

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL: CS/SB 1262

INTRODUCER: Fiscal Policy Committee and Senator Legg

SUBJECT: Education

DATE: April 22, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Graf</u>	<u>Klebacha</u>	<u>ED</u>	Favorable
2.	<u>Sikes</u>	<u>Elwell</u>	<u>AED</u>	Recommend: Favorable
3.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	Fav/CS

I. Summary:

CS/SB 1262 deletes obsolete deadlines and streamlines communication and reporting of information by the Florida Department of Education (DOE) and the Commission for Independent Education (CIE). Specifically, the bill:

- Provides clarification regarding the use of an individual education plan (IEP) by requiring that the IEP and the electronic IEP system developed by the DOE be available for statewide use and deletes an obsolete, July 1, 2007, deadline.
- Deletes the obsolete, December 31, 2013, deadline for reporting of student data by the CIE to the DOE.
- Allows the Commissioner of Education's in personnel discipline proceedings regarding certified Florida educators the option, in lieu of finding probable cause, to issue a letter of guidance.
- Allows district school boards, with a super majority vote, to adopt a resolution to implement exceptions to the education facilities construction requirements in the State Requirements for Educational Facilities of the Florida Building Code.
- Requires the board, before voting on the resolution, to conduct a cost-benefit analysis and at least one public workshop to discuss and receive public comment on the proposed resolution
- Allows Florida Keys Community College to construct dorms for up to 400 beds instead of only 100 beds.

The bill has an insignificant fiscal impact.

II. Present Situation:

Individual Education Plans

Federal law requires states to make a free appropriate public education available to all children with disabilities residing in the state between the ages of 3 and 21, including children with

disabilities who have been suspended or expelled from school.¹ As the state educational agency, the Florida Department of Education (DOE) must exercise general supervision over all educational programs for children with disabilities in the state, including all programs administered by other state or local agencies, and ensure that the programs meet the educational standards of the state educational agency.²

For each eligible child with a disability served by a school district, or other state agency that provides special education and related services directly, by contract, or through other arrangements, an individual educational plan (IEP) or individual family support plan must be developed, reviewed, and revised.³ In developing an IEP, the IEP team is required to consider a child's strengths, concerns of the parents for enhancing education, results of the initial evaluation or most recent evaluation of the child, and the academic, developmental, and functional needs of the child, as well as special factors.⁴

States receiving Individuals with Disabilities Education Act funds must comply with detailed procedural requirements, including identifying, evaluating, and making placements for students with disabilities and for developing an individualized education program for each student.⁵ States must also provide students with disabilities and their parents with certain procedural safeguards, including:

- Notice of any proposal or refusal to change the student's identification, evaluation, or educational placement;
- The opportunity to present a complaint and to have an impartial due process hearing; and
- The right to keep the student in his or her current educational placement pending administrative or judicial review proceedings.⁶

A student with a disability and his or her parents also have the right to bring a civil action in state court, if they are aggrieved by the decision of the state administrative hearing officer relating to a due process hearing or alternative placement.⁷

Commission for Independent Education

The Commission for Independent Education (CIE), established in the DOE, consists of seven members who are residents of this state.⁸ The Governor appoints the members of the CIE who are subject to confirmation by the Senate.⁹ The CIE is responsible for independently exercising

¹ 20 U.S.C. s. 1400 et. seq., as amended by Pub. L. No. 108-446; 34 C.F.R. s. 300.17.

² 34 C.F.R. s. 300.149.

³ Rule 6A-6.03028(3), F.A.C.

⁴ 20 U.S.C. s. 1414(d)(3)(A) and (B).

⁵ 20 U.S.C. s. 1412. See also U.S. Department of Education, *Building the Legacy: IDEA 2004*, available at <http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CTopicalArea%2C12%2C> (last visited April 14, 2015).

⁶ 20 U.S.C. s. 1415(b), (c), (d), (e), (f), and (j). There is an exception to keeping a student in his or her current placement if it involves an alternative educational setting.

⁷ 20 U.S.C. s. 1415(i)(2).

⁸ Section 1005.21(1) and (2), F.S.

⁹ Section 1005.21(2), F.S., and Florida Department of Education, *Commission Members*, available at <http://www.fldoe.org/policy/cie/commission-members.stml> (last visited April 14, 2015).

all powers, duties, and functions concerning independent postsecondary educational institutions¹⁰ in consumer protection, program improvement, and licensure of institutions under its purview.¹¹ The CIE is also responsible for authorizing the granting of diplomas and degrees by independent postsecondary educational institutions under its jurisdiction. The DOE serves as the administrative agent of the CIE by providing services, including payroll, procurement, and legal counsel.¹²

Personnel Discipline

The DOE is required to investigate complaints of misconduct by certified educators.¹³ The DOE must prioritize investigation of a legally sufficient complaint that “involves misconduct by any certificated personnel which affects the health, safety, or welfare of a student” over other pending complaints.¹⁴ The DOE may contract with the Department of Business and Professional Regulation for conducting the investigations.¹⁵ The DOE general counsel and staff must review the findings of such investigations and advise the Commissioner of Education (commissioner) regarding probable cause or lack thereof. The commissioner must make the determination of probable cause. Unless the complaint involves a felony or crime of moral turpitude, the commissioner may enter into a deferred prosecution agreement with a certified educator in lieu of finding probable cause. The commissioner must dismiss a complaint if probable cause does not exist to commence prosecution.¹⁶

State Requirements for Educational Facilities

The Florida Building Commission (commission) adopts the State Requirements for Educational Facilities (SREF) within the Florida Building Code (FBC), which governs the planning and construction of public educational and ancillary plants.¹⁷ The State Fire Marshal adopts standards for public school fire safety within the Florida Fire Prevention Code (FFPC).¹⁸ The SREF specifies standards including, but not limited to:

- Interior walls;
- Walks, roads, drives, and parking areas;
- Covered walks; and
- Site lighting.¹⁹

¹⁰ Independent postsecondary educational institution means “any postsecondary educational institution that operates in this state or makes application to operate in this state, and is not provided, operated, and supported by the State of Florida, its political subdivisions, or the Federal Government.” s. 1005.02(11), F.S.

¹¹ Section 1005.21(1) and (2), F.S.

¹² Section 1005.21(1), F.S.

¹³ Section 1012.796(1), F.S.

¹⁴ Section 1012.796(1)(b), F.S.

¹⁵ Section 1012.796(2), F.S.

¹⁶ Section 1012.796(3), F.S.

¹⁷ Sections 553.73 and 1013.37(1), F.S.; Rule 6A-2.0010, F.A.C.; and section 423, FBC. The 2014 *State Requirements for Educational Facilities* (effective November 1, 2014) are available at <http://www.fldoe.org/core/fileparse.php/7738/urlt/srefrule14.pdf> (last visited April 21, 2015). See Florida Department of Education, Office of Educational Facilities, *2015 Agency Bill Analysis* (March 5, 2015) (on file with the Committee on Education Pre-K – 12).

¹⁸ Sections 633.206(1)(b), 1013.03(6), and 1013.37(1) and (4), F.S., and section 443, FBC.

¹⁹ Section 423 of the FBC contains the State Requirements for Educational Facilities (SREF). However, the FBC has been redrafted and section 423 will be renumbered as section 453. *The Florida Building Code, Draft Building Chapters*, 5th

Review by the District School Board

Before the commencement of the construction, renovation, or remodeling of any educational or ancillary plants, a district school board must review the construction plans, including any related documents.²⁰ In reviewing the plans, the district school board must consider certain information, including but not limited to:²¹

- The need for the new facility;
- The energy efficiency and conservation of design;
- Life-cycle cost considerations;
- The proposed construction cost per gross square foot;
- Plans for future expansion;
- The type of construction;
- Sanitary provisions;
- The design to accommodate physically handicapped persons; and
- Conformity with the FBC and FFPC standards.

Approval by the District School Board

Before approving any construction plans, a district school board must ensure that the plans comply with the applicable standards of the FBC and the FFPC.²² For each proposed new facility and each proposed new addition exceeding 2,500 square feet, the district school board must submit a copy of the plans²³ to the county, municipality, or independent special fire control district providing fire protection services to the facility for review at no charge.²⁴ Upon determining that the construction plans comply with the applicable standards, the district school board may approve the plans and construction may begin on the facilities.²⁵

Waivers or Variances

The Florida Constitution prohibits the enactment of any special act or general law of local application that proposes to amend, alter, or contravene the provisions of the SREF.²⁶ Legislative intent is that building officials, local enforcement agencies, and the commission interpret the FBC in a manner that protects the public safety, health, and welfare at the most reasonable cost.²⁷

The commission is not authorized to accept a petition for and may not grant any waiver or variance from the requirements of the FBC.²⁸ However, the commission is required to adopt

Edition (2014) is available at

http://ecodes.biz/ecodes_support/free_resources/14FloridaDraft/Building/14FL_Building_Draft.html (last visited April 21, 2015).

²⁰ Section 1013.37(2)(a) and (b), F.S.

²¹ Section 1013.37(2)(b), F.S.

²² Sections 1013.37(2), 1013.371(1)(c), and 1013.38(4)(a), F.S.

²³ Such site plans are exempt from all other state building codes; local amendments to the FBC and FFPC; local ordinances; building permits, including related fees; road closures; and impact fees or service availability fees. ss. 1013.371(1)(a) and 1013.38(1)(b), F.S.

²⁴ Section 1013.38(1)(a) and (b), F.S.

²⁵ Sections 1013.37(2)(a) and 1013.38(4)(a), F.S.

²⁶ Section 1013.37(5), F.S. The enactment of a special law or general law of local application is prohibited if pertaining to a subject prohibited by general law. Art. III, s. 11(a)(21), Fla. Const.

²⁷ Section 553.775(1), F.S.

²⁸ Sections 120.80(16)(a) and (b) and 553.512(1), F.S.

criteria and procedures for granting alternative means of compliance with the FBC standards, or local amendments to the FBC, for enforcement by local governments, local enforcement districts, or other entities authorized by law to enforce the FBC.²⁹

Upon a determination by the commission of unnecessary, unreasonable, or extreme economic hardship, provided the waiver does not violate federal accessibility laws and regulations, the commission must grant an applicant's request for waiver.³⁰

If planned or actual construction of a facility deviates from the standards, a district school board must, at a public hearing, quantify and compare the costs of constructing the facility with the proposed deviations and in compliance with the adopted standards and the FBC, and explain the reason for the proposed deviations.³¹

III. Effect of Proposed Changes:

Individual Education Plans (Section 1)

The bill provides clarification regarding the use of an individual education plan (IEP) by requiring that the IEP and the electronic IEP system developed by the DOE be available for statewide use and deletes an obsolete deadline. Current law requires the IEP and the electronic IEP system be available for potential statewide use no later than July 1, 2007.³²

Commission for Independent Education (Section 2)

The bill deletes an obsolete deadline for reporting of student data (e.g., retention rates, transfer rates, completion rates, graduation rates, and employment and earnings) by the CIE to the DOE. Specifically, the bill deletes December 31, 2013, as the deadline for submitting student data for 2012-2013 academic year and maintains October 1 as the annual deadline for reporting such data.

Personnel Discipline (Section 3)

The bill allows the commissioner the option, in lieu of finding probable cause, to issue a letter of guidance. Current law authorizes the commissioner to enter into a deferred prosecution agreement with a certified educator in lieu of finding probable cause.³³

State Requirements for Educational Facilities (Section 4)

The bill authorizes a district school board to adopt, by supermajority vote, a resolution to implement exceptions to the State Requirements for Educational Facilities (SREF). The bill requires that the district school board adopt the resolution at a public meeting that begins no

²⁹ Section 120.80(16)(b), F.S. Each local government and each code enforcement agency with statutory authority must regulate building construction and enforce the FBC standards. s. 553.513, F.S.

³⁰ Section 553.512(1), F.S.

³¹ Section 1013.371(2), F.S.

³² Section 1003.576, F.S.

³³ Section 1012.796(3), F.S.

earlier than 5 p.m., and conduct a cost-benefit analysis using a professionally accepted methodology for each exception selected by the district school board.

The bill authorizes implementation of the following exceptions to the SREF relating to:

- Interior nonload-bearing walls, by approving the use of fire-rated wood stud walls in new construction or remodeling for interior nonload-bearing wall assemblies that will not be exposed to water or located in wet areas.
- Walkways, roadways, driveways, and parking areas, by approving the use of designated, stabilized, and well-drained gravel or grassed student parking areas.
- Standards for relocatables used as classroom space, by approving construction specifications for installation of relocatable buildings that do not have covered walkways leading to the permanent buildings onsite.
- Site lighting, by approving construction specifications regarding site lighting that:
 - Do not provide for lighting of gravel or grassed auxiliary or student parking areas.
 - Provide lighting for walkways, roadways, driveways, paved parking lots, exterior stairs, ramps, and walkways from the exterior of the building to a public walkway through installation of a timer that is set to provide lighting only during periods when the site is occupied.
 - Allow lighting for building entrances and exits to be installed with a timer that is set to provide lighting only during periods in which the building is occupied. The minimum illumination level at single-door exits may be reduced to no less than 1 foot-candle.

Before voting on a resolution, the district school board must conduct a cost-benefit analysis using a professionally accepted methodology that describes how each proposed exception:

- Achieves cost savings;
- Improves the efficient use of school district resources;
- Impacts the life-cycle costs and life span for each educational facility to be constructed; and
- Preserves student safety or the quality of student instruction.

The bill requires that the district school board hold at least one public workshop, beginning no earlier than 5 p.m., to discuss and receive public comment on the proposed resolution and cost-benefit analysis, and authorizes the district school board to vote on the resolution at the same meeting. Otherwise, the vote on the resolution must be made during a public meeting beginning no earlier than 5 p.m.

Florida Keys Community College (Section 5)

Currently, s. 1013.40, F.S., allows Florida Keys Community College to construct dormitories for up to 100 beds. The bill increases the number of beds the college can construct a dormitory to have to 400 beds.

Effective Date (Section 6)

The bill is effective July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

If a district school board elects to use one of the exceptions authorized in the bill, the fiscal impact to the district school board would be insignificant.³⁴

VI. Technical Deficiencies:

None.

VII. Related Issues:

In order to not have a deficit of safe public hurricane evacuation shelter space the Division of Emergency Management must conduct a survey to identify buildings that can serve as shelters. Section 1013.372, F.S., requires the DOE to create criteria that ensures that appropriate new educational facilities can serve as public shelters for emergency management purposes. This criteria must be incorporated into the Florida Building Code. A facility, or an appropriate area within a facility, must be built in compliance with the amended code unless the facility or a part of it is exempt.³⁵ If the regional planning council region in which the county is located does not have a hurricane evacuation shelter deficit, the educational facilities within the planning council region are not required to incorporate the public shelter criteria. It is unclear if the bill's

³⁴ Florida Department of Education, Office of Educational Facilities, *2015 Agency Bill Analysis* (March 5, 2015) (on file with the Committee on Education Pre-K – 12).

³⁵ Any educational facility located or proposed to be located in an identified category 1, 2, or 3 evacuation zone is not subject to the requirements of s. 1013.372, F.S.

exceptions to the educational facilities construction requirements affect which educational facilities can serve as public shelters.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1003.576, 1005.22, 1012.796, 1013.385, and 1013.40.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Fiscal Policy on April 20, 2015:

The committee substitute:

- Allows district school boards, with a super majority vote, to adopt a resolution to implement exceptions to the education facilities construction requirements. The exceptions to the requirements of the uniform statewide building code relate to:
 - Interior nonload bearing walls;
 - Walkways, roadways driveways and parking areas;
 - Standards for relocatables; and
 - Site lighting.
- Requires before voting on the resolution the board must conduct a cost-benefit analysis and at least one public workshop to discuss and receive public comment on the proposed resolution.
- Allows Florida Keys Community College to construct dorms for up to 400 beds instead of only 100 beds.

B. Amendments:

None.