

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 49A Education
SPONSOR(S): Mealor
TIED BILLS:

IDEN./SIM. BILLS:

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|-----------|--------|---------|----------------|
| 1) _____ | _____ | Tilton | Bohannon |
| 2) _____ | _____ | _____ | _____ |
| 3) _____ | _____ | _____ | _____ |
| 4) _____ | _____ | _____ | _____ |
| 5) _____ | _____ | _____ | _____ |

SUMMARY ANALYSIS

The 2002 Legislature enacted a new School Code designed to reflect the new K-20 education governance system, focus primarily on students and learning, reduce overly prescriptive provisions, eliminate duplication, eliminate obsolete provisions, have a logical and user-friendly format, and maintain all necessary statutory authority.

During the interim, staff of the Education K-20 Committee worked with representatives of the Department of Education, school districts, postsecondary institutions, Statutory Revision, the Senate, the Governor's Office, and other members of the education community to review the new School Code. They identified technical problems, items that need clarification, and unintended consequences of the legislation passed last session.

This bill updates obsolete terminology, corrects unintended consequences, provides clarification, corrects omissions, and makes technical corrections.

The bill revises provisions relating to the determination of a student's residency status for tuition purposes. The bill ties the statutorily-required minimum 12-month residency period to the student's initial enrollment in a Florida postsecondary institution.

The bill restores the Uniform Management of Institutional Funds Act (UMIFA) to the Florida Statutes. UMIFA provides national guidelines for educational institutions in executing their fiduciary responsibilities in the investment and expenditure of permanent endowment funds.

The bill also amends the section of statutes relating to the Trust Fund for University Major Gifts, by updating terminology to reflect the creation of the Board of Governors, and by capping state matching for gifts.

The fiscal impact of the bill is indeterminate. See the FISCAL COMMENTS section.

The effective date of the bill is upon becoming law, except as otherwise expressly provided.

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

STORAGE NAME: h0049A.edk.doc
DATE: May 14, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

B. EFFECT OF PROPOSED CHANGES:

School Code Rewrite

The “school code” is the compilation of Florida school laws, previously comprised of 19 chapters of education law reflected in chapters 228 through 246, F.S., and currently contained in chapters 1000 through 1013, F.S.

The Education Governance Reorganization Act of 2001 established the Florida Board of Education and charged it with governance of the K-20 education system and directed the new board to “develop and recommend . . . for adoption during 2002, a clear, concise new School Code, comprised of the revision of chapters 228-246, to accomplish the implementation, administration, and operation of Florida’s seamless K-20 education system in accordance with the (legislative) guidelines.”

In response to the 2001 legislation, the Florida Board of Education established a workgroup with representation from all education delivery sectors and education stakeholders to examine the School Code and make recommendations for its revision. During the 2002 Session, members of the Legislature considered the recommendations of the board, its workgroup, and others as they undertook the task of rewriting the Florida School Code.

The new School Code adopted by the 2002 Legislature was crafted to reflect the new K-20 education governance system, focus primarily on students and learning, reduce overly prescriptive provisions, eliminate duplication, eliminate obsolete provisions, have a logical and user-friendly format, and maintain all necessary statutory authority.

During the interim, staff of the Education K-20 Committee worked with representatives of the Department of Education, school districts, postsecondary institutions, Statutory Revision, the Senate, the Governor’s Office, and other members of the education community to review the revised School Code. They identified technical problems, items that need clarification, and unintended consequences of the legislation passed last session.

This bill updates obsolete terminology, corrects unintended consequences, provides clarification, corrects omissions, and makes technical corrections.

This bill updates obsolete terminology as follows:

- Replaces references to “rule-making authority” of the “Department of Education” or the “Commissioner of Education” with rule-making authority of the State Board of Education.
- Replaces references to “developmental research schools” with “lab schools.”
- Replaces references to “Articulation Coordinating Committee” with “State Board of Education.”
- Replaces references to “State Board of Community Colleges” with “State Board of Education.”

- Replaces references to "State Board of Independent Colleges and Universities" and "State Board for Nonpublic Career Education" with the "Commission for Independent Education."
- Corrects references to the Accrediting Council for Independent Colleges and Schools.

This bill addresses unintended consequences as follows:

- Clarifies the methodology for calculating an elected superintendent's salary.
- Clarifies that school-entry immunizations are for pre-K through grade 12, rather than for Kindergarten through grade 12.
- Clarifies that rule changes to passing scores on the 10th grade FCAT only apply to students who take the 10th grade FCAT for the first time after the rules are changed.
- Adds grade 3 to grades 1 and 2 in good cause exemption from retention for students with disabilities.
- Authorizes AHCA, as the primary monitoring source, rather than DOE to monitor compliance of school districts with Medicaid provider agreements.
- Updates sections of statutes relating to direct deposit of funds, pretax benefits, deferred compensation, the Consolidated Equipment Financing Program, and Worker's Compensation Self-insurance due to the change of universities from state agency status to public corporations.

This bill provides clarification and corrects omissions as follows:

- Clarifies that SBOE as an appointed board (not elected) may not waive state statutory law.
- Clarifies some of the functions of the Commissioner, the Department, and the State Board.
- Clarifies definitions, such as educational support employee.
- Includes AICE (Advanced International Certificate of Education) students and courses in Bright Futures scholarship program.

This bill also makes a number of technical corrections. The bill corrects cross-reference errors, punctuation errors, and incorrect references to federal law. The bill also makes conforming changes.

Residency For Tuition Purposes

Current law requires students to be classified as residents or nonresidents for the purpose of assessing tuition in community colleges and state universities. To qualify as a resident for tuition purposes, a student, or the student's parents if the student is a dependent, must have established legal residence in the state and maintained legal residence in the state for at least 12 months immediately prior to the student's qualification. Presence in the state must have been for the purpose of maintaining a bona fide domicile, rather than for the purpose of maintaining a mere temporary residence or abode incident to enrollment in an institution of higher education.

A recent review of residency determination by the Office of Program Policy Analysis and Government Accountability concluded that residency criteria are unclear and inconsistently applied, jeopardizing the accuracy of residency determinations. The review recommended that the Legislature amend current laws relating to residency determination to aid in the clarification of residency criteria.

This bill revises residency criteria to require that a person reside in-state for 12 months immediately prior to initial enrollment at a postsecondary institution in Florida. Initial enrollment is defined as the first day of classes. A student is eligible to be reclassified from nonresident to resident if the student provides documentation that supports the student's permanent residency in the state such as documentation of permanent full-time employment for a minimum of 12 months or purchase of a home in this state and residence in said home for a minimum of 12 months. If the student is a dependent child, the residency requirements apply to the student's parents.

Uniform Management of Institutional Funds Act (UMIFA)

UMIFA was drafted in the early 1970s to provide greater certainty in the administration of permanent endowment funds and to permit investment for long-term growth while preserving the ability of colleges, universities, or affiliated foundations to make short-term distributions from the endowments. Until UMIFA, most endowments were investing endowment funds, primarily for current income and limiting spending to a portion of dividends, interest, rents, and royalties earned (that is, they were heavily invested in bonds, forgoing capital gains to favor income). There was uncertainty about whether traditional trust rules applied to endowments.

UMIFA's primary goal is to free institutions from income-allocation investment concerns, allowing more contemporary investment for growth over the long term. It allows the institutions to focus on the best investment strategy and distribution policy for the overall health (both long and short-term) of the institution.

The bill restores the Uniform Management of Institutional Funds Act (UMIFA) to the Florida Statutes, UMIFA was omitted in error from last year's School Code Rewrite. The version of UMIFA in this bill differs from the version in place prior to the School Code Rewrite. Since last year, the National Commission on Uniform Laws has issued a new draft of UMIFA. This new version of UMIFA provides revised guidelines that respond to the current market situation where many gifts designated for endowment have fallen below their historical market value (once an endowment has dipped below its historic gift value, all spending from the fund is stopped). The bill will allow our public and private institutions to continue to conserve the long term value of endowments while also continuing distributions consistent with the donor's wishes.

The section of the bill regarding the UMIFA will take effect retroactively, January 7, 2003.

Trust Fund for University Major Gifts

The bill also amends the section of statutes relating to the Trust Fund for University Major Gifts. The trust fund was originally established to enable each university and New College to provide donors with an incentive in the form of matching grants.

The bill updates terminology to reflect the creation of the Board of Governors and adds language requiring the proceeds of investments to be used to support university priorities as established by a university's board of trustees. In addition, the bill caps state matching for any gift at \$3 million a year, with the total for any gift capped at \$15 million over 5 years.

Commission for Independent Education

The Commission for Independent Education is responsible for the licensure of nonpublic postsecondary educational institutions that are under the jurisdiction of the Commission. This bill revises provisions relating to licensure activities of the Commission. The bill provides for expiration of an incomplete application. The bill also provides an extension of time for licensure investigations beyond that provided in ch. 120, F.S.

C. SECTION DIRECTORY:

Section 1: Amends s. 17.076, F.S., to provide an exception to an exemption as it relates to state universities and the direct deposit of funds.

Section 2: Amends s. 20.055, F.S., to delete "Board of Regents."

Section 3: Amends s. 24.121, F.S., to correct cross-reference.

Section 4: Amends s. 110.161, F.S., to include employees of state universities in definition for purposes of pretax benefits program.

Section 5: Amends s. 112.215, F.S., to include employees of state university boards of trustees in definition for purposes of deferred compensation program.

Section 6: Amends s. 145.19, F.S., to add cross-reference; to provide for superintendent's annual performance salary incentive to be added to adjust salary rate.

Section 7: Amends s. 159.27, F.S., to change "development research" to "lab."

Section 8: Amends s. 212.055, F.S., to delete "Florida Frugal School System."

Section 9: Amends s. 216.136, F.S., to delete chancellor of State University System; to delete executive director of State Board of Community Colleges; to delete executive director of State Board of Nonpublic Career Education; to add the executive director of the Commission for Independent Education.

Section 10: Amends s. 250.10, F.S., to delete "State Board of Community Colleges."

Section 11: Amends s. 287.064, F.S., to authorize state universities to continue to participate in the Consolidated Equipment Financing Program.

Section 12: Amends s. 316.615, F.S., to change "Commissioner of Education" to "State Board of Education."

Section 13: Amends s. 402.305, F.S., to change "Department of Education" to "State Board of Education."

Section 14: Amends s. 409.1451, F.S., to correct cross-reference.

Section 15: Amends s. 440.38, F.S., to include state universities as self-insurers for purposes of worker's compensation.

Section 16: Amends s. 445.012, F.S., to change "Articulation Coordinating Committee" to "State Board of Education."

Section 17: Amends s. 445.0122, F.S., to change "Articulation Coordinating Committee" to "State Board of Education."

Section 18: Amends s. 445.0123, F.S., to change "State Board of Independent Colleges and Universities" and "State Board of Nonpublic Career Education" to "Commission for Independent Education."

Section 19: Amends s. 445.0124, F.S., to change "Articulation Coordinating Committee" to State Board of Education"; to change "State Board of Community Colleges" and "Department of Education" to "State Board of Education."

Section 20: Amends s. 455.2125, F.S., to change "State Board of Independent Colleges and Universities" and "State Board of Nonpublic Career Education" to "Commission for Independent Education"; to change "State Board of Community Colleges" to "State Board of Education."

Section 21: Amends s. 456.028, F.S., to change "State Board of Independent Colleges and Universities" and "State Board of Nonpublic Career Education" to "Commission for Independent Education"; to change "State Board of Community Colleges" to "State Board of Education."

Section 22: Amends s. 458.347, F.S., to change “State Board of Community Colleges” to “State Board of Education.”

Section 23: Amends s. 467.009, F.S., to change “State Board of Nonpublic Career Education” to “Commission for Independent Education.”

Section 24: Amends s. 488.01, F.S., to change “State Board of Nonpublic Career Education” to “Commission for Independent Education.”

Section 25: Amends s. 489.125, F.S., to change “Commissioner of Education” to “State Board of Education.”

Section 26: Amends s. 784.081, F.S., to change “development research” to “lab.”

Section 27: Amends s. 817.566, F.S., to change “State Board of Independent Colleges and Universities” to “Commission for Independent Education”; to correct cross-reference.

Section 28: Amends s. 817.567, F.S., to change “State Board of Independent Colleges and Universities” to “Commission for Independent Education”; to correct cross-reference.

Section 29: Amends s. 943.17, F.S., to change “Department of Education” to “State Board of Education.”

Section 30: Amends s. 943.22, F.S., to change “Accrediting Commission for Independent Colleges” to “Accrediting Council for Independent Colleges.”

Section 31: Amends s. 1000.04, F.S., to delete “area” from technical centers.

Section 32: Amends s. 1001.26, F.S., to correct cross-reference.

Section 33: Amends s. 1001.32, F.S., to delete “and the commissioner,” in reference to rules of the commissioner.

Section 34: Amends s. 1001.372, F.S., to correct cross-reference.

Section 35: Amends s. 1001.42, F.S., to correct cross-reference.

Section 36: Amends s. 1001.47, F.S., to provide calculation methodology for salaries for elected superintendents based on county populations.

Section 37: Amends s. 1001.50, F.S., to delete “age,” limiting age as a criterion of compensation for district school superintendents.

Section 38: Amends s. 1001.51, F.S., to delete “patrons.”

Section 39: Amends s. 1001.74, F.S., to correct a cross-reference.

Section 40: Amends s. 1002.01, F.S., to correct cross-reference.

Section 41: Amends s. 1002.20, F.S., to correct cross-reference.

Section 42: Amends s. 1002.32, F.S., to change “developmental research” to “lab”; to correct cross-reference.

Section 43: Amends s. 1002.33, F.S., to correct reference to federal law; to delete conflicting provisions relating to charter school students; to require compliance with s. 1012.45, F.S., for transportation of charter school students; to delete obsolete pilot program.

Section 44: Amends s. 1002.42, F.S., to correct cross-reference.

Section 45: Amends s. 1002.43, F.S., to add “school” before attendance, for purposes of clarification; to correct cross-reference.

Section 46: Amends s. 1003.22, F.S., to change “kindergarten” to “prekindergarten.”

Section 47: Amends s. 1003.43, F.S., to delete reference to State Board of Education waiver authority; to correct a date and name.

Section 48: Amends s. 1003.52, F.S., to correct cross-reference.

Section 49: Amends s. 1003.63, F.S., to delete reference to State Board of Education waiver authority.

Section 50: Amends s. 1004.24, F.S., to delete obsolete reference to postaudit of financial accounts; to provide for financial audit pursuant to s. 11.45, F.S..

Section 51: Amends s. 1004.26, F.S., to conform university oversight of student government.

Section 52: Amends s. 1004.445, F.S., to delete obsolete reference to postaudit of financial accounts; to provide for financial audit pursuant to s. 11.45, F.S..

Section 53: Amends s. 1005.04, F.S., to correct a punctuation error.

Section 54: Amends s. 1006.14, F.S., to correct a punctuation error.

Section 55: Amends s. 1006.21, F.S., to delete “regulation”; to change “state board” to “State Board of Education.”

Section 56: Amends s. 1007.21, F.S., to delete “guardian.”

Section 57: Amends s. 1008.22, F.S., to provide rules for raising passing score only apply to students taking FCAT for first time after rules are adopted.

Section 58: Amends s. 1008.25, F.S., to provide grade 3 students with disability who were previously retained same exemption from retention as grade 1 and 2 students with disability who were previously retained; to change date.

Section 59: Amends s. 1008.32, F.S., to require the Commissioner of Education to report finding of probable cause; to correct a grammar error.

Section 60: Amends s. 1008.37, F.S., to change date from November “31” to “30.”

Section 61: Amends s. 1009.21, F.S., to revise provisions relating to determination of resident status for tuition purposes.

Section 62: Amends s. 1009.24, F.S., to restore language providing that nonresident student fees must be sufficient to defray costs of undergraduate education.

Section 63: Amends s. 1009.29, F.S., to change number of state universities from “nine” to “eleven.”

Section 64: Amends s. 1009.531, F.S., to change “plead” to “pled”; to add “International General Certificate of Secondary Education” and “Advanced International Certificate of Education” in the courses that are weighted for purposes of determining initial eligibility for a Bright Futures Scholarship.

Section 65: Amends s. 1009.532, F.S., to change “reinstatement only once” to “restoration one time.”

Section 66: Amends s. 1009.534, F.S., to add “Advanced International Certificate of Education” in initial eligibility criteria for a Florida Academic Scholars award; to change “Department” to “State Board”; to change “Office” to “Organization”; to change “one reinstatement” to “restoration one time.”

Section 67: Amends s. 1009.535, F.S., to add “Advanced International Certificate of Education” in initial eligibility criteria for a Florida Medallion Scholars award; to change “Department” to “State Board”; to change “reinstatement” to “restoration.”

Section 68: Amends s. 1009.536, F.S., to change “reinstatement” to “restoration.”

Section 69: Amends s. 1009.58, F.S., to change “development research” to “lab.”

Section 70: Amends s. 1009.61, F.S., to change “development research” to “lab.”

Section 71: Amends s. 1009.765, F.S., to change “Department of Education” to “State Board of Education” for purposes of rulemaking.

Section 72: Amends s. 1009.77, F.S., to change “Department” to “State Board”

Section 73: Creates s. 1010.10, F.S., to create the Florida Uniform Management of Institutional Funds Act.

Section 74: Amends s. 1010.215, F.S., to change “revenues” to “funds.”

Section 75: Amends s. 1010.75, F.S., to change “for” to “from,” providing that fees be remitted for disbursement from the Teacher Certification Examination Trust Fund.

Section 76: Amends s. 1011.24, F.S., to change “developmental research” to “lab.”

Section 77: Amends s. 1011.47, F.S., to change “developmental research” to “lab.”

Section 78: Amends s. 1011.60, F.S., to delete obsolete cross-reference; to add provisions relating to minimum days of instruction for grade 12 students for purposes of high school graduation.

Section 79: Amends s. 1011.62, F.S., to change “developmental research” to “lab”; to delete reference to High School Competency Test; to add reference to state accountability grade.

Section 80: Amends s. 1011.70, F.S., to change “Department of Education” to “Agency for Health Care Administration”; to change “development research” to “lab”; to provide lab schools to participate in Medicaid certified school match program “on same basis as school districts.”

Section 81: Amends s. 1011.765, F.S., to change “Department of Education” to “Consortium of Florida Education Foundations”; to change a date; to change “notification” to “certification.”

Section 82: Amends s. 1011.94, F.S., to revise Major Gifts provisions relating to use of proceeds and provide limitations on matching funds.

Section 83: Amends s. 1012.21, F.S., to change “Department of Education” to “department”; to change “Department” to “State Board.”

Section 84: Amends s. 1012.585, F.S., to correct trust fund name; to correct cross-reference.

Section 85: Amends s. 1012.61, F.S., to add definition of “educational support employee.”

Section 86: Amends s. 1012.62, F.S., to correct cross-reference.

Section 87: Amends s. 1012.74, F.S., to correct cross-reference.

Section 88: Amends s. 1012.79, F.S., to correct cross-reference.

Section 89: Amends s. 1012.795, F.S., to add clarifying language designating appointed representative of district school superintendent to receive certain records concerning certain offenses.

Section 90: Amends s. 1012.796, F.S., to correct cross-reference.

Section 91: Amends s. 1012.98, F.S., to add “state,” requiring consultation with state university faculty.

Section 92: Amends s. 1013.31, F.S., to delete extraneous use of “colleges;” to change “Division of Colleges and Universities” to “Department of Education” or “State Board of Education,” providing that Department of Education validates certain university surveys in accordance with State Board of Education approval of needs and enrollment cycle.

Section 93: Amends s. 1013.62, F.S., to add “for a nominal fee or at no charge,” providing charter schools serve students in facilities that are not provided for nominal fee or at no charge by sponsor to be eligible for capital outlay funding.

Section 94: Amends s. 1013.73, F.S., to correct cross-reference.

Section 95: Amends s. 1013.74, F.S., to delete obsolete cross-reference.

Section 96: Amends s. 1005.31, F.S., to revise provisions relating to licensure.

Section 97: Amends s. 1005.32, F.S., to revise provisions relating to licensure by means of accreditation.

Section 98: Amends s. 1005.38, F.S., to revise provisions relating to actions against a licensee and other penalties.

Section 99: Amends s. 1009.531, F.S., to correct a cross-reference.

Section 100: Repeals s. 445.049(2)(g) and (h), F.S., removing the executive director of the State Board of Community Colleges and the executive director of the State Board for Career Education as members of the Digital Divide Council; s. 1006.57, F.S., relating to certain books furnished by the Clerk of the Supreme Court; and s. 1006.20(10), F.S., relating to a report.

Section 101: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See FISCAL COMMENTS.

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See FISCAL COMMENTS.

D. FISCAL COMMENTS:

The fiscal impact, if any, of the corrections to the School Code Rewrite should be minimal.

A student's residency for tuition classification determines whether or not the student must pay an out-of-state fee at a public postsecondary institution and also a student's eligibility to participate in certain programs that provide financial assistance such as the Florida Student Assistance Grant (FSAG) Program, the Florida Bright Futures Scholarship Program, and the Florida Resident Access Grant (FRAG) Program. To the extent that students have been classified incorrectly in the past, public postsecondary institutions may experience increased fee revenues and the costs associated with the participation of ineligible recipients in state financial assistance programs may be reduced. The costs to certain students to continue their postsecondary education in Florida may increase.

The fiscal impact of the changes to the Major Gifts Program is indeterminate. The bill caps state matching for any gift at \$3 million a year, with the total for any gift capped at \$15 million over 5 years.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take action which requires the expenditure of funds.

2. Other:

This bill does not appear to have any constitutional issues.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES