-state undergraduate rate for up to 36 months. Benefits generally expire 15 years after the date of the last discharge or release from active duty service. Funds are paid directly to the institution on the student's behalf and are prorated according to the student's benefit level. The benefit amounts under this program are as follows:

Post-9/11 GI Bill Service Requirements ¹⁴ (aggregate active duty service after Sept. 10, 2001)	Percentage of Maximum Benefit Payable
At least 36 months	100
At least 30 continuous days on active duty (must be discharged due to service-connected disability)	100
At least 30 months, but less than 36 months	90
At least 24 months, but less than 30 months	80
At least 18 months, but less than 24 months	70
At least 12 months, but less than 18 months	60
At least 6 months, but less than 12 months	50
At least 90 days, but less than 6 months	40

Under the Post-9/11 GI Bill, servicemembers may transfer any or all unused benefits to a spouse or child provided the servicemember is still in the military, has at least six years of service and commits to an additional four years of service. Spouses may begin to use benefits immediately and have up to 15 years from the last separation date. Children may begin to use benefits after the servicemember completes 10 years of military service and are eligible to use benefits until age 26.¹⁵

The Marine Gunnery Sergeant John David Fry Scholarship (Fry Scholarship)¹⁶ entitles surviving spouses¹⁷ and children of servicemembers who died in the line of duty after September 10, 2001 to 36 months of the full, 100% level, of the Post-9/11 GI Bill Benefits, including tuition and fees, a monthly housing allowance, and a book stipend. Spouses may use this benefit until such time as they remarry and children are eligible until age 33.

Montgomery GI Bill

The Montgomery GI Bill – Active Duty (MGIB-AD)¹⁸ is available to veterans who began active duty service for the first time after June 30, 1985, had their pay reduced \$100 a month for 12 months, and

¹³ 38 U.S.C. §§3301-3325.

¹⁴ USDVA Pamphlet 22-09-01 RE: Post 9/11 GI Bill. May 2012. Available at: http://www.benefits.va.gov/gibill/docs/pamphlets/ch33_pamphlet.pdf (last viewed March 6, 2015).

¹⁵ 38 U.S.C. § 3319.

¹⁶ 38 U.S.C. § 3311(b)(9).

¹⁷ Public Law 113-146, Title VII, Section 701, The Veterans' Access to Care through Choice, Accountability, and Transparency Act of 2014, H.R. 3230, 113th Cong. (Aug. 7, 2014), expanded eligibility for the Fry Scholarship to surviving spouses effective January 1, 2015.

¹⁸ 38 U.S.C. §§3001-3035.

received an honorable discharge. These benefits are paid directly to the veteran with monthly benefit amounts varying based on length of service and type of educational training being pursued. The current monthly benefit for a veteran who completed an enlistment of 3 years or more and is pursuing a full time college degree or certificate is \$1,717.¹⁹ The MGIB-AD provides up to 36 months of benefits and must be used within 10 years of the last discharge date.

The Montgomery GI Bill – Selected Reserve (MGIB-SR)²⁰ is available to members actively participating in the Selected Reserve.²¹ To be eligible, reservists must be actively drilling and agree to a 6-year commitment to the reserves. Benefits are paid directly to the reservist and may be used for up to 36 months. The current monthly benefit for a reservist enrolled in a full time degree or certificate program is \$367.²²

Survivors' and Dependents' Educational Assistance

The Survivors' and Dependents' Educational Assistance program (DEA)²³ is the benefit program offered to spouses and children of a veteran who has a service-connected permanent and total disability, died as a result of service, or is listed as Missing in Action or Prisoner of War.²⁴ Spouses are eligible for 10 years from the date USDVA determines eligibility (up to 20 years in certain circumstances) and children are eligible until age 26, both for a maximum of 45 months. The current monthly rate payable to the recipient enrolled in a full time degree or certificate program is \$1,018.²⁵

Reserve Educational Assistance Program

The Reserve Educational Assistance Program (REAP)²⁶ provides educational assistance to members and reservists of the National Guard who have been called to active duty in response to a war, national emergency, or contingency operation as declared by the President or Congress on or after September 11, 2001 for a minimum of 90 consecutive days.²⁷ Program beneficiaries are eligible for up to 36 months of benefits at a proportionate rate of the MGIB-AD 3-year enlistment rate. The current monthly rate for a member or reservist with at least 90 consecutive days of service, but less than one year is \$686.60.²⁸

Veterans Educational Assistance Program

The Veterans Educational Assistance Program (VEAP)²⁹ provides educational benefits for veterans entering service for the first time between December 31, 1976 and July 1, 1985. Enrollment for this program closed June 30, 1985, however a small number of veterans are still using benefits at higher education institutions in Florida.

The chart below shows the number of Florida beneficiaries for each USDVA education program for fiscal years 2011-2013.³⁰

¹⁹ USDVA Website. MGIB-AD Rates Effective October 1, 2014. Available at:

http://www.benefits.va.gov/GIBILL/resources/benefits_resources/rates/ch30/ch30rates100114.asp (last viewed March 6, 2015).

²⁰ 10 U.S.C. §§16131-16136.

²¹ Selected Reserve components include the Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve, Coast Guard Reserve, Army National Guard, and Air Force National Guard.

²² USDVA Website. MGIB-SR Rates. Effective October 1, 2014. Available at:

http://www.benefits.va.gov/GIBILL/resources/benefits_resources/rates/ch1606/ch1606rates100114.asp (last viewed March 6, 2015).

²³ 38 U.S.C. §§3500-3566.

²⁴ 38 U.S.C. §3501(a)(1).

²⁵ USDVA Website. REAP Rates Effective October 1, 2014. Available at:

http://www.benefits.va.gov/GIBILL/resources/benefits_resources/rates/ch35/ch35rates100114.asp (last viewed March 6, 2015).

²⁶ 10 U.S.C. §§16161-16166.

²⁷ 10 U.S.C. §16163(a).

²⁸ USDVA Website. REAP Rates Effective October 1, 2014. Available at:

http://www.benefits.va.gov/GIBILL/resources/benefits_resources/rates/ch1607/ch1607rates100114.asp (last viewed March 6, 2015).

²⁹ 38 U.S.C. §§3201-3243.

³⁰ National Center for Veterans Analysis and Statistics. Utilization Report on Department of Veterans Affairs Education Program Beneficiaries by Geography: FY 2000 to FY 2013. Available at: <http://www.va.gov/vetdata/Utilization.asp> (last viewed March 6, 2015).

Fiscal Year	Total Beneficiaries	USDVA Educational Assistance Program					
		Post-9/11	MGIB-AD	MGIB-SR	DEA	VEAP	REAP
2011	68,133	42,607	14,628	3,020	6,810	7	1,081
2012	62,911	42,607	9,454	2,613	6,513	5	818
2013	87,140	63,947	6,530	2,575	6,770	2	615

The Veterans Access, Choice and Accountability Act of 2014

The Veterans Access, Choice and Accountability Act of 2014 (VA Reform Bill) was signed into law in August 2014.³¹ The VA Reform Bill requires public institutions of higher learning to provide in-state tuition rates to veterans and eligible dependents in order for the institution to remain eligible to receive G.I. Bill education payments. Specifically, the bill requires the USDVA Secretary to disapprove a course of education at a public institution of higher learning if that institution does not offer a covered individual tuition at the in-state rate. Any veteran who has served at least 90 days of active service must be allowed to pay resident tuition rates, in any state, within three years of leaving the military. The law also covers spouses and dependent children of veterans meeting certain criteria. Effective July 1, 2015, the federal law will apply to any public college or university in order for the institution to remain eligible to receive the education payments from the Montgomery G.I. Bill or Post-9/11 G.I. Bill programs.

The requirements of this legislation apply only to students qualifying under the Post-9/11 GI Bill or the Montgomery GI Bill-AD. Institutions are not required to change policies for individuals using any other USDVA educational benefits. Beneficiaries qualifying under this act include (1) veterans who enroll in an institution within the state s/he resides within 3 years of discharge from a period of active duty service of 90 days or more, (2) spouses/children using transferred benefits to attend an institution within the state s/he resides within 3 years of the transferor's discharge from a period of active duty service of 90 days or more, or (3) spouses/children using benefits under the Fry Scholarship who enroll in an institution of higher education within the state s/he resides within 3 years of the servicemember's death in the line of duty following a period of active duty service of 90 days or more. Provided a student remains continuously enrolled and continues to use either Post-9/11 GI Bill or Montgomery GI Bill-AD benefits, the beneficiary will remain eligible to continue receiving the in-state tuition rate beyond the 3 year date of discharge.

Effect of Proposed Changes

Currently, the Congressman C.W. Bill Young Veteran Tuition Waiver Program authorizes out-of-state fee waivers for honorably discharged veterans of the U.S. Armed Forces, U.S. Reserve Forces, and the National Guard. The bill expands the waivers to include veterans of the U.S. Uniformed Services, effectively adding veterans of the commissioned corps of the Public Health Service (PHS) and the National Oceanic and Atmospheric Administration (NOAA).³² This fee waiver will be granted regardless of whether the person is using G.I. Bill education benefits.

The bill also creates an additional out-of-state fee waiver for those individuals residing in the state and receiving USDVA education benefits under Chapters 30, 33 or 35. These chapters include beneficiaries under the Post-9/11 G.I. Bill, Montgomery G.I. Bill, Survivor's and Dependents' Educational Assistance Program, Reserve Educational Assistance Program, and the Veterans Educational Assistance Program. Spouses and children using benefits transferred from an eligible servicemember are also eligible for the out-of-state fee waiver.

³¹ The Veterans' Access to Care through Choice, Accountability, and Transparency Act of 2014, Pub.L. 113-146, H.R. 3230, 113th Cong. (Aug. 7, 2014).

³² 10 U.S.C. § 101 (2013), defines the term "uniformed services" as the Army, Navy, Air Force, Marine Corps, Coast Guard, National Oceanic and Atmospheric Administration, and Public Health Service.

The bill removes the limitation on the number of credit hours that may be waived. Currently, the waiver is applicable for 110 percent of the required credit hours of the degree or certificate program for which a student is enrolled. Currently state universities are required by law to assess additional fees to all students who enroll in additional coursework beyond what is required for a degree program in which the student is enrolled.³³ This policy was established to incentivize students to complete baccalaureate degree programs in the most efficient way possible.

B. SECTION DIRECTORY:

Section 1: Amends s. 1009.26, F.S., to direct state universities, Florida College System institutions, and Florida career centers to waive certain fees for veterans.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

State University System

The Board of Governors, based on Fall 2013 enrollment data of veteran dependents using G.I. Bill benefits and enrolling in 30 credit hours per year, estimates an annual unrealized tuition amount for the State University System of \$2,695,543.³⁴

According to the Board of Governors, the fiscal impact to the State University System is calculated by using the 2013-2014 FTE enrollment data for active duty students and eligible dependent students because 2014-2015 data are not yet available. Additionally, the 2014-2015 Tuition and Fee Survey is used to calculate the system average of lost revenues resulting from the exclusion of non-resident fees paid by these students.³⁵

Of the 136 FTE non-resident students listed under active duty, reservist, and eligible dependents, 88 FTE are undergraduate students and 53 FTE are graduate students. The estimated fiscal impact of waiving the non-resident fee for undergraduate and graduate students is as follows:

Active Duty and Reservists³⁶

Undergraduate Students (4 FTE):

2014-2015 System Non-Resident Fee Revenue = \$19,588 * 4 FTE = \$78,352

Graduate Students (23 FTE):

2014-2015 System Non-Resident Fee Revenue = \$19,966 * 23 FTE = \$459,218

³³ Section 1009.286(2), F.S.

³⁴ E-mail correspondence with Board of Governors of the State University System of Florida staff. February 23, 2015. On file with Higher Education and Workforce Subcommittee.

³⁵ State University System of Florida Board of Governor's 2015 Legislative Bill Analysis for CS/HB 35.

³⁶ Id.

Eligible Dependents and Survivors³⁷

Undergraduate Students (84 FTE):

2014-2015 System Non-Resident Fee Revenue = \$19,588 * 84 FTE = \$1,645,392

Graduate Students (25 FTE):

2014-2015 System Non-Resident Fee Revenue = \$19,966 * 25 FTE = \$499,150

As a result, an estimated \$2.7 M in tuition revenue would be foregone by the system if the non-resident fee is waived for 136 FTE active duty and reservists students and eligible dependents and survivors at the undergraduate and graduate levels.³⁸

Florida College System

According to the Division of Florida Colleges, the fiscal impact of the bill is indeterminate. The number of spouses or dependents affected by the recommended changes cannot be determined with currently available data. Colleges may see a reduction of out-of-state fee revenue from currently enrolled students benefitting from the proposed changes. The loss in revenue may be offset by revenues received through increased enrollment due to lower tuition.

For Fiscal Year 2014-15, the weighted average in-state tuition and fees for lower level programs is \$105.21 per credit hour; the weighted average out-of-state tuition and fees is \$386.82 per credit hour³⁹, which is \$281.61 above the in-state per credit hour rate.

2. Expenditures:

Existing data elements within the Florida College System Student Data Base may need revision to identify veterans and their dependents. Florida College System institutions may incur additional administrative costs to verify and track student eligibility; however, the cost is indeterminate. Additionally, the potentially increased enrollment would require supplementary resources and expenditures just as any other enrollment growth would.⁴⁰

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

³⁷ Id.

³⁸ Id.

³⁹ Id.

⁴⁰ Florida Department of Education 2015 Agency Bill Analysis, March 9, 2015.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Specified veterans using G.I. Bill educational benefits, who would otherwise be unable to establish Florida residency for tuition purposes, and spouses and dependents of servicemen who transfer their benefits would be able to pay in-state tuition rates at state universities, Florida College System institutions, career centers, and charter technical career centers. Savings are outlined below:

*In-State versus Out-of-State Tuition Per Credit / Clock Hour*⁴¹

	Average Tuition and Fees		Savings Per Credit Hour
	In-State	Out-of-State	
COLLEGES			
Associate	\$105	\$387	\$282
Baccalaureate	\$120	\$513	\$393
Career Certificates/Applied Technology Diploma ¹	\$83	\$328	\$246
UNIVERSITIES			
Undergraduate	\$198	\$688	\$490
Graduate ²	\$433	\$1,057	\$624
CAREER CENTERS (tuition - per clock hour)			
Career Certificates/Applied Technology Diploma ¹	\$2.74	\$10.56	\$7.82

¹Career Centers and Charter Technical Centers also offer Career Certificate and Applied Technology Diploma programs. These tuition and fee rates represent college' conversion of rates from clock hour to credit hour.

²Graduate program tuition and fee comparisons do not include Law, Medical, Vet Medicine, Dentistry, Pharmacy, Physical Therapy, Master Public Health, or Nurse Anesthetist programs, which have higher tuition and fees.

D. FISCAL COMMENTS:

Generally, it may be difficult for institutions to identify the number of students who will meet the criteria outlined in the bill and opt to take advantage of the expanded benefits; therefore, the full potential fiscal impact is indeterminate.

Institutions may incur losses in out-of-state fee revenues for current students who become eligible as a result of this legislation. However, by lowering tuition, institutions may gain additional enrollment, which may offset those revenue losses.

Currently, for both the Florida colleges and state universities, state funding provides approximately 57 percent of the cost of a student's education, while student tuition provides 43 percent. Significant increases in enrollment will require additional state funding. Since there is no way to determine potential enrollment increases, the fiscal impact is indeterminate.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

⁴¹ State universities: <http://www.flbog.edu/about/budget/current.php> ; Colleges and Career Center data provided by the Division of Florida Colleges, and Florida Department of Education, Career and Adult Education

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.

RULE-MAKING AUTHORITY:

The State Board of Education and Board of Governors may be required to amend any rules or regulations inconsistent with the provisions of the bill.

B. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS / COMMITTEE SUBSTITUTE CHANGES

On March 3, 2015, the Higher Education and Workforce Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. In an effort to comply with the federal Veterans Access, Choice and Accountability Act of 2014, the proposed committee substitute expands the out-of-state fee waivers to:

- veterans of the commissioned corps of the Public Health Service (PHS) and National Oceanic and Atmospheric Administration (NOAA) and
- veterans and eligible dependents using specified G.I. Bill benefits and residing in the state while enrolled in the institution.

This analysis is drafted to the committee substitute as approved by the Higher Education and Workforce Subcommittee.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Education Committee
2 Representative Metz offered the following:

Amendment

5 Remove lines 182-189 and insert:

6 (a) Implements the Safe Paths to Schools Program as
7 provided in s. 335.066; or

8 (b) Establishes standards for the safety of students
9 walking to school, and procedures for identifying and correcting
10 hazardous walking conditions, that meet or exceed the standards
11 and procedures provided in subsections (2), (3), and (4).

27
 28 Section 1. Section 1006.23, Florida Statutes, is reordered
 29 and amended to read:

30 1006.23 Hazardous walking conditions.—

31 (1) DEFINITION.—As used in this section, the term
 32 "student" means any public elementary school student whose grade
 33 level does not exceed grade 6.

34 ~~(2) (4) STATE CRITERIA FOR DETERMINING HAZARDOUS WALKING~~
 35 ~~CONDITIONS.—~~

36 (a) Walkways parallel to the road.—

37 1. It shall be considered a hazardous walking condition
 38 with respect to any road along which students must walk in order
 39 to walk to and from school if there is not an area at least 4
 40 feet wide adjacent to the road, not including drainage ditches,
 41 sluiceways, swales, or channels, having a surface upon which
 42 students may walk without being required to walk on the road
 43 surface. In addition, whenever the road along which students
 44 must walk is uncurbed and has a posted speed limit of 50 ~~55~~
 45 miles per hour or greater, the area as described above for
 46 students to walk upon shall be set off the road by no less than
 47 3 feet from the edge of the road.

48 2. ~~The provisions of Subparagraph 1. does~~ ~~de~~ not apply
 49 when the road along which students must walk:

50 ~~a. Is in a residential area which has little or no~~
 51 ~~transient traffic;~~

52 ~~a.b.~~ Is a road on which the volume of traffic is less than

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53 | 180 vehicles per hour, per direction, during the time students
54 | walk to and from school; or

55 | ~~b.e.~~ Is located in a residential area and has a posted
56 | speed limit of 30 miles per hour or less.

57 | (b) Walkways perpendicular to the road.—It shall be
58 | considered a hazardous walking condition with respect to any
59 | road across which students must walk in order to walk to and
60 | from school if:

61 | 1. ~~If~~ The traffic volume on the road exceeds the rate of
62 | 360 vehicles per hour, per direction (including all lanes),
63 | during the time students walk to and from school and if the
64 | crossing site is uncontrolled. For purposes of this subsection,
65 | an "uncontrolled crossing site" is an intersection or other
66 | designated crossing site where no crossing guard, traffic
67 | enforcement officer, or stop sign or other traffic control
68 | signal is present during the times students walk to and from
69 | school.

70 | 2. ~~If~~ The total traffic volume on the road exceeds 4,000
71 | vehicles per hour through an intersection or other crossing site
72 | controlled by a stop sign or other traffic control signal,
73 | unless crossing guards or other traffic enforcement officers are
74 | also present during the times students walk to and from school.

75 |
76 | Traffic volume shall be determined by the most current traffic
77 | engineering study conducted by a state or local governmental
78 | agency.

79 (c) Crossings over the road.—It shall be considered a
 80 hazardous walking condition with respect to any road at any
 81 uncontrolled crossing site which students must walk in order to
 82 walk to and from school if:

83 1. The road has a posted speed limit of 50 miles per hour
 84 or greater; or

85 2. The road has six lanes or more, not including turn
 86 lanes, regardless of the speed limit.

87 (3) IDENTIFICATION OF HAZARDOUS CONDITIONS.—

88 (a) When a request for review is made by ~~to~~ the district
 89 school superintendent with respect to a road over which a state
 90 or local governmental entity has jurisdiction ~~or the district~~
 91 ~~school superintendent's designee~~ concerning a condition
 92 perceived to be hazardous to students in that district who live
 93 within the 2-mile limit and who walk to school, such condition
 94 shall be inspected jointly by a representative of the school
 95 district, ~~and~~ a representative of the state or local
 96 governmental entity with ~~that~~ has jurisdiction over the
 97 perceived hazardous location, and a representative of the
 98 municipal police department for a municipal road, a
 99 representative of the sheriff's office for a county road, or a
 100 representative of the Department of Transportation for a state
 101 road. If the jurisdiction is within an area for which there is a
 102 metropolitan planning organization, a representative of that
 103 organization shall also be included. The governmental
 104 representatives shall determine whether the condition

105 constitutes a hazardous walking condition as provided in
106 subsection (2). If the governmental representatives concur that
107 a condition constitutes a hazardous walking condition as
108 provided in subsection (2), the governmental entity with
109 jurisdiction shall report that determination in writing to the
110 district school superintendent, who shall initiate a formal
111 request for correction as provided in subsection (4).

112 (b) If the governmental representatives are unable to
113 reach a consensus, the reasons for lack of consensus shall be
114 reported to the district school superintendent, who shall
115 provide a report and recommendation to the district school
116 board. The district school board may initiate a proceeding under
117 chapter 86 seeking a determination as to whether the condition
118 constitutes a hazardous walking condition as provided in
119 subsection (2) after providing at least 30 days' notice in
120 writing to the local governmental entities having jurisdiction
121 over the road of its intent to do so unless, within 30 days
122 after such notice is provided, the local governmental entities
123 concur in writing that the condition is a hazardous walking
124 condition as provided in subsection (2) and provide the position
125 statement pursuant to subsection (4). If a proceeding is
126 initiated under this paragraph, the district school board has
127 the burden of proving such condition by the greater weight of
128 evidence. If the district school board prevails, the district
129 school superintendent shall report the outcome to the Department
130 of Education and initiate a formal request for correction of the

131 hazardous walking condition as provided in subsection (4). ~~The~~
 132 ~~district school superintendent or his or her designee and the~~
 133 ~~state or local governmental entity or its representative shall~~
 134 ~~then make a final determination that is mutually agreed upon~~
 135 ~~regarding whether the hazardous condition meets the state~~
 136 ~~criteria pursuant to this section. The district school~~
 137 ~~superintendent or his or her designee shall report this final~~
 138 ~~determination to the Department.~~

139 (4)(2) TRANSPORTATION; CORRECTION OF HAZARDS.-

140 (a) A district school board ~~It is intended that district~~
 141 ~~school boards~~ and other governmental entities shall work
 142 cooperatively to identify conditions that are hazardous along
 143 student walking routes to school, and a district school board
 144 shall ~~that district school boards~~ provide transportation to
 145 students who would be subjected to such conditions.
 146 Additionally, ~~It is further intended that~~ state or local
 147 governmental entities with having jurisdiction over a road along
 148 which a hazardous walking condition is determined to exist shall
 149 correct the condition ~~such hazardous conditions~~ within a
 150 reasonable period of time.

151 (b) Upon a determination pursuant to subsection (3) ~~this~~
 152 ~~section~~ that a hazardous walking condition exists ~~is hazardous~~
 153 ~~to students~~, the district school superintendent ~~board~~ shall
 154 request a position statement with respect to correction of such
 155 condition ~~determination~~ from the state or local governmental
 156 entity with having jurisdiction over the road. Within 90 days

157 after receiving such request, the state or local governmental
158 entity shall inform the district school superintendent regarding
159 whether the entity will include correction of the hazardous
160 walking condition in its next annual 5-year transportation work
161 program hazard will be corrected and, if so, when correction of
162 the condition will be completed. If the hazardous walking
163 condition will not be included in the state or local
164 governmental entity's next annual 5-year transportation work
165 program, the factors justifying such conclusion must be stated
166 in writing to the district school superintendent and the
167 Department of Education regarding a projected completion date.

168 (c) State funds shall be allocated for the transportation
169 of students subjected to a hazardous walking condition. However,
170 such hazards, provided that such funding shall cease upon
171 correction of the hazardous walking condition hazard or upon the
172 projected completion date, whichever occurs first.

173 (5) CIVIL ACTION.—In a civil action for damages brought
174 against a governmental entity under s. 768.28, the designation
175 of a hazardous walking condition under this section is not
176 admissible in evidence.

177 (6) INTERLOCAL AGREEMENTS.—This section does not prohibit
178 a district school board and other governmental entities from
179 entering into an interlocal agreement pursuant to s. 163.31777
180 that addresses the identification and correction of hazardous
181 walking conditions, if such agreement:

182 (a) Establishes the same or higher standards for the

CS/CS/HB 41

2015

183 safety of students walking to school as the standards provided
 184 in this section;

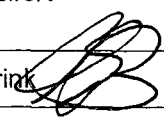

185 (b) Establishes the same or a more rigorous process for
 186 identifying hazardous walking conditions as the processes
 187 provided in this section; or

188 (c) Implements the Safe Paths to Schools Program as
 189 provided in s. 335.066.

190 Section 2. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 41 Hazardous Walking Conditions
SPONSOR(S): Local Government Affairs Subcommittee; Metz
TIED BILLS: IDEN./SIM. **BILLS:** SB 154

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Government Affairs Subcommittee	9 Y, 0 N	Zaborske	Miller
2) Education Appropriations Subcommittee	12 Y, 0 N, As CS	Seifert	Heflin
3) Education Committee		Brink 	Mizereck 

SUMMARY ANALYSIS

CS/CS/HB 41 relates to identifying, inspecting, and correcting hazardous walking conditions on roads students walk along or cross in order to walk to school. The current statute applies to elementary school students through grade 6 living within a 2 mile radius of a school. Currently, the law states the intent is for the condition to be corrected within a reasonable time, but does not require entities with jurisdiction over a road with an identified hazardous walking condition to correct the condition. The bill:

- Requires district school boards and other governmental entities to cooperate to identify hazardous walking conditions;
- Requires the entity with jurisdiction over the road to correct the hazardous condition within a reasonable time;
- Requires the entity with jurisdiction over the road to include correction of a hazardous condition in its next annual 5-year capital improvements program or provide a statement of the factors justifying why a correction is not so included;
- Revises the criteria identifying hazardous walking conditions for walkways parallel to the road;
- Creates a new hazardous walking condition category, "crossings over the road";
- Requires additional parties to participate with the representatives of the school district and entity with jurisdiction over the road in inspecting the walking condition and determining whether it is hazardous;
- Provides the district school board, after notice, may initiate a declaratory judgment proceeding if the local governmental entities cannot agree whether the condition is hazardous;
- Provides a hazardous walking condition determination may not be used as evidence in a civil action for damages against a governmental entity; and
- Provides that interlocal agreements may be used to identify and correct hazardous walking conditions.

The bill has an indeterminate fiscal impact on state or local government revenues and expenditures (see Fiscal Analysis Section).

The bill is effective on July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Generally, school districts do not receive state funding to transport students in grades K-12 living 2 miles or less from the schools they attend.¹ However, state funds must be allocated to transport any public elementary school student whose grade level does not exceed grade 6² and who is subjected to a "hazardous walking condition" until the sooner of correcting the hazard or the projected completion date of correcting the hazard.³ The intent of the law is for district school boards to cooperate with the state or local governmental entities with responsibility for roads to identify and correct hazardous walking conditions within a reasonable period of time.⁴

Hazardous Walking Conditions

Hazardous walking conditions currently are classified according to walkways either parallel or perpendicular to a road along which students must walk to and from school.

For walkways *parallel* to a road, a hazardous walking condition exists if there is less than a 4-foot wide surface for students to walk adjacent to the road.⁵ Not only must the walking surface be at least 4-feet wide, but if the road is uncurbed with a posted speed limit of 55 miles per hour, the walking surface adjacent to the road also must be at least 3-feet from the edge of the road or it will be a hazardous walking condition.⁶

Even if the above criteria are met for walkways *parallel* to the road, a walking condition nevertheless will *not* be considered hazardous if:

- The road is in a residential area with little or no transient traffic;⁷
- The volume of traffic⁸ on the road is less than 180 vehicles per hour, per direction, during the time when students walk to and from school;⁹ or
- The road is located in a residential area with a posted speed limit of 30 miles per hour or less.¹⁰

For walkways *perpendicular* to a road, a hazardous walking condition exists if:

- Traffic volume on the road exceeds the rate of 360 vehicles per hour, per direction, during the time when students walk to and from school *and* the crossing site is uncontrolled, meaning it is an intersection or other designated crossing site where no crossing guard,

¹ Section 1011.68(1), F.S.; rule 6A-3.001(3), F.A.C. ("A reasonable walking distance for any student who is not otherwise eligible for transportation pursuant to Section 1011.68, F.S., is any distance not more than two (2) miles between the home and school or one and one-half (1 1/2) miles between the home and the assigned bus stop.").

² Section 1006.23(1), F.S.

³ Section 1006.23(1), F.S.; s. 1011.68(1)(e), F.S.

⁴ Section 1006.23(2)(a), F.S. Current law does not define what is a reasonable period of time.

⁵ Section. 1006.23(4)(a)1., F.S.

⁶ *Id.*

⁷ Section 1006.23(4)(a)2.a., F.S.

⁸ "Traffic volume [is] determined by the most current traffic engineering study conducted by a state or local governmental agency."

Section 1006.23(4), F.S.

⁹ Section 1006.23(4)(a)2.b., F.S.

¹⁰ Section 1006.23(4)(a)2.c., F.S.

traffic enforcement officer, stop sign, or other traffic control signal is present when students walk to and from school;¹¹ or

- Total traffic volume on the road exceeds 4,000 vehicles per hour through an intersection or other crossing site controlled by a stop sign or other traffic control signal *and* no crossing guards or other traffic enforcement officers are present during the time when students walk to and from school.¹²

Inspecting, Determining, & Reporting Hazardous Walking Conditions

Identification of hazardous walking conditions begins when the district school superintendent or the superintendent's designee receives a request to review a condition perceived to be hazardous to students in the district living within the 2-mile radius of a school and who walk to school.¹³

After the request for review is received, the perceived hazardous walking condition is inspected by the district school superintendent, or designee, and the state or local governmental entity with jurisdiction over the road.¹⁴

Current law requires the district school superintendent, or designee, and the governmental entity having jurisdiction over the road, or its representative, to mutually determine whether the walking condition is hazardous to students.

The district school superintendent or designee must report to the Department of Education the final determination whether the walking condition is hazardous to students.¹⁵

The statute does not provide a process for resolving a dispute between the district school officials and the government entity with jurisdiction over the subject road as to whether a hazardous walking condition exists.

Correcting Hazardous Walking Conditions

Upon determining that a condition is hazardous to students, the district school board must request the entity having jurisdiction over the road for a determination whether the hazard will be corrected and a projected completion date for any correction.¹⁶ Current law, however, does not require the entity with jurisdiction over the road having a hazardous walking condition to correct the condition.

Effect of Proposed Changes

The bill changes the current law's intent language to make mandatory the cooperation between school districts and governmental entities to identify hazardous walking conditions. The bill requires the governmental entities with jurisdiction over a road with a hazardous walking condition to correct the condition within a reasonable period of time. In addition, the bill expressly requires the district school board to provide transportation to students who would be subjected to a hazardous walking condition.

Hazardous Walking Condition

For walkways *parallel* to a road, the bill:

¹¹ Section 1006.23(4)(b)1., F.S.

¹² Section 1006.23(4)(b)2., F.S.

¹³ Section 1006.23(3), F.S.

¹⁴ Section 1006.23(2), F.S.

¹⁵ Section 1006.23(3), F.S.

¹⁶ Section 1006.23(2)(b), F.S.

- Retains the requirement for an area at least 4 feet wide adjacent to the road upon which students may walk but excludes drainage ditches, sluiceways, swales, or channels, from any calculation of that 4 foot area;
- By changing the posted speed limit from 55 miles per hour to 50 miles per hour or greater, expands the number of uncurbed roads required to have at least a 3 foot buffer from the edge of the road to the required 4 foot area on which students may walk; and
- Removes the exception for roads students walk along in residential areas with little or no transient traffic.

The bill does not change the criteria for hazardous walking conditions for walkways *perpendicular* to the road.

The bill adds a new subsection for “crossings over the road.” Under this subsection any *uncontrolled crossing site*¹⁷ which students must use when walking to and from school will be considered a hazardous walking condition if the road has:

- A posted speed limit of 50 miles per hour or greater; or
- 6 lanes or more, not including turn lanes, regardless of the speed limit.

Inspecting, Determining, & Reporting Hazardous Walking Conditions

Under the bill, inspection of a perceived hazardous walking condition will be initiated by a request for review from the district school superintendent. The alleged hazardous condition must be inspected jointly by:

- A representative of the school district;
- A representative of the state or local governmental entity with jurisdiction over the perceived hazardous location;
- A representative of the municipal police department for a municipal road, a representative of the sheriff’s office of a county road, or a representative of the Department of Transportation for a State road; and
- If the jurisdiction is within an area for which there is a metropolitan planning organization, a representative of that organization.

The bill changes the procedure for determining whether a walking condition is hazardous. If all representatives concur the condition constitutes a hazardous walking condition, they must report that determination in writing to the district school superintendent. The district school superintendent then must request a position statement from the state or local governmental entity with jurisdiction over the road regarding correcting the condition.

If the governmental representatives are unable to reach a consensus, then the reasons for lack of consensus must be reported to the district school superintendent, who must provide a report and recommendation to the district school board. The bill does not state who must submit a report to the district school superintendent when the governmental representatives are unable to reach a consensus, which could result in multiple reports, nor does it state what must be included in the report and recommendation.

Declaratory Judgment Action

Chapter 86, F.S., relates to declaratory judgment actions and provides that a declaratory judgment action may be brought in circuit or county court, depending on the jurisdictional amounts involved, “to

¹⁷ An uncontrolled crossing site, as stated in the discussion of the present situation, means an intersection or other designated crossing site where no crossing guard, traffic enforcement officer, or stop sign or other traffic control signal is present during the time students walk to and from school. Section 1006.23(4)(b)1., F.S.

declare rights, status, and other equitable or legal relations whether or not further relief is or could be claimed.”¹⁸ The bill provides that if there is no consensus whether the walking condition is hazardous, the district school board may initiate a declaratory judgment action.

The bill also provides that if the district school board prevails in the declaratory action, the district school superintendent is to report the outcome to the Department of Education and initiate a formal request for correction of the hazardous walking condition by requesting from the entity with jurisdiction over the road a position statement regarding correction.

Correcting Hazardous Walking Conditions

The bill revises the process for correcting a hazardous walking condition. Within 90 days after receiving a request to correct the hazardous walking condition, the state or local governmental entity must inform the district school superintendent whether the entity will include correction of the hazardous walking condition in its next annual 5-year capital improvements program and, if so, when the correction will be completed.

If the next annual 5-year capital improvements program will not include correction of the condition, then the governmental entity must state the factors justifying such conclusion in writing to the district school superintendent and the Department of Education. The interaction between this requirement and the bill’s statement that the entity with jurisdiction over the road shall repair the hazardous condition within a reasonable time is unclear.

Evidence in Civil Action

The bill makes the designation of a hazardous walking condition inadmissible as evidence in a civil action for damages against a governmental entity under s. 768.28, F.S.

Interlocal Agreements

The bill allows interlocal agreements to be used to identify and correct hazardous walking conditions as long as the agreement establishes the same or higher standards for the safety of the students walking to school.

B. SECTION DIRECTORY:

Section 1: Amends s. 1006.23, F.S.; revising criteria for determining hazardous walking conditions for public school students; revising procedures for inspection and identification of hazardous conditions; authorizing district school superintendents to initiate formal requests for correction of hazardous conditions; requiring district school boards to provide transportation to students who would be subjected to hazardous conditions; requiring state or local entities with jurisdiction over roads with hazardous conditions to correct condition; providing requirements for governmental entities relating to capital improvement programs; and making the designation of hazardous walking conditions inadmissible as evidence in civil actions for damages against a governmental entity.

Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Indeterminate. The bill may increase the costs related to taking necessary corrective action (1) if interpreted as requiring corrective action within a reasonable time period after a walking condition is determined to be hazardous; (2) by creating a new category of road crossing, "crossings over the road"; (3) by applying the hazardous criteria to certain residential neighborhoods formerly excluded by law; and (4) by changing the criteria for determining acceptable walkways and bringing more roads under consideration by expanding the applicable speed limit. The more expansive criteria may result in walking conditions formerly not considered hazardous now being deemed hazardous walking conditions. To the extent that a local governmental entity does correct the condition, it would cover any such costs, which amount cannot be quantified at this time.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Indeterminate. The bill may increase the costs related to taking necessary corrective action (1) if interpreted as requiring corrective action within a reasonable time period after a walking condition is determined to be hazardous; (2) by creating a new category of road crossing, "crossings over the road"; (3) by applying the hazardous criteria to certain residential neighborhoods formerly excluded by law; and (4) by changing the criteria for determining acceptable walkways and bringing more roads under consideration by expanding the applicable speed limit. The more expansive criteria may result in walking conditions formerly not considered hazardous now being deemed hazardous walking conditions. To the extent that a state entity does correct the condition, it would cover any such costs, which amount cannot be quantified at this time.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill requires correction of hazardous walking conditions within a reasonable period of time. However, because the bill does not set any time frame by which a hazardous walking condition must be corrected nor penalize a state or local governmental entity for failing to correct the condition, it is unlikely that there is an associated fiscal impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not compel counties or municipalities with jurisdiction over particular roads having hazardous walking conditions to correct such conditions within a specific time or subject to a specific consequence. Thus, the bill does not mandate local governments take any corrective action or expend funds beyond such amounts as called for under the present law. To the extent requiring the

correction of hazardous walking conditions “within a reasonable time” may operate to increase expenditures in a shorter time frame, the bill could operate as a mandate under Art. VII, s. 18(a), Fla. Const. If so, the legislation would still bind county and city governments if:

- a. The Legislature expressly determines the proposed law fulfills an important state interest; and either
- b. The expenditure is required to comply with a law that applies to all persons similarly situated, including state and local governments; or
- c. The bill is approved by a two-thirds vote of the membership in each chamber.¹⁹

A bill interpreted as requiring expenditures by counties and municipalities is exempt from the constitutional mandate provision if the bill would have an insignificant fiscal impact.²⁰

If the fiscal impact of the bill is calculated not to exceed \$1.9 million, the impact is insignificant and there is no mandate. However, if the potential cost exceeds \$1.9 million, to meet the terms of the constitutional provision the bill would require an express determination by the Legislature that the bill fulfills an important state interest.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 9, 2015, the Local Government Affairs Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment clarifies the type of proceeding the district school board may bring to resolve a dispute as to whether a hazardous walking condition exists on a particular road. The bill provided for an administrative hearing under ch. 120, F.S. The amendment instead provides for resolution by a declaratory judgment action under ch. 86, F.S. The amendment also makes a technical correction. This analysis is drafted to the committee substitute as passed by the Local Government Affairs Subcommittee.

On March 24, 2015, the Education Appropriations Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment makes technical changes and clarifications to terminology. The amendment also clarifies that interlocal agreements meet specified criteria in the bill. The bill analysis is drafted to the committee substitute.

¹⁹ Art. VII, s. 18(a), Fla. Const.

²⁰ Long standing policy of the legislature has deemed “insignificant fiscal impact” to be an amount equal to 10 cents per capita. Since Florida’s population was estimated to be approximately 19 million people in 2009, a fiscal impact of less than \$1.9 million statewide on cities and counties is deemed “insignificant” for purposes of Art. VII, s. 18(d), Fla. Const.

1 A bill to be entitled
 2 An act relating to public records and meetings;
 3 creating s. 1004.097, F.S.; providing an exemption
 4 from public records requirements for identifying
 5 information of an applicant for president or provost
 6 of a state university or Florida College System
 7 institution; providing an exemption from public
 8 meeting requirements for any portion of a meeting held
 9 for the purpose of identifying or vetting or otherwise
 10 disclosing identifying information of such applicants;
 11 requiring that closed meetings be reasonably noticed
 12 and recorded; providing that the recordings of closed
 13 portions of a meeting are exempt from public records
 14 requirements; specifying that any portion of a meeting
 15 held for purposes of establishing the qualifications
 16 of, or any compensation framework to be offered to,
 17 potential applicants is subject to public meetings
 18 requirements; specifying that the identifying
 19 information of final applicants is no longer exempt
 20 from public records and public meetings requirements
 21 within a specified period before a final action or
 22 vote; providing for future legislative review and
 23 repeal of the exemptions; providing a statement of
 24 public necessity; providing an effective date.

25
 26 Be It Enacted by the Legislature of the State of Florida:

27
28 Section 1. Section 1004.097, Florida Statutes, is created
29 to read:

30 1004.097 Information identifying applicants for president
31 or provost at state universities or Florida College System
32 institutions; public records exemption; public meetings
33 exemption.-

34 (1) Any identifying information of an applicant for
35 president or provost of a state university or Florida College
36 System institution is exempt from s. 119.07(1) and s. 24(a),
37 Art. I of the State Constitution.

38 (2)(a) Any portion of a meeting held for the purpose of
39 identifying or vetting a potential applicant for president or
40 provost of a state university or Florida College System
41 institution is exempt from s. 286.011 and s. 24(b), Art. I of
42 the State Constitution.

43 (b) Any portion of a meeting that would disclose
44 identifying information of an applicant for president or provost
45 of a state university or Florida College System institution is
46 exempt from s. 286.011 and s. 24(b), Art. I of the State
47 Constitution.

48 (c) Any portion of a meeting that is closed pursuant to
49 paragraph (a) or paragraph (b) must be reasonably noticed. A
50 complete recording must be made of any closed portion of a
51 meeting, and a closed portion of a meeting may not be held off
52 the record. The recording of the closed portion of a meeting is

53 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
54 Constitution.

55 (d) Any portion of a meeting held for purposes of
56 establishing the qualifications of potential applicants or
57 establishing the compensation framework to be offered to
58 potential applicants must be open to the public and is subject
59 to s. 286.011 and s. 24(b), Art. I of the State Constitution.

60 (3) No later than 30 days before the date of the meeting
61 at which a final action or vote is to be taken regarding the
62 employment of an applicant, identifying information of the
63 applicants on whom a final action or vote is to be taken is no
64 longer exempt as provided under subsections (1) and (2).

65 (4) This section is subject to the Open Government Sunset
66 Review Act in accordance with s. 119.15 and shall stand repealed
67 on October 2, 2020, unless reviewed and saved from repeal
68 through reenactment by the Legislature.



69 Section 2. The Legislature finds that it is a public
70 necessity that any identifying information of an applicant for
71 president or provost of a state university or Florida College
72 System institution be exempt from s. 119.07(1), Florida
73 Statutes, and s. 24(a), Article I of the State Constitution. The
74 Legislature also finds that any portion of any meeting which is
75 held for the purpose of identifying or vetting applicants for
76 president or provost of a state university or Florida College
77 System institution or which would disclose identifying
78 information of an applicant be exempt from s. 286.011, Florida

79 Statutes, and s. 24(b), Article I of the State Constitution.
80 Identifying information of finalists is no longer exempt from
81 public records and public meetings requirements 30 days before
82 the date of the meeting at which a final action or vote occurs
83 regarding the hiring of a president or provost. The task of
84 filling the position of president or provost of a state
85 university or Florida College System institution is often
86 conducted by an executive search committee. Many, if not most,
87 applicants for such a position are currently employed at another
88 job at the time they apply and disclosure of their applications
89 could jeopardize their current positions. These exemptions from
90 public records and public meeting requirements are needed to
91 ensure that the executive search committee can avail itself of
92 the most experienced and desirable pool of qualified applicants
93 from which to fill the position of president or provost of a
94 state university or Florida College System institution. If
95 potential applicants fear the possibility of losing their
96 current employment as a consequence of attempting to progress
97 along their chosen career path or seeking different and more
98 rewarding employment, failure to have these exemptions in place
99 could have a chilling effect on the number and quality of
100 applicants available to fill the position of president or
101 provost of a state university or Florida College System
102 institution.

103 Section 3. This act shall take effect October 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 223 Public Records and Meetings/Postsecondary Education Executive Search
SPONSOR(S): Government Operations Subcommittee; Higher Education & Workforce Subcommittee;
Combee
TIED BILLS: IDEN./SIM. BILLS: CS/CS/SB 182

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Higher Education & Workforce Subcommittee	9 Y, 1 N, As CS	Banner	Sherry
2) Government Operations Subcommittee	8 Y, 4 N, As CS	Williamson	Williamson
3) Education Committee		Banner 	Mizereck 

SUMMARY ANALYSIS

The bill creates an exemption from public record and public meeting requirements for information associated with the applicant recruitment process and discussions associated with the applicant search for certain state university and Florida College System (FCS) institution employees. Specifically, the bill provides that any personal identifying information of an applicant for president or provost of any state university or FCS institution is confidential and exempt from public record requirements. It also creates a public meeting exemption for any meeting held for the purpose of identifying or vetting applicants for president or provost of any state university or FCS institution.

The bill provides instances when the public meeting exemption does not apply. In addition, it provides that the identifying information of any applicants who comprise a final group of applicants must be released by the state university or FCS institution no later than 30 days before the date of the meeting at which a final action or vote is to be taken on the employment of the applicants. At that time, all documents containing such identifying information is no longer exempt of those applicants who comprise a final group of applicants.

The bill requires closed meetings to be reasonably noticed, and requires a complete recording to be made of the closed portion of the meeting.

The bill provides for repeal of the section on October 2, 2020, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

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

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates public record and public meeting exemptions; thus, it requires a two-thirds vote for final passage.

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.

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.

Public Meetings Law

Article I, s. 24(b) of the State Constitution sets forth the state's public policy regarding access to government meetings. The section requires that all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, be open and noticed to the public.

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., known as the "Government in the Sunshine Law" or "Sunshine Law," further requires that all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, at which official acts are to be taken be open to the public at all times.¹ The board or commission must provide reasonable notice of all public meetings.² Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin, or economic status or which operates in a manner that unreasonably restricts the public's access to the facility.³ Minutes of a public meeting must be promptly recorded and open to public inspection.⁴

Public Record and Public Meeting Exemptions

The Legislature may provide by general law for the exemption of records and meetings from the requirements of Article I, s. 24(a) and (b) 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.⁵

Furthermore, the Open Government Sunset Review Act⁶ 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:⁷

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;

¹ Section 286.011(1), F.S.

² *Ibid.*

³ Section 286.011(6), F.S.

⁴ Section 286.011(2), F.S.

⁵ Art. I, s. 24(c), Fla. Const.

⁶ Section 119.15, F.S.

⁷ Section 119.15(6)(b), F.S.

- 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; or
- Protects trade or business secrets.

The Open Government Sunset Review Act requires the automatic repeal of a newly created exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.⁸

Search Committees

Oftentimes, when looking to fill a vacant president, provost, or dean position, state universities and Florida College System (FCS) institutions⁹ establish a search committee, which may be comprised of members from an institution's board of trustees, faculty or student representatives, members of the community, a member from the Board of Governors or State Board of Education, and other potentially interested persons. The purpose of the committee is to locate qualified applicants who are interested in filling the vacant position at the university or institution, vetting applicants, and selecting a candidate to fill the position.¹⁰

The search committee often retains the services of a consulting firm for the purpose of conducting the search for a president or provost. It is typical for the consultant to make the initial contact with a potential applicant to determine if the person is interested in applying to fill the vacancy at the state university or FCS institution.

Information obtained by a search committee or consultant, including applications and other information gathered by a committee or consultant regarding applicants, must be made available for copying and inspection upon request. In addition, any meetings associated with the search process, including vetting of applicants, are open to the public.¹¹

Effect of Proposed Changes

The bill creates an exemption from public record requirements for information associated with the applicant recruitment process and an exemption from public meeting requirements for discussions associated with the applicant search.

Specifically, the bill provides that any personal identifying information of an applicant for president or provost of any state university or FCS institution is exempt¹² from public record requirements.

The bill also creates a public meeting exemption for any portion of a meeting:

- Held for the purpose of identifying or vetting potential applicants for president or provost of any state university or FCS institution.

⁸ Section 119.15(3), F.S.

⁹ The board of trustees for a FCS institution is charged with appointing an institution president and may appoint a search committee for this purpose. Section 1001.64(19), F.S.

¹⁰ The Board of Governors must confirm the selected candidate for president of a state university Section 1001.706(6)(a), F.S.

¹¹ FCS institutions and state universities are considered state agencies, subject to public records and public meetings laws. *See Wood v. Marston*, 442 So. 2d 934, 938 (Fla. 1983) (holding that a University of Florida screening committee was subject to Florida's Sunshine Law); *Rhea v. District Bd. Of Trustees of Santa Fe College*, 2013 WL 950544 at 3, n. 1 (Fla. 1st DCA 2013) (noting that Santa Fe College, as part of the Florida College System, is a state agency having a duty to provide access to public records).

¹² 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 statute. *See Attorney General Opinion 85-62* (August 1, 1985).

- That would disclose identifying information of an applicant for president or provost of a state university or FCS institution.

Any portion of a closed meeting must be reasonably noticed, and no portion of the closed meeting may be held off the record. A recording must be made of the closed portion of the meeting. The bill provides that the recording is exempt from public record requirements.

The public meeting exemptions do not apply to a meeting held for the purpose of establishing qualifications of potential applicants or any compensation framework to be offered to potential applicants. Any meeting or interview held after a final group of applicants has been established and held for the purpose of making a final selection to fill the position of president or provost is subject to public meeting requirements. In addition, the names of any applicants who comprise a final group of applicants must be released by the state university or FCS institution no later than 30 days before the date of the meeting at which final action or vote is to be taken on the employment of the applicants. All documents containing personal identifying information of any applicants who comprise a final group of applicants become subject to public record requirements when the applicants' names are released.

The bill provides that the section is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2020, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

B. SECTION DIRECTORY:

Section 1. Creates s. 1004.097, F.S., to provide public record and public meeting exemptions associated with a search conducted by a state university or FCS institution for the purpose of identifying or vetting applicants for president or provost.

Section 2. Provides a statement of public necessity as required by the State Constitution.

Section 3. Provides an effective date of October 1, 2015.

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 likely could create a minimal fiscal impact on state universities and FCS institutions, because staff responsible for complying with public record requests could require training related to creation of the public record exemption. In addition, state universities and FCS institutions could incur costs associated with redacting the exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the universities and institutions. In addition, there may be minimal fiscal costs associated with the requirement to record the closed portion of a meeting.

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:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates public record and public meeting exemptions; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates public record and public meeting exemptions; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for any personal identifying information of an applicant for president or provost of any state university or FCS institution, in addition to a public meeting exemption for any meetings wherein such information is discussed or such applicants are vetted. The exemptions do not appear to be in conflict with the constitutional requirement that the exemptions be no broader than necessary to accomplish the stated purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 10, 2015, the Higher Education and Workforce Subcommittee adopted a strike all amendment to the bill and reported the bill favorably as a committee substitute. The amendment conformed the bill to Senate Bill 182 by:

- providing that records be exempt rather than both confidential and exempt;
- requiring closed meetings to be recorded and those recordings exempt from public records; and

- extending the timeframe that records of finalists and meetings regarding finalists be open to the public from 10 days to 30 days prior to the final vote or action.

On March 24, 2015, the Government Operations Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment removed the public record and public meeting exemption for those searches for a dean of a state university or FCS institution.

This analysis is drafted to the committee substitute as approved by the Government Operations Subcommittee.

1 A bill to be entitled
 2 An act relating to education personnel; amending s.
 3 39.202, F.S.; authorizing certain employees or agents
 4 of the Department of Education to have access to
 5 certain reports and records; amending s. 1012.39,
 6 F.S.; providing requirements regarding liability
 7 insurance for students performing clinical field
 8 experience; amending s. 1012.75, F.S.; requiring the
 9 department to administer an educator liability
 10 insurance program; specifying program administration
 11 and eligibility requirements; amending s. 1012.79,
 12 F.S.; revising Education Practices Commission
 13 membership; authorizing the Commissioner of Education
 14 to appoint emeritus members to the commission;
 15 amending s. 1012.796, F.S.; authorizing the
 16 commissioner to issue a letter of guidance in response
 17 to a complaint against a certified teacher or
 18 administrator; providing an effective date.

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

21
 22 Section 1. Paragraphs (q) through (s) of subsection (2) of
 23 section 39.202, Florida Statutes, are redesignated as paragraphs
 24 (r) through (t), respectively, and a new paragraph (q) is added
 25 to that subsection, to read:
 26 39.202 Confidentiality of reports and records in cases of

27 | child abuse or neglect.—

28 | (2) Except as provided in subsection (4), access to such
29 | records, excluding the name of the reporter which shall be
30 | released only as provided in subsection (5), shall be granted
31 | only to the following persons, officials, and agencies:

32 | (q) An employee or agent of the Department of Education
33 | who is responsible for the investigation or prosecution of
34 | misconduct by a certified educator.

35 | Section 2. Subsection (3) of section 1012.39, Florida
36 | Statutes, is amended to read:

37 | 1012.39 Employment of substitute teachers, teachers of
38 | adult education, nondegreed teachers of career education, and
39 | career specialists; students performing clinical field
40 | experience.—

41 | (3) A student who is enrolled in a state-approved teacher
42 | preparation program in a postsecondary educational institution
43 | that is approved by rules of the State Board of Education and
44 | who is jointly assigned by the postsecondary educational
45 | institution and a district school board to perform a clinical
46 | field experience under the direction of a regularly employed and
47 | certified educator shall, while serving such supervised clinical
48 | field experience, be accorded the same protection of law as that
49 | accorded to the certified educator except for the right to
50 | bargain collectively as an employee of the district school
51 | board. The district school board providing the clinical field
52 | experience shall notify the student electronically or in writing

53 of the availability of educator liability insurance under s.
54 1012.75. A postsecondary educational institution or district
55 school board may not require a student enrolled in a state-
56 approved teacher preparation program to purchase liability
57 insurance as a condition of participation in any clinical field
58 experience or related activity on the premises of an elementary
59 or secondary school.

60 Section 3. Subsection (3) is added to section 1012.75,
61 Florida Statutes, to read:

62 1012.75 Liability of teacher or principal; ~~excessive~~
63 ~~fee~~.—

64 (3) Beginning with the 2015-2016 school year, the
65 Department of Education shall administer an educator liability
66 insurance program, as provided in the General Appropriation Act,
67 to protect full-time instructional personnel from liability for
68 monetary damages and the costs of defending actions resulting
69 from claims made against the instructional personnel arising out
70 of occurrences in the course of activities within the
71 instructional personnel's professional capacity. For purposes of
72 this subsection, the terms "full-time," "part-time," and
73 "administrative personnel" shall be defined by the individual
74 district school board. For purposes of this subsection, the term
75 "instructional personnel" has the same meaning as provided in s.
76 1012.01(2).

77 (a) Liability coverage of at least \$2 million shall be
78 provided to all full-time instructional personnel. Liability

79 coverage may be provided to the following individuals who choose
 80 to participate in the program, at cost: part-time instructional
 81 personnel, administrative personnel, and students enrolled in a
 82 state-approved teacher preparation program pursuant to s.
 83 1012.39(3).

84 (b) Annually, by August 1, each district school board
 85 shall notify personnel specified in paragraph (a) of the
 86 liability coverage provided pursuant to this subsection. The
 87 department shall develop the form of the notice which shall be
 88 used by each district school board. The notice shall be on an 8
 89 1/2-inch by 5 1/2-inch postcard and include the amount of
 90 coverage, a general description of the nature of the coverage,
 91 and the contact information for coverage and claims questions.
 92 The notification shall be provided separately from any other
 93 correspondence. Each district school board shall certify to the
 94 department, by August 5 of each year, that the notification
 95 required by this paragraph has been provided.

96 (c) The department shall consult with the Department of
 97 Financial Services to select the most economically prudent and
 98 cost-effective means of implementing the program through self-
 99 insurance, a risk management program, or competitive
 100 procurement.

101 Section 4. Subsection (1) of section 1012.79, Florida
 102 Statutes, is amended to read:

103 1012.79 Education Practices Commission; organization.—

104 (1) The Education Practices Commission is composed

105 ~~consists~~ of the following 25 members: ~~10, including 8~~ teachers;
 106 5 administrators, at least one of whom represents ~~shall~~
 107 ~~represent~~ a private or virtual school; ~~4~~ 7 lay citizens who are,
 108 ~~5 of whom shall be~~ parents of public school students and who are
 109 unrelated to public school employees; ~~and 2 of whom shall be~~
 110 former charter school governing board or district school board
 111 members or former superintendents, assistant superintendents, or
 112 deputy superintendents; and ~~4~~ 5 sworn law enforcement officials,
 113 appointed by the State Board of Education from nominations by
 114 the Commissioner of Education and subject to Senate
 115 confirmation. Prior to making nominations, the commissioner
 116 shall consult with teaching associations, parent organizations,
 117 law enforcement agencies, and other involved associations in the
 118 state. In making nominations, the commissioner shall attempt to
 119 achieve equal geographical representation, as closely as
 120 possible.

121 (a) A teacher member, in order to be qualified for
 122 appointment:

123 1. Must be certified to teach in the state.

124 ~~2. Must be a resident of the state.~~

125 ~~2.3.~~ Must have practiced the profession in this state for
 126 at least 5 years immediately preceding the appointment.

127 (b) A school administrator member, in order to be
 128 qualified for appointment:

129 1. Must have an endorsement on the educator certificate in
 130 the area of school administration or supervision.

131 ~~2. Must be a resident of the state.~~

132 ~~2.3.~~ Must have practiced the profession as an

133 administrator for at least 5 years immediately preceding the

134 appointment.

135 ~~(c) The lay members must be residents of the state.~~

136 ~~(c)(d)~~ The law enforcement official members must have

137 served in the profession for at least 5 years immediately

138 preceding appointment and have background expertise in child

139 safety.

140 (d) The Commissioner of Education, upon request or

141 recommendation from the commission, may also appoint up to 5

142 emeritus members from the commission's prior membership to serve

143 1-year terms. Notwithstanding any prior service on the

144 commission, an emeritus member may serve up to five 1-year

145 terms. An emeritus member serves as a voting member at a

146 discipline hearing and as a consulting but nonvoting member

147 during a business meeting.

148 (e) All members must be residents of the state.

149 Section 5. Subsection (3) of section 1012.796, Florida

150 Statutes, is amended to read:

151 1012.796 Complaints against teachers and administrators;

152 procedure; penalties.—

153 (3) The department staff shall advise the commissioner

154 concerning the findings of the investigation. The department

155 general counsel or members of that staff shall review the

156 investigation and advise the commissioner concerning probable

157 cause or lack thereof. The determination of probable cause shall
158 be made by the commissioner. The commissioner shall provide an
159 opportunity for a conference, if requested, prior to determining
160 probable cause. The commissioner may enter into deferred
161 prosecution agreements in lieu of finding probable cause if, in
162 his or her judgment, such agreements are in the best interests
163 of the department, the certificateholder, and the public. Such
164 deferred prosecution agreements shall become effective when
165 filed with the clerk of the Education Practices Commission.
166 However, a deferred prosecution agreement may ~~shall~~ not be
167 entered into if there is probable cause to believe that a felony
168 or an act of moral turpitude, as defined by rule of the State
169 Board of Education, has occurred. Upon finding no probable
170 cause, the commissioner shall dismiss the complaint and may
171 issue a letter of guidance to the certificateholder.

172 Section 6. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 587 Education Personnel
SPONSOR(S): Education Appropriations Subcommittee, K-12 Subcommittee, Spano and others
TIED BILLS: IDEN./SIM. BILLS: SB 888

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) K-12 Subcommittee	9 Y, 0 N, As CS	Beagle	Fudge
2) Education Appropriations Subcommittee	12 Y, 0 N, As CS	Dobson	Heflin
3) Education Committee		Beagle <i>GB</i>	Mizereck <i>KM</i>

SUMMARY ANALYSIS

The Education Practices Commission (EPC) is a 25 member panel comprised of educators, parents, former school board members, and law enforcement officials that is responsible for adjudicating complaints of misconduct committed by certified educators. The EPC is authorized to suspend or revoke an educator's certificate and may impose other sanctions if the Department of Education (DOE) finds probable cause to prosecute a complaint. Law enforcement members of EPC are not required to be Florida residents. The law does not provide membership for public virtual school administrators, former charter school governing board members, and former district school superintendents.

DOE is required to investigate complaints of misconduct committed by certified educators. DOE employees who are responsible for investigating or prosecuting misconduct by certified educators are not currently authorized to access child abandonment, abuse, or neglect records held by the Department of Children and Families (DCF). Currently, the Commissioner of Education is authorized to enter into a deferred prosecution agreement with a certified educator who is accused of misconduct in lieu of finding probable cause if, in his or her judgment, the agreement is in the best interests of DOE, the educator, and the public, unless there is probable cause to believe that a felony or an act of moral turpitude has occurred. Upon finding no probable cause, the commissioner must dismiss the complaint.

Public school educators are immune from personal liability through the doctrine of sovereign immunity. There are also specific statutory protections in place for such educators. There is currently not a publicly administered statewide liability insurance program for educators.

Among other things, the bill revises the membership of the EPC to include membership opportunities for school administrators employed by virtual schools; former charter school governing board members; and former district school superintendents, assistant superintendents, or deputy superintendents. The bill also requires all EPC members to be Florida residents and authorizes the appointment of emeritus members. Additionally, the bill authorizes the commissioner to issue a letter of guidance to a certified educator upon finding that probable cause to prosecute a complaint does not exist. The bill authorizes DCF to disclose child abandonment, abuse, or neglect records to DOE employees who investigate or prosecute misconduct by certified educators.

Beginning with the 2015-16 school year, the bill requires DOE to administer a statewide educator liability program for public school educators. Coverage must be provided to all full-time instructional personnel free of charge. Part-time instructional personnel, administrative personnel, and student teachers participating in clinical field experience may opt to receive liability coverage, at cost.

The bill has a fiscal impact on state government, as funding for the educator liability insurance program will be subject to appropriation in the General Appropriations Act (GAA). The proposed GAA provides an appropriation of \$1.2 million. See Fiscal Analysis & Economic Impact Statement.

The bill takes effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Education Practices Commission

The Education Practices Commission (EPC) is a panel that is responsible for adjudicating complaints of misconduct committed by certified educators. The EPC is authorized to suspend or revoke an educator's certificate and may impose other sanctions.¹ The EPC consists of 25 members, including:

- Eight teachers;
- Five administrators, at least one of whom must represent a private school;
- Seven lay citizens, five of whom must be parents of public school students with no family relation to a public school employee and two of whom must be former district school board members; and
- Five sworn law enforcement officials.

EPC members are appointed by the State Board of Education based upon nominations by the Commissioner of Education and subject to Senate confirmation. Teacher, school administrator, and lay members of the EPC must be Florida residents. Residency is not required of law enforcement members.²

The Department of Education (DOE) is required to investigate complaints of misconduct committed by certified educators to determine if probable cause exists to refer the matter for prosecution by the EPC.³ DOE investigative staff must advise the Commissioner for Education regarding the findings of the investigation. DOE's legal department must review the investigation and advise the commissioner as to whether probable cause exists to prosecute the complaint. Unless the complaint involves a felony or crime of moral turpitude, the commissioner may enter into a deferred prosecution agreement with the certified educator in lieu of finding probable cause. The commissioner must dismiss a complaint if probable cause does not exist to commence prosecution.⁴

Florida law provides that records held by the Department of Children and Families (DCF) regarding reports of child abandonment, abuse, or neglect are confidential and exempt from public records disclosure requirements. The law authorizes disclosure of these records to a limited list of individuals, e.g., state or local government, law enforcement, or court officials who investigate or adjudicate alleged child abuse or provide supportive services to child abuse victims.⁵ The law does not authorize disclosure of child abuse records to DOE employees who are responsible for investigating or prosecuting misconduct by certified educators.

Educator Liability

Public school educators are immune from personal liability through the doctrine of sovereign immunity.⁶ There are also specific statutory protections in place for such educators. Each district school board may

¹ Section 1012.795(1), F.S.

² Section 1012.79(1), F.S.

³ Section 1012.796(1), F.S.

⁴ Section 1012.796(3), F.S.

⁵ Section 39.202(1)-(2), F.S.

⁶ "No officer, employee, or agent of the state or of any of its subdivisions shall be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his

provide legal services for officers and employees charged with civil or criminal actions arising out of, or in the performance of, their assigned duties and responsibilities. Additionally, district school boards must reimburse reasonable legal expenses incurred by officers and employees of school boards who are charged with civil or criminal actions arising out of or in the performance of assigned duties and responsibilities upon successful defense by the employee or officer.⁷ Furthermore, except in the case of excessive force or cruel and unusual punishment, a teacher or other member of the instructional staff, a principal or the principal's designated representative, or a bus driver, may not be held civilly or criminally liable for any action carried out in conformity with state board and district school board rules regarding the control, discipline, suspension, and expulsion of students.⁸

Student participants in a state-approved teacher preparation program are accorded the same legal protection as a certified educator while serving in a supervised clinical field experience.⁹ Thus, student participants are shielded from personal liability while serving in their official capacity.

Effect of Proposed Changes

The bill revises the membership of the EPC as follows:

- The number of teacher members is increased from eight to 10.
- The one school administrator slot currently reserved for a private school administrator may also be filled by a virtual school administrator.
- The number of parent members is reduced from five to four.
- The two membership slots currently reserved for former district school board members remain, but are no longer classified as "lay citizen" slots and may also be filled by a former charter school governing board member or former district school superintendent, assistant superintendent, or deputy superintendent.
- The number of sworn law enforcement officials is reduced from five to four.
- The Commissioner of Education, upon request or recommendation from the EPC, is authorized to appoint up to five emeritus members to serve one-year terms. Emeritus members may serve up to five one-year terms, are voting members for discipline hearings, and are nonvoting members for other matters. Such members are not subject to Senate confirmation.
- All members of the EPC must be Florida residents.

Additionally, the bill authorizes DCF to disclose child abandonment, abuse, or neglect records to DOE employees who investigate or prosecute misconduct by certified educators.

Currently, the commissioner must dismiss a complaint if probable cause does not exist to commence prosecution. The bill also authorizes the commissioner to issue a letter of guidance to a certified educator upon finding that probable cause does not exist, in conjunction with dismissing the complaint.

Beginning with the 2015-16 school year, the bill requires DOE to administer a liability insurance program to protect public school educators from liability for claims arising from incidents occurring while performing job responsibilities. The program must provide coverage amounting to \$2 million to all full-time instructional personnel.¹⁰ Part-time instructional personnel, administrative personnel, and student teachers participating in clinical field experience through a state-approved teacher preparation program may opt to receive liability coverage, at cost. Each district school board must annually notify eligible

employment or function, unless such officer, employee, or agent acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property." Section 768.28(9)(a), F.S.

⁷ Section 1012.26, F.S.

⁸ Section 1012.75, F.S.

⁹ Section 1012.39(3), F.S.

¹⁰ Instructional personnel include classroom teachers; staff who provide student personnel services, e.g., guidance counselors, social workers, career specialists, and school psychologists; librarians and media specialists; other instructional staff, e.g., learning resource specialists; and education paraprofessionals under the direct supervision of instructional personnel. Section 1012.01(2), F.S.

school district personnel and student teachers participating in clinical field experience in the district regarding the coverage. Postsecondary institutions and district school boards are prohibited from requiring student teachers to obtain liability coverage.

DOE must consult with the Department of Financial Services to select the most economically prudent and the cost-effective means of implementing the program through self-insurance, a risk management program, or competitive procurement. Funding for the program is contingent upon appropriation in the General Appropriations Act.

B. SECTION DIRECTORY:

Section 1. Amends s. 39.202, F.S., relating to Confidentiality of reports and records in cases of child abuse or neglect.

Section 2. Amends s. 1012.39, F.S., relating to Students performing clinical field experience.

Section 3. Amends s. 1012.75, F.S., relating to Liability of teacher or principal.

Section 4. Amends s. 1012.79, F.S., relating to the Education Practices Commission.

Section 5. Amends s. 1012.796, F.S., relating to Complaints against teachers and administrators.

Section 6. Provides that the bill takes effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill has a fiscal impact on state government, as funding for the educator liability insurance program will be subject to appropriation in the GAA. The House proposed GAA provides funding for the program at \$1.2 million.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 11, 2015, the K-12 subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment added provisions:

- Requiring DOE to establish an educator liability insurance program.
- Specifying program administration and eligibility requirements.
- Requiring school boards to notify eligible educators and student teachers regarding liability insurance coverage.
- Prohibiting postsecondary institutions and school boards from requiring student teachers to obtain liability insurance.

The amendment also restored the total membership of the EPC to 25 members and reduced the number of parent members from five to four. The bill increased the EPC's total membership from 25 to 27 members and the number of parent slots from five to six. Rather than authorizing the Commissioner of Education to issue of a letter of guidance to a certified educator in lieu of a finding of probable cause, the amendment authorizes issuance of the letter upon dismissal of a complaint.

On March 24, 2015, the Education Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment clarified that the terms "full-time," "part-time," and "administrative personnel" will be defined by each school district, as they pertain to eligibility for educator liability insurance. These changes align with the House budget implementing bill. This bill analysis is drafted to the bill as amended by the Education Appropriations Subcommittee.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Education Committee
2 Representative Hutson offered the following:

Amendment

Remove lines 19-30 and insert:

3
4
5
6 institution district is confined to one school board district
7 and may be comprised of seven members upon election by the board
8 of trustees.; ~~seven members when~~ When a Florida College System
9 ~~institution district is confined to one school board district~~
10 ~~and the board of trustees so elects; and not more than nine~~
11 ~~members when the district~~ contains two or more school board
12 districts the Florida College System institution may, upon
13 election by the board of trustees, be comprised of up to nine
14 members who represent the school board districts., ~~as provided~~
15 ~~by rules of the State Board of Education. However, Florida State~~
16 ~~College at Jacksonville shall have an odd number of trustees.~~
17 Each school board district shall have proportionate

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 759 (2015)

Amendment No. 1

18 representation according to its population. However, in no
19 instance shall the number of members from each school board
20 district exceed the number of members from the school board
21 district in which the main campus of the Florida College System
22 institution is located.

23 (2) Trustees shall be appointed by the Governor to
24 staggered 4-year terms, subject to confirmation ~~and confirmed~~ by
25 the Senate in regular session.

26 Section 2. This act shall take effect upon becoming law
27 ~~July 1, 2015.~~

28
29



Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Education Committee
2 Representative Hutson offered the following:

3

4 **Amendment**

5 Remove line 30 and insert:

6 Section 2. This act shall take effect upon becoming law.

1 A bill to be entitled
 2 An act relating to Florida College System boards of
 3 trustees; amending s. 1001.61, F.S.; revising the
 4 membership requirements for the Florida College System
 5 institution boards of trustees; deleting a provision
 6 requiring the Florida State College at Jacksonville to
 7 have an odd number of trustees; providing for
 8 staggered terms of board members; providing an
 9 effective date.

10

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

12

13 Section 1. Subsections (1) and (2) of section 1001.61,
 14 Florida Statutes, are amended to read:

15 1001.61 Florida College System institution boards of
 16 trustees; membership.—

17 (1) Florida College System institution boards of trustees
 18 shall be comprised of five members when a Florida College System
 19 institution district is confined to one school board district;
 20 seven members when a Florida College System institution district
 21 is confined to one school board district and the board of
 22 trustees so elects; and not more than nine members when the
 23 district contains two or more school board districts, ~~as~~
 24 ~~provided by rules of the State Board of Education. However,~~
 25 ~~Florida State College at Jacksonville shall have an odd number~~
 26 ~~of trustees.~~

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27 (2) Trustees shall be appointed by the Governor to
28 staggered 4-year terms, subject to confirmation ~~and confirmed~~ by
29 the Senate in regular session.

30 Section 2. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 759 Florida College System Boards of Trustees
SPONSOR(S): Higher Education and Workforce Subcommittee; Hutson
TIED BILLS: **IDEN./SIM. BILLS:** SB 446

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Higher Education & Workforce Subcommittee	10 Y, 0 N	Banner	Sherry
2) Education Committee		Banner <i>AB</i>	Mizereck <i>HM</i>

SUMMARY ANALYSIS

A rule of the State Board of Education regulates the composition of the boards of trustees of all Florida College System institutions. However, the rule specifically dictates the composition of the boards at South Florida Community College, Gulf Coast Community College, and Edison Community College. The rule also prescribes the process the Governor must follow to stagger the length of terms for board members.

The bill repeals the rulemaking authority of the State Board of Education regarding the composition of Florida College System institution boards of trustees. The bill also requires board member terms to be staggered.

The fiscal impact of this bill is insignificant.

The bill takes effect July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Florida College System (FCS) was established in order to maximize open access for students, respond to community needs for postsecondary academic education and career education, and provide associate and baccalaureate degrees that best meet the state's employment needs.¹ The FCS is comprised of 28 institutions, each with specific service areas within the state.²

Each FCS institution is governed by a local board of trustees.³ These boards are charged with ensuring that the college is an integral part of the community by balancing and integrating the wide variety of interests and needs into policies that benefit the common good and future of the region the institution serves.⁴

Current law requires that the FCS institution boards be comprised of five members when an institution's district is confined to one school district, seven members when there is one district and the board of trustees elects to have additional members, and not more than nine when the district contains two or more school districts. The State Board of Education (SBE) is also authorized to adopt rules related to the membership of the board of trustees. Trustees are appointed by the Governor and confirmed by the Senate.⁵

The State Board of Education (SBE) has adopted a rule regulating the composition of the boards of trustees of FCS institutions.⁶ For those FCS institutions that serve more than one county, the rule provides requirements for board composition as follows:

- Two (2) county district boards shall be composed of five (5) trustees from the county of location and four (4) from the cooperating county. However, if the county of location has more than five (5) times the population of the cooperating county as determined by the U.S. Census, there shall be three (3) trustees from the cooperating county.
- Three (3) and four (4) county district boards shall be composed of three (3) trustees from the county of location and two (2) from each cooperating county.
- Five (5) county district boards shall be composed of three (3) trustees from the county of location, two (2) from each of the two (2) more populous cooperating counties, and one (1) from each of the two (2) less populous cooperating counties.
- Six (6) county district boards shall be composed of three (3) trustees from the county of location, two (2) from the most populous cooperating county, and one (1) from each of the remaining counties.

However, the rule specifically dictates the composition of the boards at South Florida Community College, Gulf Coast Community College, and Edison Community College.

The rule also prescribes the process the Governor must follow to stagger the length of terms for board members.

¹ Section 1001.60(1), F.S.

² Section 1000.21(3), F.S.

³ Section 1001.60(3), F.S.

⁴ Association of Florida Colleges, *Florida College System Trustee Manual*, (Sept. 2013), available at http://myafchome.org/asests/Publications/Trustees/2k12_trustee_manual.pdf.

⁵ Section 1001.61, F.S.

⁶ Rule 6A-4.024, F.A.C. This rule was last updated in July 2004, therefore it does not reflect the most current Florida College System institution names.

Effect of Proposed Changes

This bill repeals the rulemaking authority of the SBE. This enables each board of trustees to determine the composition of its board based upon the counties it serves. The bill also requires the staggering of the terms of board members.

The bill takes effect July 1, 2015.

B. SECTION DIRECTORY:

Section 1. Amends s. 1001.61, F.S. to repeal the rulemaking authority of the State Board of Education and require staggering of terms of board members.

Section 2. Provides an effective date of July 1, 2015.

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.

2. Other:

None

B. RULE-MAKING AUTHORITY:

This bill repeals rulemaking authority of the State Board of Education regarding Florida College System institution boards of trustees.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 18, 2015, the Higher Education and Workforce Subcommittee reported the proposed committee substitute for HB 759 favorably as a committee substitute. The proposed committee substitute repeals the rulemaking authority of the State Board of Education regarding the composition of Florida College System institution boards of trustees. The bill also requires board member terms to be staggered.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Education Committee
 2 Representative O'Toole offered the following:

Amendment (with title amendment)

Remove lines 303-304

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

Remove lines 24-28 and insert:
 fees; providing an effective date.

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1 A bill to be entitled
2 An act relating to postsecondary options for students
3 with disabilities; creating s. 1004.6501, F.S.;
4 providing a short title; providing purposes and
5 legislative intent; defining terms; establishing the
6 Florida Center for Students with Unique Abilities;
7 providing center duties and responsibilities;
8 providing for Florida Postsecondary Comprehensive
9 Transition Programs at eligible institutions;
10 requiring the center to oversee the programs;
11 providing for application, application submission
12 deadlines, and approval and renewal process for the
13 programs; requiring certain information to be included
14 on the application; requiring the programs to provide
15 certain notification and to submit an annual report;
16 providing student eligibility for program admittance;
17 requiring the center to provide a report to the
18 Governor, Legislature, Chancellor of the State
19 University System, and Commissioner of Education and
20 to provide certain recommendations to the Legislature;
21 providing for rulemaking; amending s. 1009.25, F.S.;
22 providing that certain students with a physical or
23 mental disorder are exempt from specified tuition and
24 fees; repealing s. 19, chapter 2014-184, Laws of
25 Florida; abrogating the scheduled repeal of s.
26 1003.438, F.S., relating to special high school

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb7091-01-c1

27 graduation requirements for certain exceptional
 28 students; providing an effective date.

29
 30 Be It Enacted by the Legislature of the State of Florida:
 31

32 Section 1. Section 1004.6501, Florida Statutes, is created
 33 to read:

34 1004.6501 Florida Postsecondary Comprehensive Transition
 35 Program and Florida Center for Students with Unique Abilities.-

36 (1) SHORT TITLE.-This section shall be known and may be
 37 cited as the "Florida Postsecondary Comprehensive Transition
 38 Program Act."

39 (2) PURPOSE AND LEGISLATIVE INTENT.-The purpose of this
 40 section is to increase independent living, inclusive and
 41 successful experiential postsecondary education, and employment
 42 opportunities for students with intellectual disabilities
 43 through degree, certificate, and nondegree programs and to
 44 establish statewide coordination of the dissemination of
 45 information regarding programs and services for students with
 46 disabilities. It is the intent of the Legislature that students
 47 with intellectual disabilities and students with disabilities be
 48 provided the opportunity to obtain important postsecondary
 49 education credentials and participate in meaningful campus
 50 experiences.

51 (3) DEFINITIONS.-As used in this section, the term:

52 (a) "Center" means the Florida Center for Students with

53 Unique Abilities.

54 (b) "Director" means the director of the center.

55 (c) "Eligible institution" means a state university, a
 56 Florida College System institution, a career center, a charter
 57 technical career center, or an independent college or university
 58 that is eligible to participate in the William L. Boyd, IV,
 59 Florida Resident Access Grant Program.

60 (d) "FPCTP" means a Florida Postsecondary Comprehensive
 61 Transition Program that is approved pursuant to subsection (5)
 62 and offered by an eligible institution.

63 (e) "Transitional student" means a student who is at least
 64 18 but not older than 26 years of age who meets the eligibility
 65 requirements of paragraph (5)(e).

66 (4) FLORIDA CENTER FOR STUDENTS WITH UNIQUE ABILITIES.—
 67 There is established within the University of Central Florida
 68 the Florida Center for Students with Unique Abilities. The
 69 center shall:

70 (a) Disseminate information to students with disabilities
 71 and their parents, which must include, but is not limited to,
 72 information relating to:

73 1. Education programs, services, and resources that are
 74 available at eligible institutions.

75 2. Supports, accommodations, technical assistance, and
 76 training programs provided by eligible institutions, the
 77 advisory council established under s. 383.141, and regional
 78 autism centers established under s. 1004.55.

79 3. Mentoring, networking, and employment opportunities.

80 (b) Coordinate, facilitate, and oversee the statewide
81 implementation of this section, including, but not limited to,
82 creating the application, deadlines for the submission of an
83 application, and the approval and renewal process for an FPCTP
84 under subsection (5).

85 (c) Consult and collaborate with the National Center for
86 Information and Technical Support for Postsecondary Students
87 with Disabilities and the coordinating center established under
88 20 U.S.C. s. 1140q regarding guidelines established by the
89 Florida Center for Students with Unique Abilities for the
90 effective implementation of programs for students with
91 disabilities and for students with intellectual disabilities
92 that align with the federal requirements and standards, quality
93 indicators, and benchmarks identified by the National Center for
94 Information and Technical Support for Postsecondary Students
95 with Disabilities and the coordinating center.

96 (d) Consult and collaborate with the Higher Education
97 Coordinating Council to identify important credentials for
98 FPCTPs and to engage businesses and stakeholders in the
99 promotion of experiential training and employment opportunities
100 for students with intellectual disabilities.

101 (e) Provide information and technical assistance to
102 administrators, instructors, staff, and other interested parties
103 at an eligible institution relating to programs and services for
104 students with intellectual disabilities, which must include, but

105 are not limited to:

106 1. Holding meetings and annual workshops to share
 107 successful practices and address issues or concerns.

108 2. Facilitating collaboration between eligible
 109 institutions, school districts, private schools, and the parents
 110 of students enrolled in home education programs to better assist
 111 students with intellectual disabilities and their parents in
 112 planning for the transition of such students into an FPCTP or
 113 another program at an eligible institution.

114 3. Assisting eligible institutions with FPCTP and federal
 115 comprehensive transition and postsecondary program applications.

116 4. Assisting eligible institutions with the identification
 117 of funding sources for an FPCTP and for student financial
 118 assistance for students enrolled in an FPCTP.

119 5. Monitoring federal and state law relating to the
 120 comprehensive transition program and notifying the Legislature,
 121 the Governor, the Board of Governors, and the State Board of
 122 Education of any change in law that may impact the
 123 implementation of this section.

124 (f) Plan, advise, and evaluate approved degree,
 125 certificate, and nondegree programs and evaluate the performance
 126 of students and FPCTPs using the performance indicators included
 127 in the application pursuant to subparagraph (5)(c)6.

128 (5) FLORIDA POSTSECONDARY COMPREHENSIVE TRANSITION
 129 PROGRAMS.—Any eligible institution desiring to offer an FPCTP
 130 shall submit an application to the center in a manner prescribed

131 by the center. The application must be approved by the eligible
132 institution's governing board and be submitted by the
133 institution's president or director by a date established by the
134 center.

135 (a) Notwithstanding the program approval requirements of
136 s. 1004.03, within 30 days after receipt of an application from
137 an eligible institution to offer an FPCTP, the director shall
138 issue a recommendation for approval of the application to the
139 Chancellor of the State University System, if the institution is
140 a state university, or the Commissioner of Education, for all
141 other eligible institutions, or give written notice to the
142 eligible institution of any deficiencies in the application.
143 Within 15 days after receipt of the notice of deficiencies, the
144 eligible institution shall correct the deficiencies and return
145 the application to the center or withdraw the application from
146 consideration. Upon receipt of the revised application, the
147 director shall, within 30 days, recommend approval or
148 disapproval of the revised application to the chancellor or
149 commissioner, as applicable. Within 15 days after receipt of the
150 director's recommendation, the chancellor or commissioner shall
151 approve or disapprove the eligible institution's application. If
152 the chancellor or commissioner does not take action within the
153 15-day period, the application shall be considered approved.

154 (b) Initial approval of an FPCTP is valid for the 3
155 academic years immediately following the academic year in which
156 the approval is granted. An eligible institution may submit, in

157 | the same manner as the initial application, an application for
158 | renewal of an FPCTP. The application for renewal must be
159 | submitted before the end of the initial 3-year period. If the
160 | eligible institution and the FPCTP continue to meet the
161 | requirements of this section, a renewal shall be granted for an
162 | additional 5 academic years. The renewal period shall begin at
163 | the end of the original approval period.

164 | (c) The application developed by the center must:

165 | 1. Address the requirements of the federal comprehensive
166 | transition and postsecondary program in 20 U.S.C. s. 1140 and
167 | this section.

168 | 2. Identify the credential awarded to a student with an
169 | intellectual disability upon completion of an FPCTP if he or she
170 | meets the eligibility requirements of paragraph (e).

171 | 3. Outline the length and design of an FPCTP, including,
172 | but not limited to, inclusive and successful experiential
173 | postsecondary education practices relating to curricular,
174 | assessment, and advising structure and internship and employment
175 | opportunities that support a student with an intellectual
176 | disability who is seeking to continue academic, career,
177 | technical, and independent living instruction at an eligible
178 | institution, including, but not limited to, opportunities to
179 | earn industry certifications, to prepare such student for
180 | gainful employment. If an eligible institution offers a credit-
181 | bearing degree program, the institution is responsible for
182 | maintaining the rigor and effectiveness of a comprehensive

183 transition degree program at the same level as other comparable
184 degree programs offered by the institution pursuant to
185 applicable accreditation standards.

186 4. Address the ways in which students with intellectual
187 disabilities will be socially and academically integrated, to
188 the maximum extent possible, with nondisabled students, which
189 must be on at least a half-time basis. Such integration must
190 include one or more of the following for such students:

191 a. Regular enrollment in credit-bearing courses at an
192 eligible institution.

193 b. Audit of or participation in noncredit-bearing courses
194 at an eligible institution.

195 c. Enrollment in noncredit-bearing, nondegree courses at
196 an eligible institution.

197 d. Participation in internships or employment training
198 programs.

199 5. Identify a plan for partnerships with businesses to
200 promote experiential training and employment opportunities for a
201 student with an intellectual disability.

202 6. Identify, after collaboration with the Board of
203 Governors and the State Board of Education, performance
204 indicators for the satisfactory progress of a student with an
205 intellectual disability in an FPCTP and for the performance of
206 an FPCTP and any other requirements specified by the center.

207 Each eligible institution must address the performance
208 indicators identified by the center in its application for the

209 approval and renewal of a proposed FPCTP and in the annual
210 report that the institution submits to the center.

211 7. Outline a 5-year plan incorporating enrollment and
212 operational expectations for an FPCTP.

213 8. Include documented evidence of a federally approved
214 comprehensive transition and postsecondary program that is
215 determined to be an eligible program for the federal student aid
216 programs and is currently offered at the institution, documented
217 evidence of the submission of an application for such federal
218 approval of a comprehensive transition and postsecondary program
219 proposed by the institution, or documentation demonstrating the
220 commitment of the institution's governing board to submit an
221 application within the subsequent academic year for federal
222 approval of a comprehensive transition and postsecondary program
223 proposed by the institution pursuant to 20 U.S.C. s. 1140.

224 (d) Upon approval of an application, an eligible
225 institution must notify students with intellectual disabilities
226 and their parents of the FPCTP and student eligibility
227 requirements for participation in the FPCTP.

228 (e) To be eligible to enroll in an FPCTP at an eligible
229 institution, a student must, as determined by the institution
230 and based on guidelines established by the center:

231 1. Be a student with an intellectual disability as defined
232 in 20 U.S.C. s. 1140(2), including, but not limited to, a
233 transitional student.

234 2. Physically attend the eligible institution.

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235 3. Submit to the eligible institution documentation
236 regarding his or her intellectual disability. Such documentation
237 may include, but not be limited to, a current individualized
238 plan for employment associated with a review completed pursuant
239 to s. 413.20(3) or a diagnosis from a physician licensed under
240 chapter 458 or chapter 459 or a psychologist licensed under
241 chapter 490.

242 (f) By August 1 of each year, an eligible institution with
243 an FPCTP shall submit an annual report to the center that, at a
244 minimum, addresses the following performance indicators for the
245 previous academic year:

246 1. Efforts to recruit students to enroll in the FPCTP and
247 the number of students enrolled in the FPCTP.

248 2. Efforts to retain student enrollment in the FPCTP and
249 the retention rate of students in the FPCTP.

250 3. The completion rate of students enrolled in the FPCTP
251 and related courses, as applicable.

252 4. Transition success of students who complete the FPCTP,
253 as measured by employment rates and salary levels at 1 year and
254 5 years after completion, as available.

255 5. Other performance indicators identified by the center
256 under subparagraph (c) 6.

257 (6) ACCOUNTABILITY.—

258 (a) By October 1 of each year, the center shall provide to
259 the Governor, the President of the Senate, the Speaker of the
260 House of Representatives, the Chancellor of the State University

261 System, and the Commissioner of Education a report that
262 includes, but is not limited to:

263 1. The status of the statewide coordination of FPCTPs and
264 the implementation of FPCTPs at eligible institutions including,
265 but not limited to, the number of applications approved or
266 disapproved, the reasons for each disapproval, and the number of
267 applications on which no action was taken by the chancellor or
268 the commissioner, as applicable.

269 2. Performance indicators identified by the center under
270 subparagraph (5)(c)6. and the performance of each eligible
271 institution based on such indicators.

272 3. The projected number of students with intellectual
273 disabilities who may be eligible to enroll in the FPCTPs within
274 the next academic year.

275 4. Education programs and services for students with
276 intellectual disabilities that are available at an eligible
277 institution.

278 (b) Beginning December 1, 2015, and annually thereafter,
279 the center, in collaboration with the Board of Governors, the
280 State Board of Education, the Higher Education Coordinating
281 Council, and other stakeholders, shall submit to the Governor,
282 the President of the Senate, and the Speaker of the House of
283 Representatives statutory and budget recommendations for
284 improving the implementation and delivery of FPCTPs and other
285 education programs and services for students with disabilities.

286 (7) RULES.—The Board of Governors and the State Board of

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2015

287 Education, in consultation with the center, shall expeditiously
288 adopt the necessary regulations and rules, as applicable, to
289 allow the center to perform its responsibilities pursuant to
290 this section beginning in the 2015-2016 fiscal year.

291 Section 2. Paragraph (i) is added to subsection (1) of
292 section 1009.25, Florida Statutes, to read:

293 1009.25 Fee exemptions.—

294 (1) The following students are exempt from the payment of
295 tuition and fees, including lab fees, at a school district that
296 provides workforce education programs, Florida College System
297 institution, or state university:


298 (i) A student who receives social security disability
299 income or supplemental security income due to a physical or
300 mental disorder as determined by the Social Security
301 Administration. Such student is exempt from the payment of
302 tuition for adult general education pursuant to s. 1009.22(3).

303 Section 3. Section 19 of chapter 2014-184, Laws of
304 Florida, is repealed.

305 Section 4. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 7091 PCB HEWS 15-02 Postsecondary Options for Students with Disabilities
SPONSOR(S): Higher Education & Workforce Subcommittee, Cortes
TIED BILLS: IDEN./SIM. BILLS: SB 7030

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Higher Education & Workforce Subcommittee	10 Y, 0 N	Banner	Sherry
1) Education Appropriations Subcommittee	12 Y, 0 N, As CS	deNagy	Heflin
2) Education Committee		Banner	Mizereck 

SUMMARY ANALYSIS

The bill creates the "Florida Postsecondary Comprehensive Transition Program Act" to increase independent living, inclusive and experiential postsecondary education, and employment opportunities for students with intellectual disabilities.

The bill establishes a process for postsecondary institutions in Florida to voluntarily seek approval of a Florida Postsecondary Comprehensive Transition Program (FPCTP) to provide postsecondary education options for students with intellectual disabilities.

The bill creates the Florida Center for Students with Unique Abilities (center) to serve as the statewide coordinating center for the dissemination of information regarding programs and services available to students with disabilities and their families. The center will serve a broader group of students with disabilities and their parents. Duties of the center include assisting with the implementation of the FPCTPs, including but not limited to, institution and student eligibility requirements. In addition, the center will provide statewide dissemination of information regarding education programs, services, resources, technical assistance, mentoring and job placement opportunities for students with disabilities and their families. The fiscal impact to create the center is indeterminate.

The bill restores the Special Diploma as a high school graduation option for students with disabilities by abrogating the repeal of s. 1003.438, F.S. (scheduled to take effect July 1, 2015).

The bill provides tuition exemptions to individuals in adult education programs who receive social security disability income or supplemental security income due to a physical or mental disorder as determined by the Social Security Administration.

The proposed House FY 2015-16 General Appropriations Act (HB 5001) appropriates \$1,000,000 to the University of Central Florida for the Florida Center for Students with Unique Abilities.

Providing tuition exemptions to certain students with disabilities has an indeterminate fiscal impact on state funding and tuition revenues for school districts and Florida College System institutions offering these programs. See fiscal analysis & economic impact statement.

The bill takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Federal Law

The Higher Education Act of 1965, amended and extended by the Higher Education Opportunity Act of 2008, includes new provisions to support quality higher education programs for students with disabilities. The federal law establishes comprehensive transition and postsecondary (CTP) programs, transition programs for students with intellectual disabilities (TPSID) grants, and national coordination of CTP programs for students with intellectual disabilities.¹

A student with an intellectual disability is defined as a student "with a cognitive impairment, characterized by significant limitations in intellectual and cognitive functioning and adaptive behavior who is currently, or was formerly, eligible for a free appropriate public education under the Individuals with Disabilities Education Act."²

Federal law also defines a comprehensive transition and postsecondary (CTP) program as a degree, certificate, or nondegree program that meets each of the following criteria:³

- Is offered by an institution of higher education (IHE);
- Is delivered to students physically attending the IHE;⁴
- Is designed to support students with intellectual disabilities who are seeking to continue academic, career and technical, and independent living instruction at an IHE in order to prepare for gainful employment;
- Includes an advising and curriculum structure;
- Requires students with intellectual disabilities to participate on not less than a half-time basis, as determined by the institution, with such participation focusing on academic components, and occurring through one or more of the following activities with nondisabled peers:
 - Regular enrollment in credit-bearing courses offered by the institution.
 - Auditing or participating in courses offered by the institution for which the student does not receive regular academic credit.
 - Participation in noncredit-bearing, nondegree courses.
 - Participation in internships or work-based training; and
- Requires students with intellectual disabilities to be socially and academically integrated with nondisabled students to the maximum extent possible.

Students attending CTP programs may qualify to receive federal financial aid in the form of a Federal Pell Grant, Federal Supplemental Educational Opportunity Grant and/or Federal Work-Study⁵ provided the student:

- Is enrolled or accepted for enrollment in a CTP program for students with intellectual disabilities at an IHE that participates in the federal student aid programs;
- Maintains satisfactory academic progress, as determined by the institution,⁶ and

¹ 20 U.S.C. s. 1140 et. Seq.; Pub. L. No. 110-315, 122 Stat.3361 (Aug. 14, 2008).

² 20 U.S.C. s. 1140(2).

³ 20 U.S.C. s. 1140(1); 34 C.F.R. s. 231(a).

⁴ 34 C.F.R. s. 668.231(a)(2).

⁵ Federal Student Aid, U.S. Department of Education, *Students with Intellectual Disabilities May Be Able to Get Certain Types of Federal Student Aid*, <https://studentaid.ed.gov/eligibility/intellectual-disabilities> (last visited Feb. 16, 2015); see also 34 C.F.R. ss.668.233 and 68.32.

⁶ An institution is responsible for publishing the institution's standards for students enrolled in its comprehensive transition and postsecondary (CTP) program. 34 C.F.R. s. 668.233(a)(3).

- Meets the basic federal student aid eligibility requirements, except that the student is not required to have a high school diploma or General Educational Development (GED) and is not required to pursue a degree or certification.

The student must provide documentation establishing that the student has an intellectual disability.⁷

An institution that offers a CTP program must apply to the Secretary of the United States Department of Education (USDOE) to be determined eligible for federal student aid programs. The application must include:⁸

- A detailed description of the program;
- The institution's policy for determining the achievement of satisfactory academic progress;
- The length of the program (credit hours, semesters, clock hours, etc.);
- A detailed description of the educational credential or identified outcome of students enrolled in the program; and
- A copy of the letter or notice sent to the institution's accrediting agency indicating approval of the CTP program.⁹

According to data provided by the Office of Program Policy Analysis and Government Accountability (OPPAGA), this approval process takes between 3 and 6 months to complete, depending on the quality of the application and associated materials.¹⁰

Transition Programs for Students with Intellectual Disabilities (TPSID) Grants are provided by USDOE as five-year cooperative agreements to institutions of higher education or consortia of institutions of higher education to enable these institutions to create or expand high quality CTP programs for students with intellectual disabilities.¹¹ Grants totaling approximately \$10.5 million were first awarded in Fiscal Year 2010 to 27 two- and four-year institutions across 23 states, including the University of South Florida – St. Pete, Florida's sole awardee.¹² Since initially awarding TPSID grants in 2010, funds have only been awarded for non-competing continuation grants.¹³

An institution or consortium that receives a TPSID grant shall use the funds to establish a model CTP program that:¹⁴

- Serves students with intellectual disabilities;
- Provides supports and services for the academic and social inclusion of students with intellectual disabilities in academic courses, extracurricular activities, and other aspects of the institution of higher education's regular postsecondary program;
- Focuses on academic enrichment, socialization, independent living skills, and integrated work experiences and career skills that lead to gainful employment;
- Integrates person-centered planning in the development of the course of study for each student with an intellectual disability participating in the model program;
- Participates with the coordinating center in the evaluation of the model program;

⁷ 34 C.F.R. s. 668.233(c).

⁸ 34 C.F.R. s. 668.232.

⁹ Think College, as the National Coordinating Center, is working with the United States Congress regarding a specialized accreditation for programs for students with disabilities. Office of Program Policy Analysis and Government Accountability, Presentation to the Florida Senate Committee on Higher Education (Jan. 5, 2015), available at http://www.flsenate.gov/PublishedContent/Committees/2014-2016/HE/MeetingRecords/MeetingPacket_2743_2.pdf, at 7 of 29.

¹⁰ Office of Program Policy Analysis and Government Accountability, Presentation to the Florida Senate Committee on Higher Education (Jan. 20, 2015), available at http://www.flsenate.gov/PublishedContent/Committees/2014-2016/HE/MeetingRecords/MeetingPacket_2775.pdf, at 18 of 85.

¹¹ U.S. Department of Education, *Transition and Postsecondary Programs for Students with Intellectual Disabilities*, <http://www2.ed.gov/programs/tpsid/index.html> (last visited Feb. 16, 2015).

¹² U.S. Department of Education, *Transition and Postsecondary Programs for Students with Intellectual Disabilities*, <http://www2.ed.gov/programs/tpsid/awards.html> (last visited Feb. 16, 2015).

¹³ *Id.*

¹⁴ 20 U.S.C. 1140g(d).

- Partners with one or more local educational agencies (LEA's) to support students with intellectual disabilities participating in the model program who are still eligible for special education and related services under the Individuals with Disabilities Education Act (IDEA);
- Plans for sustainability of the model program after the end of the grant period; and
- Creates and offers a meaningful credential for students with intellectual disabilities upon completion of the program.

The Higher Education Opportunity Act of 2008 established a National Center for Information and Technical Support for Postsecondary Students with Disabilities (National Center).¹⁵ The National Center is responsible for:¹⁶

- Providing assistance to students and families and institutions of higher education;
- Building, maintaining, and updating a database of disability support services information;
- Working with organizations and individuals with proven expertise to evaluate, improve, and disseminate information related to the delivery of high quality disability support services at institutions of higher education; and
- Reporting to the United State Secretary of Education an analysis of the condition of postsecondary success for students with disabilities.

The act also establishes a national coordinating center for institutions of higher education that offer inclusive CTP programs for students with intellectual disabilities, including those participating in TPSID grants.¹⁷ Think College, a project of the Institute for Community Inclusion at the University of Massachusetts – Boston, was selected in October 2010, to provide support, coordination, training and evaluation services to the TPSID grant recipients.¹⁸

State Law

Florida law provides for students with disabilities to be eligible for reasonable substitution of any requirement for admission to postsecondary educational institutions if the student can provide documentation that the failure to meet the requirement is related to the disability.¹⁹ While Florida law allows for “reasonable substitution for any requirement for graduation, for admission into a program of study, or for entry into the upper division”, these substitutions may not constitute a fundamental alteration in the nature of the program.²⁰ Additionally, to be eligible for state student financial aid awards, students must meet specified eligibility criteria, which includes minimum number of credit hours per term or the equivalent.²¹

There are currently 17 non-traditional postsecondary program options available across Florida for students with documented developmental disabilities²² that provide activities such as auditing postsecondary courses, enrolling in vocational courses, participating in campus life, and job placement programs.²³ Of these programs:

- Nine are available to students who are no longer enrolled in district ESE programs. In the 2013-14 year, 222 students were enrolled and 125 graduated. Of these 125 graduates, 41 students, or 33 percent, were employed and another 6 students, or 8 percent, received industry

¹⁵ 20 U.S.C. s. 1140q(a).

¹⁶ 20 U.S.C. s. 1140q(a)(4).

¹⁷ 20 U.S.C. s. 1140q(b) and i(b).

¹⁸ Think College! *National Coordinating Center and College Options for People with Intellectual Disabilities*, <http://www.thinkcollege.net> (last visited Feb. 16, 2015).

¹⁹ s. 1007.264, F.S.; Rule 6A-10.041, F.A.C. and Board of Governors Regulation 6.018.

²⁰ s. 1007.265, F.S.; Rule 6A-10.041, F.A.C. and Board of Governors Regulation 6.018.

²¹ s. 1009.40, F.S.

²² Developmental disability means “ a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.” Section 393.063(9), F.S.

²³ Office of Program Policy Analysis and Government Accountability, Presentation to the Florida Senate Committee on Higher Education (Jan. 5, 2015), available at http://www.flsenate.gov/PublishedContent/Committees/2014-2016/HE/MeetingRecords/MeetingPacket_2743_2.pdf at 15 of 29.

certification, went on to other postsecondary options or pursued a GED. The cost to the student for these programs range from \$0 to as high as \$10,000.²⁴

- Eight are available to students through age 21 who are still receiving district ESE services. In the 2013-14 year, 85 students were enrolled and 14 graduated. Of these 14 graduates, 10 students, or 67 percent, were employed and another 2 students, or 13 percent, were enrolled in postsecondary education.²⁵ Since these students still receive district ESE services, there is no program cost to the student.

None of the 17 programs offered award college credit or a college degree, but some allow students to complete courses that can be applied toward a workforce credential.²⁶

Special Diploma Option

During the 2014 Legislative Session, Senate Bill 850²⁷ repealed section 1003.438, F.S. which eliminated the special diploma as a high school graduation option for students with disabilities, effective July 1, 2015.

Section 1003.438, F.S. does not limit or restrict the right of a student with a disability solely to a special diploma or special certificate of completion. Furthermore, section 1003.5716(2)(a), F.S. requires that the first individual education plan (IEP) in effect for a 16-year-old student must, if the parent deems appropriate, include a statement of intent to pursue a standard high school diploma and a Scholar or Merit designation. This statement of intent may also be included in the IEP for a student who is under 16, if the parent or IEP team deems it appropriate.

The repeal will result in students with disabilities who do not meet the standard diploma requirements being granted a certificate of completion. This may be problematic as some employers require either a standard or special high school diploma for employment. The certificate of completion is not considered a high school diploma and, therefore, some students who would have previously earned a special diploma may no longer be eligible for employment if the repeal takes effect.

The chart on the following page outlines the specific requirements for the standard diploma, special diploma (prior to the 2014 repeal) and the certificate of completion:

²⁴ Program costs reflect base tuition only and does not include the cost of a residential option which ranges from \$11,000-14,000 per year. Office of Program Policy Analysis and Government Accountability, Presentation to the Florida Senate Committee on Higher Education (Jan. 20, 2015), available at http://www.flseate.gov/PublishedContent/Committees/2014-2016/HE/MeetingRecords/MeetingPacket_2775.pdf at 21 of 85.

²⁵ Office of Program Policy Analysis and Government Accountability, Presentation to the Florida Senate Committee on Higher Education (Jan. 20, 2015), available at http://www.flseate.gov/PublishedContent/Committees/2014-2016/HE/MeetingRecords/MeetingPacket_2775.pdf at 22 of 85.

²⁶ Office of Program Policy Analysis and Government Accountability, Presentation to the Florida Senate Committee on Higher Education (Jan. 5, 2015), available at http://www.flseate.gov/PublishedContent/Committees/2014-2016/HE/MeetingRecords/MeetingPacket_2743_2.pdf at 13 of 29.

²⁷ Chapter 2014-184, Laws of Florida
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Graduation Requirements for the Standard Diploma 24-Credit and Certificate of Completion Section 1002.4282, Florida Statutes	Special Diploma Prior to the 2014 Legislative Session Option 1 and 2
4 Credits English Language Arts (ELA) ELA I, II, III, IV	<p>A student with a disability who meets all of the requirements of a special diploma option one or option two prescribed by the district school board in their board approved student progression plan and the minimum requirements prescribed by the Commissioner of Education as described in rule 6A-1.00961, F.A.C.</p> <p>Option 1 Demonstration of proficiency at the independent, supported, or participatory level of each standards for Special Diploma standards, as determined through the IEP process, and the completion of the minimum number of course credits for a special diploma as prescribed by the school board.</p> <p>Or For certain students with disabilities mastery of the Standards through successful completion of courses that meet graduation requirements for a standard diploma.</p> <p>Option 2 Allowed for students with disabilities to demonstrate mastery of the standards through employment and community competencies.</p> <p>There were three requirements for this pathway:</p> <ul style="list-style-type: none"> • The student has achieved all the annual goals and short-term objectives which were specified on the IEP related to the employment and community competencies. • The student is employed in a community-based job, for the number of hours per week specified in the student's training plan, for the equivalent of one (1) semester and paid the minimum wage. • The student has mastered the employment and community competencies specified in the training plan.
4 Credits Mathematics	
One of which must be Algebra I and one of which must be Geometry - Students must pass the Algebra I end-of-course (EOC) or a comparative score on the Postsecondary Education Readiness Test (P.E.R.T.) - Students must participate in the Geometry EOC results constitute 30 percent of the final course grade - Students must participate in the Algebra II EOC results constitute 30 percent of the final course grade (if enrolled)	
3 Credits Science	
One of which must be Biology I, two of which must have a laboratory component - Students must participate in the Biology I EOC results constitute 30 percent of the final course grade	
3 Credits Social Studies	
- Students must participate in the U.S. History EOC results constitute 30 percent of the final course grade	
1 Credit Fine and Performing Arts, Speech and Debate or Practical Arts	
1 Credit Physical Education to include the integration of health	
8 Credits Elective	
1 Online Course	
<p>Certificate of Completion A student who earns the required 24 credits, or the required 18 credits under s. 1002.3105(5), F.S. but fails to pass the assessments required under s. 1008.22(3), F.S. or achieve a 2.0 GPA shall be awarded a certificate of completion.</p>	

Fee Exemptions

Current law authorizes postsecondary institutions to grant student fee exemptions from all fees for specified students.²⁸

Effect of Proposed Changes

The bill creates the "Florida Postsecondary Comprehensive Transition Program Act" to increase independent living, inclusive and experiential postsecondary education, and employment opportunities for students with intellectual disabilities. Specifically, the bill:

- Establishes a process by which postsecondary institutions may voluntarily seek approval to offer a Florida Postsecondary Comprehensive Transition Program (FPCTP) for students with intellectual disabilities; and
- Creates the Florida Center for Students with Unique Abilities (center) as the statewide coordinating center for the dissemination of information regarding programs and services available to students with disabilities and their families.

Florida Postsecondary Comprehensive Transition Program (FPCTP)

FPCTP's are established for students with intellectual disabilities. The bill aligns the state approval requirements with federal requirements for comprehensive transition and postsecondary (CTP) programs. In addition to the federal requirements, an eligible institution²⁹ must submit the following to the center no later than the academic year immediately following the academic year in which federal approval was granted:

1. An application that includes:
 - Identification of a credential associated with the proposed program that is awarded to a student with an intellectual disability after the student completes the FPCTP;
 - Program length and design that includes, at a minimum, inclusive and experiential education practices related to curricular, assessment, and advising structure and internship and employment opportunities and if a college credit-bearing degree program, at the same rigor and effectiveness of a comparable program offered by the institution;
 - Plan for students with intellectual disabilities to be integrated socially and academically with nondisabled students;
 - Plan for partnerships with businesses to promote experiential training and employment opportunities for students with intellectual disabilities;
 - Identification of performance metrics, as identified by the statewide coordinating center, to measure satisfactory progress of students and performance of the program;
 - A 5-year plan regarding enrollment and operational expectation; and
 - Any other requirement identified by the statewide coordinating center.
2. Documented evidence of a federally approved program that is determined to be eligible for federal student financial aid programs and is currently offered at the institution, documented evidence of the submission of an application for such federal approval, or documentation demonstrating the intent to submit an application within the subsequent academic year.

An institution submitting a renewal application must do so within 3 years following the year during which initial approval was granted.

Currently, no Florida programs are eligible to provide federal financial aid, however Florida Panhandle Technical College has applied and the University of North Florida is working on an application. Students are, however, eligible to receive other financial assistance such as Vocational Rehabilitation funding, institutional funding, local grants or other social service agencies.³⁰

Additional responsibilities of the institutions include the submission of an annual report by August 1st of each year. This report shall address, at a minimum, the program's efforts to recruit and retain students; enrollment, retention and completion data; transition success of completers as measured by employment rates and salary levels at 1 and 5 years after completion; and any other performance indicators identified by the center.

To be eligible to enroll in a FPCTP program, a student must meet the definition of a "student with an intellectual disability" as defined in 20 U.S.C. s. 1140(2), physically attend the eligible institution, and submit to the institution documentation regarding his or her intellectual disability.

The Florida Center for Students with Unique Abilities

This bill creates the Florida Center for Students with Unique Abilities (center) at the University of Central Florida. The duties of the center include, but are not limited to:

²⁹ The bill defines eligible institution as a state university; a Florida College System (FCS) institution; a technical center; or an independent college or university that is located and chartered in Florida, is not for profit, is accredited by the Southern Association of Colleges and Schools (SACS), and is eligible to participate in the William L. Boyd, IV, Florida Resident Access Grant Program.

³⁰ Office of Program Policy Analysis and Government Accountability, OPPAGA Review of Postsecondary Options for Students with Developmental Disabilities, at 19 of 142 (February 2015).

- Disseminating information regarding education programs, services and resources available at eligible institutions; support, accommodations, technical assistance or training provided by eligible institutions, the advisory council or regional autism centers; and mentoring, networking and employment opportunities;
- Coordinating, facilitating and overseeing statewide implementation including creating the application and deadlines for the submission, review and approval of applications;
- Consulting and collaborating with the National Center and the Coordination Center regarding guidelines for effective implementation of the programs which align with federal requirements and standards, quality indicators and benchmarks;
- Consulting and collaborating with the Higher Education Coordinating Council to identify meaningful credentials and engage businesses and stakeholders to promote experiential training and employment opportunities to students with intellectual disabilities;
- Providing technical assistance regarding programs and services for students with intellectual disabilities to administrators, instructors and staff at eligible institutions;
- Administering the scholarship program; and
- Planning, advising and evaluating approved programs and student performance.

The director of the center shall oversee the approval of CTP programs and review all applications for both initial and renewal program proposals submitted by an institution. Within 30 days of receipt of the application, the director shall make a recommendation regarding approval of state university programs to the State University System Chancellor and all other programs to the Commissioner of Education or give written notice to the applicant regarding application deficiencies. In the event of notice of application deficiencies, the applicant has 15 days to correct the application and submit a revised application, at such time the director has 30 days from the time of receipt to make a recommendation. The State University System Chancellor or Commissioner of Education, as appropriate, has 15 days after receipt of the recommendation to approve or disapprove the recommendation. If no action is taken, the program will be considered approved.

The center, in collaboration with the Board of Governors and the State Board of Education, shall identify indicators for satisfactory academic progress and performance of FPCTP programs.

The center shall report to the Governor, President of the Senate, Speaker of the House of Representatives, Chancellor of the State University System and Commissioner of Education, by October 1 of each year, the following:

- Status of the statewide coordination and implementation of FPCTPs, including the number of applications approved and disapproved and reasons for each disapproval or no action taken by the Chancellor or Commissioner;
- Indicators identified and performance of each eligible institution;
- Projected number of students with intellectual disabilities eligible to enroll within the next academic year; and
- Education programs and services for students with intellectual disabilities available at an eligible institution.

Beginning in the 2015-16 fiscal year, the center, in collaboration with the Board of Governors, State Board of Education, Higher Education Coordinating Council and other stakeholders, shall submit to the Governor, President of the Senate, and Speaker of the House of Representative, statutory or budget recommendations for improving the implementation and delivery of FPCTPs by December 1 of each year.

Special Diploma

The bill restores the special diploma as a high school graduation option for students with disabilities by abrogating the repeal of s. 1003.438, F.S. (scheduled to take effect July 1, 2015).

Tuition Exemptions

The bill provides tuition exemptions to students in adult education programs who receive social security disability income or supplemental security income due to a physical or mental disorder as determined by the Social Security Administration. Currently, for adult general education programs, block tuition of \$45 per half year or \$30 per term is assessed.³¹

B. SECTION DIRECTORY:

Section 1. Creates s. 1004.6501, F.S., establishing the Florida Postsecondary Comprehensive Transition Program and the Florida Center for Students with Unique Abilities.

Section 2. Amends s. 1009.25, F.S., providing tuition exemptions to certain students with disabilities.

Section 3. Abrogates the repeal of s. 1003.438, F.S. regarding the special diploma option for students with disabilities.

Section 4. Provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

The bill establishes the Florida Center for Students with Unique Abilities at the University of Central Florida beginning in the 2015-16 fiscal year. The bill requires the center, in collaboration with other stakeholders, to make a budget recommendation by December 1st of each year. The University of Central Florida will establish the center, hire staff and become operational. The proposed House FY 2015-16 General Appropriations Act (PCB APC 15-01) appropriates \$1,000,000 in recurring general revenue funds to the University of Central Florida for the center.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

In 2013-14, 222 students with disabilities enrolled in non-traditional postsecondary education programs across the state. The cost of base tuition for these programs range from no cost to as high as \$10,000 with residential options costing approximately \$11,000-14,000 per student.

The addition of the Florida Comprehensive Transition Program and the Florida Center for Students with Unique Abilities has the potential to positively impact students with intellectual and other disabilities across the state by increasing living, inclusive and experiential postsecondary education, and

³¹ Section 1009.22(3)(c), F.S.
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employment opportunities likely resulting in the ability for these individuals to obtain gainful employment and earn higher wages.

Exempting certain students with disabilities from payment of tuition in adult general education coursework will provide savings to individuals up to \$90 per year. Currently students are assessed block tuition of \$45 per half year or \$30 per term for adult general education coursework.

D. FISCAL COMMENTS:

Providing tuition exemptions to certain students with disabilities has an indeterminate fiscal impact on state funding and tuition revenues for school districts and Florida College System institutions offering these programs. The number of eligible students who may decide to enroll in adult education coursework is unknown. It is also unknown what additional services may be provided as educational support. The Department of Education Division of Career and Adult Education provided that in 2013-2014, approximately 3,596 individuals with self-reported disabilities were enrolled in adult general education coursework.³² Of these, 59 were classified as economically disadvantaged.³³

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None

2. Other:

None

B. RULE-MAKING AUTHORITY:

The bill requires the Board of Governors and the State Board of Education to consult with the center to expeditiously adopt regulations and rules, as applicable, to allow the center to perform its responsibilities beginning in the 2015-16 fiscal year.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 24, 2015, the Education Appropriations Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment provides tuition exemptions to individuals in adult education programs who receive social security disability income or supplemental security income due to a physical or mental disorder as determined by the Social Security Administration.

This analysis reflects the committee substitute as approved by the Education Appropriations Subcommittee.

³² Email, Florida Department of Education Division of Career and Adult Education (January 20, 2015).

³³ Economically disadvantaged students are those identified through Florida Education and Training Placement Information Program (FETPIP) using Department of Economic Opportunity (DEO) data (receipt of food stamps, TANF, etc).

