

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HCB6007 PHCB EDC 05-02 A+ PLUS Plan
SPONSOR(S): Education Council and Quinones and Traviesa and Glorioso and Attkisson and Bean and PreK-12 Committee and Choice & Innovation Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Education Council	7 Y, 3 N	Aldis	Cobb
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

HCB 6007 combines all or parts of the following House Bills: HB 91, HB 1021, HB 1223, HB 1323, HB 1365, HB 1737, HB 1791, and HB 1847.

HCB 6007 makes substantial changes to education law. The analysis groups those changes into the following four primary categories:

- ACADEMIC ACCOUNTABILITY
- REFORM INITIATIVES
- INSTRUCTIONAL AND ADMINISTRATIVE PERSONNEL
- OTHER PROVISIONS

The academic accountability portion of the analysis includes a discussion of modifications to provisions related to the Sunshine State Standards, the Florida Comprehensive Assessment Test, school improvement ratings for alternative schools, school recognition awards, required instruction in U.S. history, Reading Compact Scholarships, and the education performance reporting and measurement system.

Reform initiatives detailed in the analysis include codification of the Just Read, Florida! Office, the creation of a research-based reading instruction allocation, middle grades reform, high school reform, the use of supplemental educational services, and changes to occur effective upon an amendment to the constitutional class size requirements.

Instructional and administrative personnel changes that are described consist of performance and differentiated pay, collective bargaining issues, and the professional development of school leaders.

Finally, the other provisions segment of the analysis includes material related to the education of nonresidential exceptional students in Florida, a model Individual Education Plan, dependent children of active duty military, indoor environmental quality, land acquisition and facilities advisory boards, and a Charter School Task Force.

The bill will have an indeterminate fiscal impact. Please see the FISCAL ANALYSIS section of the analysis

The bill may involve some constitutional issues which are discussed in detail in the CONSTITUTIONAL ISSUES section of the analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill both establishes and abolishes governmental entities and task forces. The bill establishes new education programs and provides rule-making authority.

Safeguard individual liberty – The bill creates an educational choice option for parents of public school students who have not attained reading proficiency.

Promote Personal Responsibility- The bill provides accountability for alternative schools.

Empower families – The bill provides parents of students in alternative schools and in kindergarten through grade 3 schools with greater information about and choices for their children's schools. The bill provides students with additional services and options to ensure their educational success.

B. EFFECT OF PROPOSED CHANGES:

ACADEMIC ACCOUNTABILITY

The Sunshine State Standards and Provision of a Complete Education

The Sunshine State Standards (SSS) were approved by the State Board of Education (SBE) in 1996 and provide the expectations for student achievement in Florida by specifying content and skill standards for each subject area by grade level. Subject areas covered by the SSS include language arts, mathematics, science, social studies, health, physical education, foreign languages, and the arts.

The standards have not been formally revised since their adoption, although minor technical revisions were made in 1999. The results of a 2001 midcourse review conducted by the Department of Education (DOE) and several independent reviews will be used in the revision process ongoing this year. Adoption of the revised standards by the SBE is planned for December 2005. There is no formal policy on the review of the standards, but the department has planned to revise them every ten years.¹

The bill requires the SBE to review the standards periodically and to evaluate the extent to which the standards are being taught at each grade level. The evaluation must be provided to the Governor, the President of the Senate, and the Speaker of the House of Representatives and must include a determination of the extent to which district school boards have provided a complete education program. The bill adds to district school board powers the power to adopt policies to provide a complete education program, including specified subjects as defined by the SSS. The subjects specified in the bill as inclusive of a complete education program are the subjects currently covered by the SSS.

The bill amends the powers and duties of district school boards to require specific components in district and school improvement plans related to student progress towards the SSS. The components reflect six steps commonly found in effective schools research and total quality management business practices that direct continuous school improvement based on disaggregated student achievement data and appropriate prescriptive instructional strategies.

Florida Comprehensive Assessment Test

¹ Correspondence with Paula Shea, Director of Governmental Relations, Florida Department of Education, March 4, 2005.

Generally

The primary purpose of the Florida Comprehensive Assessment Test (FCAT) is to assess student achievement on the skills represented in the SSS in Reading, Writing, Mathematics, and Science. The SSS portion of FCAT is a criterion-referenced test. A secondary purpose is to compare the performance of Florida students to the Reading and Mathematics performance of students across the nation using a norm-referenced test (NRT).²

All students in grades 3-10 take the FCAT Reading and Mathematics in the spring of each year. All students in grades 4, 8, and 10 take FCAT Writing, and FCAT Science is administered to all students in grades 5, 8, and 10.

The bill maintains the requirement that students in grades 3 through 10 take the FCAT Reading and Mathematics annually each year. The bill also provides that students will take FCAT Science and Writing at least once at the elementary, middle, and high school levels, rather than in grades 4/5, 8, and 10. A pilot test of FCAT Science that was administered in 2004 to a sample of grade 11 students determined that the test design is suitable for use in grade 11. Therefore, in September of 2004, the DOE announced that the department would be administering the Science assessment at grade 11 rather than grade 10. The DOE based their determination upon feedback from the FCAT Science Content Advisory Committee, the Science Performance Review committee, the Florida Association of Science Supervisors, and the Florida Association of Science Teachers.³

Alternative Assessments for Grade 10 FCAT

The 2004 Legislature passed CS/SB 364 that required the Commissioner of Education (Commissioner) to approve the use of the SAT and ACT tests as alternative assessments for the grade 10 FCAT for students graduating in 2003-04.⁴ Students graduating in 2003-04 were eligible to use the scores on an alternative assessment to meet graduation requirements only after failing to pass the grade 10 FCAT three times, with an exception for students new to the Florida public school system in grade 12. In 2003-04, 544 students were awarded a standard high school diploma using equivalent scores on the SAT or ACT to meet the graduation-testing requirement.⁵ Equivalent scores approved for 2003-2004 graduates were as follows:⁶

READING		MATH	
FCAT	300	FCAT	300
SAT	410	SAT	370
ACT	15	ACT	15

Equivalent passing scores on the SAT and ACT were determined by a concordance study conducted by the DOE in 2003. Section 1008.301, F.S. required the SBE to undertake a study to examine the PSAT, PLAN, SAT, ACT and College Placement Test for concordance with FCAT scores. Studies of each test were based on students who had taken the FCAT and had also taken one of the other standardized tests.⁷ In addition to requiring the study, s. 1008.301, F.S. authorizes the SBE to adopt equivalent scores to meet graduation requirements in lieu of the FCAT passing score and requires new equivalencies to be determined.

² <http://firn.edu/doe/sas/fcat.htm>

³ <http://firn.edu/doe/sas/pdf/fcat-update-0904.pdf> FCAT Update. Florida Department of Education September, 2004.

⁴ Section 1008.22, F.S.

⁵ Florida Department of Education 2005 Legislative Bill Analysis, HB 379, February 18, 2005, at 4.

⁶ Memorandum from Jim Horne, Commissioner of Education, to District School Superintendents. May 13, 2004. Available at <http://info.fldoe.org/dscgi/ds.py/Get/File-2060/fcatscore.pdf>

⁷ Florida Department of Education, *Report of Concordance Studies*. June 17, 2003. Available at

<http://www.firn.edu/doe/evaluation/pdf/cstdoc.pdf>

The bill requires the continued use of the SAT and ACT as alternative assessments to the grade 10 FCAT to meet graduation requirements. In repealing 1008.301, F.S., the bill removes the authorization for the SBE to approve the use of the PSAT, PLAN, or College Placement Test as alternative assessments to meet graduation requirements. Continuing the approval of the SAT and ACT as alternative assessments may result in more students being able to qualify for standard high school diplomas than otherwise would have been able to qualify.

Designation of School Grades

The bill changes terminology to reflect current usage by replacing “as performance category” with “with a grade of” and replacing “performance grade category” with “school grades”.

Current law provides that a school’s grade is based on its current year performance and its annual learning gains. A school’s grade is based on a combination of student achievement scores, student learning gains as measured by annual FCAT assessments in grades 3 through 10, and improvement of the lowest 25th percentile of students in the school in reading, math, or writing on the FCAT.

The bill requires all schools to receive a school grade, unless the school is an alternative school that provides dropout prevention or academic intervention services⁸ and receives a school improvement rating.

The bill provides that the criteria for a school’s grade are a combination of the following:

- Student achievement scores.
- Student learning gains as measured by annual FCAT assessments in grades 3 through 10.
- Improvement of the lowest 25th percentile of students in the school on the FCAT Reading.

The bill codifies current practice that the measurement of the lowest 25th percentile in the school is only in FCAT Reading.

The bill also requires that the achievement scores of “eligible students”⁹ attending alternative schools shall be used in the calculation of the home school’s grade. This would appear to remove the incentive for assigning students to an alternative school to improve the overall performance of the home school.

Current law provides that school performance grade category designations and improvement ratings apply to each school’s performance for the year in which performance is measured and that the designation and rating are published annually by the DOE and the school district. Also, parents are entitled to the report card of the school in which their child is enrolled.

The bill requires the DOE to annually develop a school report card, including information relating to the school’s grade, the school’s improvement, an explanation of school performance as evaluated by federal law,¹⁰ and indicators of return on investment, and that the report card be delivered to the parents throughout each school district and published annually on the DOE’s website.

School Improvement Ratings for Alternative Schools

The bill provides that alternative schools that provide dropout prevention and academic intervention services will receive school improvement ratings in lieu of a school grade; however, an alternative school may choose to receive a school grade instead of a school improvement rating. The school improvement ratings will be based on student performance for the current year compared to student performance for the previous year.

⁸ As provided in s. 1003.53, F.S.

⁹ “Eligible students” does not include students who are attending an alternative school who are subject to expulsion, who are in dropout retrieval programs, or who are in Department of Juvenile Justice operated and contracted programs.

¹⁰ As evaluated by the No Child Left Behind Act of 2001.

The following student assessment data is used to determine the school improvement rating:

- Aggregate scores of all eligible students¹¹ who were enrolled in the school during the October or February FTE counts, who have been assessed on the FCAT, and who have FCAT comparable scores from the previous year.
- Aggregate scores of all eligible students who were enrolled in the school during the October or February FTE counts, who have been assessed on the FCAT, and who have scored at or in the lowest 25th percentile of students in the state in reading.

Based on the school improvement rating, the bill provides that schools that improve at least one level or maintain an “improving” rating are eligible for school recognition awards.

The bill requires the commissioner to prepare annual reports on the performance of alternative schools. The bill also requires the DOE to annually develop a school report card, including information relating to the school’s improvement rating, identification of student learning gains, information regarding school improvement, an explanation of school performance as evaluated by federal law,¹² and indicators of return on investment. The report card shall be delivered to parents throughout each school district. The SBE is charged with adopting rules to implement provisions related to school improvement ratings.

School Recognition Awards

The Florida School Recognition Program¹³ provides financial awards to public schools as a reward for performance. Schools that maintain a grade of “A” or improve one letter grade receive \$100 per student. Section 1008.36(5), F.S., authorizes the use of the funds for:

- nonrecurring bonuses to the faculty and staff,
- nonrecurring expenditures for educational equipment or materials to assist in maintaining and improving student performance, or
- temporary personnel for the school to assist in maintaining and improving student performance.

The school’s staff and advisory council jointly determine the specific use of the funds. In Fiscal Year 2004-05, schools received \$117.2 million in School Recognition funds.

School Recognition funds are provided from statewide District Discretionary Lottery funds. After deducting the School Recognition Program funds from the statewide District Discretionary Lottery funds, the remaining funds are allocated to the school districts based on each district’s portion of base funding as determined in the Florida Education Finance Program (FEFP). Each district’s Discretionary Lottery funds are to be used for “enhancement,” as defined by school board policy.

Currently, schools are only eligible to participate in the School Recognition program if they receive school grades. FCAT results, including learning gains, are required criteria for receiving a school grade. Schools that do not serve students beyond third grade are not eligible for school grades because students do not take the FCAT in kindergarten through grade 2, and learning gains cannot be calculated with only grade 3 data.

The bill requires that schools serving students in kindergarten through grade 3 be assigned the school grade of the feeder pattern school designated by the DOE and verified by the school district. A “feeder school pattern” is defined as a pattern where at least 60 percent of the students in the ungraded school were assigned to the graded school. The bill makes such schools eligible to participate in the Florida

¹¹ “Eligible students” does not include students who are attending an alternative school who are subject to expulsion, who are in dropout retrieval programs, or who are in Department of Juvenile Justice operated and contracted programs.

¹² As evaluated by the No Child Left Behind Act of 2001.

¹³ Section 1008.36, F.S.

School Recognition Program and the Opportunity Scholarship Program¹⁴ based on the feeder grade assigned. Under the bill's provisions, the DOE estimates that \$1.0 million in School Recognition funds would be awarded to schools serving students in kindergarten through grade 3.¹⁵ The \$1.0 million would be funded from statewide District Discretionary Lottery funds, thereby reducing by \$1.0 million District Discretionary Lottery funds allocated to school districts for enhancement. The DOE has determined that currently there are no K-3 schools that qualify for the Opportunity Scholarship Program under this bill.¹⁶ See FISCAL ANALYSIS section.

As discussed in the section of the bill analysis on school improvement ratings for alternative schools, the bill makes alternative schools that receive an "improving" rating or improve at least one level under the newly created s. 1008.341, F.S., eligible for the school recognition program. The schools would not otherwise be eligible as they receive a school improvement rating instead of a school grade.

Current law provides that all schools selected for a school recognition award receive financial awards depending on the availability of funds appropriated and specifies the number and size of schools selected to receive an award. Current statutory law provides that if school staff cannot reach an agreement by November 1, the award is equally distributed to all classroom teachers currently teaching in the school.¹⁷

The bill increases the allowable uses of school recognition awards to include bonuses to persons who taught at the school during the year of improved performance and student incentives. However, the bill requires the annual school improvement plan developed by the school advisory council to include a determination of the use of school recognition funds, if received. If the plan does not include such a determination, the school shall not be eligible for the funds.

Required Instruction in U.S. History

Section 1003.43(1)(d) requires successful completion of one credit in American history for high school graduation. In addition, school districts are required by law to provide appropriate instruction designed to ensure students meet the SBE adopted standards in specified subjects, including social studies. The current standards cover American history topics and requirements.

Section 1003.42, F.S. requires school districts to provide instruction in a number of specified topics, including:

- The Declaration of Independence,
- The United States Constitution, and
- The history of the state.

The bill specifies in greater detail the following additional requirements for the instruction in certain U.S. history topics:

- Instruction on the Declaration of Independence must address its history and must include the ideas of national sovereignty, natural law, self-evident truth, equality of all persons, limited government, popular sovereignty, and God-given, inalienable rights of life, liberty, and property.
- Instruction in the U.S. Constitution must include the history, meaning, significance and effect of its provisions, with emphasis on the Bill of Rights.
- Instruction in the history of the state must also include the history of the State Constitution.

The bill adds a requirement for instruction in U.S. history which must:

¹⁴ Students attending or assigned to a school that received a grade of "F" in two of the past four years are eligible for an Opportunity Scholarship for use at a public or private school of the parent's choice.

¹⁵ Florida Department of Education, 2005 Legislative Bill Analysis for HB 1365, dated March 24, 2005.

¹⁶ Email from Judy Wilson, with the Florida Department of Education, to the Education Appropriations Committee, dated April 11, 2005.

¹⁷ s. 1008.36, F.S., Florida School Recognition Program

- Include the period of discovery, early colonies, the War for Independence, Reconstruction, the Civil War, the expansion of the U.S., the world wars, and the civil rights movement;
- Be taught as genuine history and not follow the revisionist or postmodernist viewpoints of relative truth;
- Be viewed as factual, not constructed, and as knowable, teachable, and testable; and
- Be defined as the creation of a new nation based largely on the universal principles stated in the Declaration of Independence.

Other Required Instruction

The bill requires that the materials used for required instruction meet the highest standards for professionalism and historic accuracy. Instruction in the history of the Holocaust is currently required, for the purpose of “encouraging tolerance of diversity in a pluralistic society” (1003.42, F.S.). The bill specifies that the purpose of the instruction is to encourage tolerance of racial, ethnic, and religious diversity.

Comprehensive health education is currently required to address mental and emotional health. The bill removes the requirement for instruction in mental and emotional health.

The bill adds a new requirement of instruction in the nature and importance of free enterprise to the U.S. economy.

Character-development programs are currently required. The bill amends the requirements for the content of such programs. The bill deletes the requirement that such programs stress attentiveness, patience and initiative. The bill adds requirements that the programs stress:

- The Golden Rule,
- Respect specifically for authority, human life, liberty, and personal property, and
- Specifically racial, ethnic, and religious tolerance.

Reading Compact Scholarships

The bill creates the Reading Compact Scholarship Program (RCS), an educational choice program for public school students with reading deficiencies. The program is established to offer an educational choice to parents of students who have scored Level 1 on the reading portion of the FCAT for 2 of the previous 3 years.

RCS Student Eligibility

Generally

Parents of public school students who have scored Level 1 on the reading portion of the FCAT for 2 of the previous 3 years are eligible to receive a RCS. However, students who score a level 1 on the reading portion of the FCAT in the 10th grade are not eligible for the scholarship. It is not known how many students might utilize the RCS; however, there would have been 290,363 students eligible for a RCS based upon this year’s test scores. The following table illustrates the participation rate in other educational scholarship programs.

McKay			CITC			RCS
Eligible	Participants	%	Eligible	Participants	%	Eligible
516,569	14,937	2.89	1,047,647	11,231	1.07	290,363

The participation rate of the Corporate Income Tax Credit (CITC) does not provide much information as the funding for the program limits the number of participants. The McKay Scholarship for Students with Disabilities is more similar to the RCS because any qualified student may accept a scholarship. For this

reason the participation rate in McKay is likely better for estimating the participation rate for the RCS. Another factor that must be considered is that 40% of the students eligible for a RCS are already eligible for a McKay Scholarship. If the number of students eligible for a RCS is reduced by 40% (since those students could already be participating in a scholarship program but choose not to) there would be 174,218 eligible students. If the participation rate for the RCS is the same as McKay (2.89%) and there are 174,218 eligible students, then the expected number of participants would be approximately 5,035 students. This is a very rough estimate and could be influenced by a large number of factors.

A parent of an eligible student may request and receive from the state a RCS to attend a public school or a private school of choice if the parent has obtained acceptance for the student at an eligible private school and has requested the scholarship 60 days prior to the first payment. See CONSTITUTIONAL ISSUES section. The scholarship may be used until the student returns to a public school or graduates from high school. Parents may, upon reasonable notice to the DOE and school district, remove the student from a private school and place the student in a public school or transfer the student from one participating private school to another.

The bill provides that a student may not use a RCS while he or she is enrolled in a Department of Juvenile Justice (DJJ) commitment program, receiving a CITC scholarship or an educational scholarship under chapter 1002, F.S., participating in a home education or a private tutoring program, participating in a virtual school, correspondence school, or distance learning program that receives state funding pursuant to the student's participation, or enrolled in the Florida School for the Deaf and the Blind. This provision prevents students from receiving funding from multiple sources.

Parent and Student Responsibilities

The bill provides the following parent and student responsibilities for participation in the RCS Program:

- Students are required to attend school throughout the school year unless excused by the school for illness or other good cause.
- Each parent and each student is required to comply with the private school's published policies.
- Parents are required to ensure scholarship student participation in the norm-referenced assessment offered by the private school. Also, parents are given the option to choose for their child to participate in the statewide assessments.
- Parents are required, upon receiving a scholarship warrant, to restrictively endorse the warrant to the private school. This provision provides that no power of attorney shall be valid for the purpose of endorsement, and participants who fail to comply with this provision forfeit the scholarship.

Funding and Payment

The bill provides that the amount of the RCS is the calculated amount, or the amount of the private school's tuition and fees, whichever is less.¹⁸ Private school fees shall include textbook fees, lab fees, and other fees related to curriculum, including transportation. The bill provides that a public or a private

¹⁸ The calculated amount is the amount equivalent to the base student allocation in the FEFP multiplied by the appropriate cost factor multiplied by the district cost differential and shall include the per-student share of instructional material funds, technology funds, and other categorical funds as provided for this purpose in the General Appropriations Act. For students who attended the Florida School for the Deaf and Blind, the scholarship is calculated based on the school district where the student's parent resides at the time of the scholarship request.

school that provides services to a student with disabilities shall receive the weighted funding for such services at the appropriate funding level.¹⁹

RCS participants are reported for purposes of the FEFP and students that attend a public school in an adjacent district shall be reported by that school district for purposes of the school district's funding under the FEFP. Districts are required to separately report RCS participants who are attending private schools from those attending a public school.

The bill provides that following notification of the number of RCS participants (July 1, September 1, December 1, or February 1), the DOE shall transfer, from the General Revenue funds only, the calculated amount from the FEFP and authorized categorical accounts to a separate account for quarterly disbursement to parents of RCS participants. The bill provides for the Chief Financial Officer (CFO) to make scholarship payments in four equal installments (September 1, November 1, February 1, and April 1) of each academic year. The initial payment is made after the DOE verifies admission acceptance and subsequent payments are made upon the DOE's verification of continued enrollment and attendance at a private school. The payment must be made by individual warrant payable to the student's parent and mailed by the DOE to the chosen private school. The parent must restrictively endorse the warrant to the private school. See FISCAL ANALYSIS section.

The bill requires the Department of Financial Services (DFS) to randomly review endorsed warrants to confirm compliance with endorsement requirements and to immediately report inconsistencies or irregularities to the DOE.

Provider Eligibility

Private schools are not required to participate in the program; however, participation is open to all private schools. The bill requires participating private schools to:

- comply with the newly created section detailing the rights and obligations of private schools participating in state school choice scholarship programs,
- annually provide the parent with a written explanation of the student's progress,
- annually administer or make provisions for students to participate in one of the nationally norm-referenced tests identified by the DOE and report the student's scores to the parent and to an independent private research organization selected by the DOE, and
- submit all documentation for a student's participation at least 30 days prior to the first scholarship payment.

The bill specifically provides that failure to meet these requirements constitutes a basis for the ineligibility to participate in the RCS Program.

Program Oversight

School District Obligations; Parental Options

The bill requires school districts to timely inform parents of all educational options, including public and private school options, available to their child. The public school options include attending a public school, either consistent or inconsistent with the district school board's choice plan, or attending a public school in an adjacent school district that has available space.²⁰ The school district is required to provide transportation to a student if the student attends a public school consistent with the school board's choice plan. Also, if the student's parent chooses the public school option, then the student may continue to attend a public school chosen by the parent until the student graduates from high

¹⁹ The appropriate funding level shall be consistent with s. 1011.62(1)(e), F.S., which provides for the funding model for exceptional student education programs.

²⁰ s. 1002.31, F.S., provides for a district school board's choice plan.

school. The bill provides that parents are not required to choose a public school option in lieu of requesting a RCS to attend a private school.

Department of Education Obligations

The bill requires the DOE to provide for fiscal and academic oversight of the RCS Program; however, some of the oversight requirements do affect both fiscal and academic issues.

Fiscal Oversight

- Requires the DOE to establish a process that allows for individuals to notify the department of violations of state laws relating to program participation. This provision also requires the DOE to conduct investigations of written complaints, or to refer them to the appropriate agency, if the complaint is signed by the complainant and is legally sufficient.
- Requires the DOE to annually receive from every participating private school a notarized, sworn compliance statement certifying compliance with state laws and to retain such forms. This provision requires the DOE to ensure that participating private schools submit their sworn compliance forms each year.
- Requires the DOE to cross-check the list of participating private scholarship students to the public school enrollment lists prior to the first payment to avoid duplication.

Academic Oversight

- Requires the DOE to identify all nationally norm-referenced tests that are comparable to the norm-referenced test portions of the FCAT. This provision implements part of the nationally norm-referenced testing program for scholarship recipients found elsewhere in the bill in that it requires DOE to proactively identify which standardized tests will fulfill the requirement for testing. See FISCAL ANALYSIS section.
- Requires the DOE to select an independent private research organization to analyze and report annually on the year-to-year improvement of participating students. The provision requires that the scores from the nationally norm-referenced tests be forwarded to the independent research organization and that in the course of its analysis the research organization must not disaggregate the data in such a way as to identify the academic level of individuals or individual schools. Independent private research organizations are required to accumulate historical performance data and conduct longitudinal studies. This provision provides a mechanism for annually and longitudinally monitoring academic performance of the scholarship program. However, since the data will not be provided to the DOE in its entirety, the DOE will not be able to identify individual schools or students with poor academic performance from the study results. See FISCAL ANALYSIS section.
- Requires the DOE to conduct analysis of matched students from public school assessment data and calculate control group learning gains using an agreed upon methodology between the third party independent research organization and the DOE. The sharing of data must be in accordance with FERPA requirements and shall be used solely for the purpose of comparing the progression of scholarship students to their public school counterparts. This provision substantially reduces the cost of the independent research organization's services to the DOE.
- Requires the DOE to establish a toll-free hotline providing information on participation in the RCS program.

Commissioner of Education Authority

- Grants the commissioner the authority to deny, suspend, or revoke a private school's participation in the scholarship program and to take other action as necessary to ensure compliance with the provisions of statutes. It also provides for procedures and timelines for the commissioner and the private school to follow in administrative proceedings.
- Provides for authority to immediately suspend payment of scholarship funds if there is probable cause to believe that there is an imminent threat to the health, safety, and welfare of the students or that there is fraudulent activity on the part of the private school. This bill also provides for procedures and timelines for appeal of such action.

Liability

- Provides that the inclusion of private schools within options available to Florida public school students does not expand the regulatory authority of the state, its officers, or school districts to impose additional requirements beyond those reasonably necessary to enforce the requirements expressed in this section and that the state is not liable based on the RCS award or use thereof.

State Board of Education (SBE)

- Provides that the SBE adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to administer this section.

Rights and Obligations of Private Schools in State School Choice Scholarship Programs

The bill creates a new section of law that sets out general guidelines for participation by private schools in the CITC, pursuant to s. 220.187, F.S., and in all educational choice scholarship programs provided in chapter 1002. The new section has compiled some of the current statutory requirements for private schools in the various scholarship programs and has added a number of new requirements. The requirements can be grouped as follows:

General Requirements²¹

The private school must:

- Be a Florida private school, as defined in s. 1002.01(2), F.S.
- Be registered as a Florida private school pursuant to s. 1002.42, F.S.
- Comply with the antidiscrimination provisions of 42 U.S.C. s. 2000d.
- Comply with applicable state and local health, safety, and welfare laws, codes, and rules, including fire and building safety, and
- Meet all requirements outlined in this proposed section.

Notifications to the DOE

- Requires notification of its intent to participate in a scholarship program.
- Requires notification within 15 days of any change in the school's name, school director, mailing address, or physical location.
- Requires the annual completion and submission to the DOE of a notarized scholarship compliance statement certifying compliance with state laws relating to private school participation in scholarship programs.

²¹ See DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR section.

- Requires the completion of student enrollment and attendance verification requirements, including using an on-line attendance verification form, prior to scholarship payment.

Fiscal Accountability

- Demonstration of fiscal soundness and accountability by being in operation for at least 3 school years or obtaining a surety bond or letter of credit for the amount equal to the scholarship funds for any one quarter and filing the bond or letter of credit with the DOE.
 - This increases the number of years a school must have been in operation to prove fiscal soundness and specifies the means by which scholarship monies are to be secured against unlawful uses when a school has been in operation less than 3 years. However, this provision does not provide the DOE a method of determining fiscal soundness of schools that have been in operation in excess of 3 years.
 - The surety bond or letter of credit secures the scholarship monies paid to the school should it be found that the funds were used for unlawful purposes.
- As recommended by the CFO, parents are required, upon receiving a scholarship warrant, to restrictively endorse the warrant to the private school. This provision provides that no power of attorney shall be valid for the purpose of endorsement, and that participants that fail to comply with this provision forfeit the scholarship.

Educator Eligibility

- Maintains current law requiring private schools to employ or contract with teachers that meet any one of the following criteria: 1) hold a baccalaureate or higher degree, 2) have at least 3 years of teaching experience in public or private schools, or 3) have special skills, knowledge, or expertise in subjects taught. This provision allows for nontraditional teachers to bring their special skills, knowledge, or expertise in certain subjects to the classroom.

Background Screening

- Requires each individual with direct student contact, defined as any individual who has unsupervised access to a scholarship student for whom the private school is responsible, to be of good moral character, to submit to a level 1 background screening, to be denied employment if required under s. 435.06, F.S., and not to be ineligible to teach in a public school because of the suspension or revocation of their educator's certificate.²² Provides an exemption for persons holding a valid Florida teaching certificate that have been fingerprinted pursuant to s. 1012.32, F.S.

²² s. 435.06, F.S.,(1) When an employer or licensing agency has reasonable cause to believe that grounds exist for the denial or termination of employment of any employee as a result of background screening, it shall notify the employee in writing, stating the specific record which indicates noncompliance with the standards in this section. It shall be the responsibility of the affected employee to contest his or her disqualification or to request exemption from disqualification. The only basis for contesting the disqualification shall be proof of mistaken identity. (2) The employer must either terminate the employment of any of its personnel found to be in noncompliance with the minimum standards for good moral character contained in this section or place the employee in a position for which background screening is not required unless the employee is granted an exemption from disqualification pursuant to s. [435.07](#). (3) Any person who is required to undergo employment screening and who refuses to cooperate in such screening or refuses to submit the information necessary to complete the screening, including fingerprints when required, shall be disqualified for employment in such position or, if employed, shall be dismissed.

- Provides that the cost of fingerprinting and the background check are not borne by the state.
- Provides for the ineligibility of a private school for continued employment of an individual after notification that the individual has failed the level 1 background screening.

Failure to meet requirements

- Provides that failure to meet these requirements outlined in this section constitutes a basis for the ineligibility to participate in the scholarship programs as determined by the DOE.

Regulatory authority

- Provides that the inclusion of private schools within options available to Florida public school students does not expand the regulatory authority of the state, its officers, or school districts to impose additional requirements beyond those reasonably necessary to enforce the requirements expressed in this section.

State Board of Education

- Provides that the SBE adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to administer this section.

K-20 Education Performance and Accountability

Guiding Principles for Accountability System

Currently, the SBE is required to adopt guiding principles for establishing state and sector-specific standards and measures and to maintain an accountability system measuring student progress towards goals prescribed in statute.²³

The bill eliminates the requirement that the SBE adopt guiding principles, and instead outlines several guiding principles for state and sector-specific standards and measures in order to ensure that the process is:

- Focused on student success and actionable.
- High quality and efficient, measurable over time, and simple to explain and display to the public.
- Aligned with other measures and other sectors to support a coordinated K-20 system.

The bill provides that the DOE, rather than the SBE, is required to maintain an accountability system that is less prescriptive yet measures student progress toward the following goals:

- Highest student achievement.
- Seamless articulation and maximum access.
- Skilled workforce and economic development.
- Quality efficient services
- And other goals identified by law or rule.

The bill removes the performance-based funding formula provided in s. 1008.31(2), F.S., which required the SBE to provide for performance-based funding relating to Florida's K-20 education performance accountability system.

Education Data Quality Improvements

²³ s. 1008.31(3), F.S.

Currently, school districts and public post secondary educational institutions are required to maintain information systems to provide the SBE and the Legislature with information and reports necessary to address the specifications of the accountability system.

The bill renames the “systemwide data collection” to “K-20 education data quality improvements,” yet the bill maintains the requirement of school districts and public post secondary educational institutions to maintain information systems in order to provide the SBE and the Legislature with information and reports necessary to address the specifications of the accountability system. However, the bill specifically provides that in order to provide data required to implement education performance accountability measures in state and federal law, the commissioner is required to initiate and maintain strategies to improve data quality and timeliness.

The bill also specifically provides that the commissioner determine the standards for the required data, monitor the data quality, measure improvements, and annually report the data quality indicators and ratings for all school districts and public post secondary educational institutions.

State Educational Goals and Student Achievement Data

Currently, the commissioner recommends to the SBE performance goals addressing the educational needs of the state for the K-20 education system. The bill transfers the duty from the Council for Education Policy Research and Improvement (CEPRI) to the DOE to develop a report card assigning grades to indicate Florida’s progress toward meeting those goals and requires that the DOE annually submit by January 1, the report card to the Legislature, the Governor, and the public.

Additionally, the commissioner is required to conduct ongoing research and analysis of student achievement data, including monitoring trends in student achievement, identifying successful school programs, and analyzing correlates of school achievement. The bill directs the commissioner to monitor the trends in student achievement by grade level and overall student achievement.

Student Achievement Report

The bill requires that the DOE annually report to the Governor and the Legislature on the following:

- Longitudinal performance of students in mathematics and reading.
- Longitudinal performance of students by grade level in math and reading.
- Longitudinal performance regarding efforts to close the achievement gap.
- Longitudinal performance of students on the norm-referenced component of the FCAT.

Also, when available, the DOE may report any other student performance data based on national norm-referenced and criterion-referenced tests.

Public School Student Progression Data

District school boards are currently required under s. 1008.25, F.S. to annually publish and report to DOE the following student progression data:

- The number and percentage of all students in grades 3 through 10 performing at Level 1 or 2 on FCAT reading, by grade,
- The number and percentage of all students retained in grades 3 through 10, by grade, and
- The total number of students who were promoted for good cause, by each category of good cause as specified in 1008.25(6)(b), F.S.

The bill requires DOE to establish a uniform format for the reporting of this information, with input from the school districts, and also to compile such information and to report it annually to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Research Reporting Division

Pursuant to s. 1008.51, F.S., the CEPRI is an independent office under the Office of Legislative Services that is required to perform a number of tasks that provide information to the Legislature and also perform some executive branch type functions. The bill eliminates CEPRI and transfers any necessary duties performed by CEPRI to the DOE. The bill codifies the Division of Accountability, Research, and Measurement of Education within the DOE. By reducing the number of entities performing research, the bill may increase efficiency by reducing duplicative research requirements.

REFORM MEASURES

Reading Initiatives

Just Read, Florida! Office

Governor Bush launched the “Just Read, Florida!” initiative in 2001, with the goal of every student reading at or above grade level by 2012. The “Just Read, Florida!” Office was established in the DOE to support the initiative. The office currently provides training and professional development for educators and school staff, reading coaches for schools, workshops for parents and other reading instruction resources.

The bill codifies the establishment and activities of the Just Read, Florida! Office, including the following duties:

- Training teachers to become reading coaches,
- Creating multiple designations of effective reading instruction, with accompanying credentials, to encourage all teachers to seek training to integrate reading instruction into their subject area,
- Providing training to teachers, school principals and parents on reading strategies,
- Reviewing, approving, and providing technical assistance with district plans for use of the research-based reading allocation,
- Providing information on research-based reading programs in concert with the Florida Center for Reading Research,
- Periodically reviewing the Sunshine State Standards for reading,
- Periodically reviewing teacher certification exams to ensure exams measure necessary skills for research-based reading instruction,
- Ensuring integration of reading instruction strategies into teacher preparation programs, and
- Administering grants and performing other functions to assist with meeting reading goals.

Research-Based Reading Instruction Allocation

In addition to the base funding allocation, the FEFP includes a number of allocations for specific programs; examples include the Safe Schools allocation and the Supplemental Academic Instruction allocation. There is no current statutory requirement for a specific reading instruction allocation as part of the FEFP formula; however, in the 2004 General Appropriations Act, \$25 million was provided for supplemental reading instruction under the FEFP. Those funds were allocated based on Full-Time Equivalent (FTE) enrollment. The bill establishes as part of the FEFP formula, the Research-Based Reading Instruction Allocation. HB 1885 includes within the FEFP \$74 million for the Research-Based Reading Instruction Allocation, with each district receiving \$50,000 and the remaining balance allocated on each district’s share of K-12 base funding. The \$25 million from the 2004-05 reading program is included in the \$74 million. See FISCAL COMMENTS section.

The bill requires school districts to annually submit a plan for use of the funds and requires that the funds be used for a system of comprehensive reading instruction, including the following:

- Highly qualified reading coaches,
- Professional development for teachers in reading instruction,

- Summer reading camps for students who score at Level 1 on the FCAT,
- Supplemental instructional materials and training for teachers in the use of such materials, and
- Intensive interventions for middle and high school students reading below grade level.

For any instructional materials purchased using these funds, teachers must be trained in the use of such materials and must receive inservice credit and certification of their proficiency by the school district. The bill requires DOE to collect data on such training.

By May 1, of each year, school districts must submit a plan for the use of the Research-Based Reading Allocation. The format of the plan must be developed with input from the school districts. The Just Read, Florida! Office will review and approve the plans prior to the release of the school district's allocated funds no later than July 1. The school district may appeal to the SBE if a school district and the Just Read, Florida! Office cannot reach agreement on the plan. The DOE is authorized to withhold funds if it determines a district has used any reading allocation funds on anything other than implementation of the reading plan.

Middle Grades Reform

Background

The middle grades in Florida comprise grades 6, 7, and 8. Currently, Florida serves approximately 627,300 students in the middle grades, in 484 schools with traditional middle school or junior high grade configurations, as well as in a number of other types of schools, such as K-8 schools.²⁴

While national and state student achievement data demonstrate that Florida's elementary grades are making progress, FCAT data in reading indicate that performance begins to decline in grade five, decreasing each year through grade nine. Florida's gain in fourth-grade reading on the National Assessment of Educational Progress (NAEP) from 1998 to 2003 (from 206 to 218) was four times the national gain. In contrast, 2003 NAEP scores for Florida's eighth-graders (257) were a slight increase from the 1998 score (255), but a decline from the 2002 score (261).²⁵

In 2004, the Legislature passed the Middle Grades Reform Act, which required the DOE to establish a Middle Grades Reform Task Force to make recommendations for further middle school reforms. The Task Force completed their work in February 2005, and this bill implements several of their recommendations and modifies certain requirements of the Middle Grades Reform Act.

Middle Grades Purpose

Current law does not expressly define a mission for middle school, but does include the intent that "students promoted from eighth grade will be ready for success in high school."²⁶ The bill adds to the intent statement by defining the mission of middle grades as preparing students to graduate from high school.

Middle School Grading System

Currently, district school board policy determines the grading scale for students in the middle grades. According to the Middle Grades Reform Task Force, having a statutorily-defined common system would

²⁴ Florida Department of Education. Available at <http://www.firn.edu/doe/eias/eiaspubs/pdf/pk-12mbrship.pdf> and <http://www.firn.edu/doe/eias/eiaspubs/pdf/schoolsbytype.pdf>.

²⁵ Florida Middle Grades Reform Task Force, *Report and Recommendations*, February 18, 2005. Available at <http://www.flmiddlegradesreform.com/pdf/recommendations-feb18.pdf>

²⁶ Section 1003.415, F.S.

help ensure an aligned and consistent grading scale for grades 6-12, the equitability of grades and credits in grades 6-12, and the transferability of grades and credits for students throughout the state.²⁷

The bill requires a common grading system. The system proposed in the bill is consistent with the high school grading system specified in 1003.437, F.S., and is as follows:

- Grade “A” equals 90% through 100% and has a grade point average value of 4.
- Grade “B” equals 80% through 89% and has a grade point average value of 3.
- Grade “C” equals 70% through 79% and has a grade point average value of 2.
- Grade “D” equals 60% through 69% and has a grade point average value of 1.
- Grade “F” equals 0% through 59% and has a grade point average value of 0.

This grading system is already being used in 66 districts. The only district that does not currently use this system is Liberty County, which uses a higher standard.²⁸

Middle School Promotion Requirements

Student progression in the middle grades is determined by local school districts in their student progression plans. There is no statewide standard set by statute or rule. A Task Force review of the student progression plans of Florida’s larger districts found that most require a minimum number of credits in core academic areas (language arts, mathematics, science, and social studies).²⁹

The bill would require the following statewide standard for promotion from middle school, beginning with students entering grade six in 2005-06:

- A credit is defined as 135 hours of instruction, or 120 hours in block scheduling; and
- Students must obtain three credits each in English / language arts and mathematics, two credits each in social studies and science, and two credits in electives.

The bill requires district school boards to establish policies, which must be approved by the SBE. The policies may include alternatives to assist students, such as:

- Opportunity for credit recovery,
- Opportunity for promotion to high school on time, and
- Opportunity to be placed in alternative programs that emphasize applied integrated curricula, small learning communities, support services, increased discipline, or other strategies documented to improve student achievement.

The standardized credit system enables districts to establish credit recovery policies so that students who fail to earn a credit in a core subject area could make-up that credit without failing an entire grade level and having to repeat the entire school year. See FISCAL COMMENTS section.

The bill authorizes the SBE to adopt rules for alternative standards for students in grades 6, 7, or 8 including those who are not enrolled in schools with a grade 6 through 8 middle school configuration.

Middle School Reading Courses

According to the Task Force, data from 2003-2004 show that, while 56% of eighth-graders scored Level 1 or 2 on FCAT reading, only 8% of eighth grade students were enrolled in an intensive reading course. The majority of middle grades students were enrolled in reading courses that were not intensive in nature or were not taught by a teacher who holds a reading endorsement or reading certification.³⁰

²⁷ Florida Middle Grades Reform Task Force, *Report and Recommendations*, February 18, 2005. Available at <http://www.flmiddlegradesreform.com/pdf/recommendations-feb18.pdf>

²⁸ Correspondence with Paula Shea, Director of Governmental Relations, Florida Department of Education, March 4, 2005.

²⁹ Florida Middle Grades Reform Task Force, *Report and Recommendations*, February 18, 2005. Available at <http://www.flmiddlegradesreform.com/pdf/recommendations-feb18.pdf>

³⁰ *Id.*

- Following the requirement of the Task Force, the bill requires a student to complete a full-year intensive reading course the year following each year the student scores at Level 1 or Level 2 on FCAT reading, for which the student may earn up to one credit per year.
- The bill allows students scoring Level 3 or Level 4 on FCAT reading to enroll in a reading course, with parent permission, and earn up to two credits during middle school.
- Additionally, the bill deletes the requirement that schools with fewer than 75% of students reading at or above grade level (as defined by FCAT Level 3) incorporate a rigorous reading requirement as the primary component of their school improvement plans.

High School Reform³¹

Background

As a result of their February 2005 education summit, the National Governor’s Association released a report entitled “Getting it Done: Ten Steps to a State Action Agenda.” The response to this report from Florida’s Commissioner of Education, John Winn, was reviewed by the PreK-12 Committee.

The 2005 National Education Summit on High Schools released “An Action Agenda for Improving America’s High Schools” that points to numerous concerns about student achievement and preparation in high school, and offers five broad strategies for action. This report also was reviewed by the PreK-12 Committee.

On January 25, 2005, the PreK-12 Committee conducted a workshop on high school performance issues and received testimony from the DOE, the Southern Regional Education Board, and educators. Data presented in that workshop included statistics on non-promotion that show an alarming non-promotion rate in Florida’s ninth grade that is consistent across years:

YEAR	GRADE 9 NON-PROMOTIONS
1998-99	37,529
1999-00	49,639
2000-01	59,434
2001-02	49,711
2002-03	51,638

District Policies

The bill requires school districts to:

1. Establish policies that address intensive reading remediation for high school students scoring below Level 3 on FCAT Reading;
2. Offer credit recovery and course scheduling to allow students to earn credit and “catch up;”
3. Notify parents of students who are in danger of not graduating;
4. Offer alternative programs; and
5. Offer summer reading institutes for rising ninth graders scoring below Level 3 on FCAT Reading.

Student Classification

The bill clarifies that students participating in a summer program immediately before or after ninth grade shall not be classified as tenth graders, or repeat ninth graders. School districts have raised this issue as artificially reducing their graduation rates.

High School Recognition

³¹ See FISCAL COMMENTS section.

The bill directs the commissioner to create and implement the Challenge High School Recognition Program to reward public high schools for academic gains.

High School Reform Task Force

The bill creates the High School Reform Task Force. The Task Force is required to work with the Southern Regional Education Board, and the International Center for Leadership in Education, and will receive administrative support from the Chancellor for K-12 Public Schools and the Just Read, Florida! Office in the DOE. The Task Force must represent the geographic and cultural diversity of Florida's school-age population and will be abolished upon submission of its recommendations.

The Governor shall appoint the chair and members from the following categories:

1. Two representatives from public school districts, who may be principals, school board members or superintendents, at least one of whom must work with a school with a grade of "F";
2. One high school teacher who teaches in a high school with a school grade of "F";
3. Two parents of high school students scoring Level 1 on FCAT reading, at least one of whom has a child enrolled in a school with a grade of "F";
4. One high school student;
5. One teacher or administrator from a charter high school;
6. Two private school teachers or administrators from any registered Florida private school that serves students in grades 9-12;
7. One representative from the business community;

In addition, The Speaker of the House of Representatives and the President of the Senate shall each appoint one member from their respective chambers to serve on the Task Force.

Not later than February 1, 2006, the Task Force shall recommend to the Governor and Legislature a long-term plan for improving Florida's grade 9 retention rate, graduation rate, dropout rate, and college remediation rate and aligning high school requirements with the needs of Florida's employers and the requirements of postsecondary institutions. The plan must be programmatically and fiscally responsible, feasible, and implementable.

Extended Day Remediation – Required Attendance

School districts throughout the state currently rely on a variety of programs to provide supplemental academic services and remedial instruction to low-performing students. Many districts use extended day programs outside of school hours – before or after school, or on the weekends – to provide remediation to the students who need additional assistance. Extended day programs can have a large positive impact on student performance, however it is unclear whether or not district school boards have the authority to require students to attend such programs.

The bill provides district school boards authority to require the attendance of low-performing students at such programs at the request of the school principal. Allowing schools to require attendance in extended day remediation programs may result in more students receiving the supplemental academic services they need to achieve on grade level.

Supplemental Educational Services

Supplemental educational services provide extra academic help, such as tutoring, and are offered outside of the regular school day. Under the federal No Child Left Behind Act, low-income students in certain Title I schools are eligible to receive supplemental educational services funded with federal Title I funds. In order to be eligible for these services, a student must attend a Title I school that has not met

adequate yearly progress requirements for three consecutive years. Parents may choose from a list of service providers approved by the DOE.³²

The bill requires that supplemental services be offered to parents of third grade students scoring Level 1 on FCAT Reading, and high school students failing grade 10 FCAT Reading or Math on their second attempt. These students may not be eligible for the supplemental educational services under No Child Left Behind. The services will be funded via the supplemental academic instruction allocation categorical, in a per-student amount to be determined in the General Appropriations Act. Parents are given a choice of providers from the DOE-approved list or their school district. See DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR and FISCAL COMMENTS sections.

Revision of Class Size Amendment

In November of 2002, the Florida voters approved a constitutional amendment to reduce class size.³³ Section 1, Article 9 of the State Constitution provides that “[t]he legislature shall make adequate provision to ensure that, by the beginning of the 2010 school year, there are a sufficient number of classrooms so that: (1) The maximum number of students who are assigned to each teacher who is teaching in public school classrooms for prekindergarten through grade 3 does not exceed 18 students; (2) The maximum number of students who are assigned to each teacher who is teaching in public school classrooms for grades 4 through 8 does not exceed 22 students; and (3) The maximum number of students who are assigned to each teacher who is teaching in public school classrooms for grades 9 through 12 does not exceed 25 students. The class size requirements of this subsection do not apply to extracurricular classes.

Section 1003.03, F.S., was created to implement the class size requirement and specifies that class size averages be calculated as follows:

- District class size average from 2003-04 to 2005-06.
- School class size average from 2006-07 to 2007-08.
- Classroom average from 2008-09 and thereafter.

The bill amends the class size reduction implementation schedule in s. 1003.03 so that during the 2006-2007 school year class size will continue to be calculated at the district level, rather than at the school level.

Contingent upon a revision to the class size amendment, the bill does the following:

- Requires that the district class size average be used to determine school district compliance.
- Requires that no classroom for core-curricula courses exceed 5 students over the district average maximum requirement.
- Establishes implementation provisions to reflect the district average class size requirements.
- Provides that the minimum salary for full-time certified instructional personnel be no less than \$35,000 or as specified in the General Appropriations Act.³⁴
- Creates an operating categorical fund and provides that such funds are to be used to:
 - Provide for the minimum pay for all full-time certified instructional personnel.³⁵
 - Provide for elevation funds³⁶ to increase the salary of all full-time certified instructional personnel.

³² Florida Department of Education, Fact Sheet: Supplemental Educational Services. Available at <http://www.firn.edu/doe/family/pdf/sesfactsheet.pdf> See <http://www.firn.edu/doe/family/doc/DirectoryContent.doc> for a current list of approved providers.

³³ Article IX, § 1, Fla. Const.

³⁴ See FISCAL ANALYSIS AND DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR sections.

³⁵ Certified instructional personnel as defined in s. 1012.01(2)(a) – (d).

³⁶ The elevation funds of at least \$2,000 or higher as specified in the General Appropriations Act.

- Provides that remaining operating categorical funds are to be used to reduce the district average class size until the district average meets the state constitutional class size requirements.

INSTRUCTIONAL AND ADMINISTRATIVE PERSONNEL

Performance and Differentiated Pay

Section 1012.22, F.S., provides for the compensation and salary schedules of public school personnel. Specifically, s. 1012.22(1)(c), F.S., sets forth requirements that the district school board must abide by in the determination and the development of the salary schedule. Further, current law requires that the district school board adopt a performance-pay policy which is subject to negotiation for school administrators and instructional personnel. The commissioner is responsible for determining whether the district school board's adopted salary schedule complies with the requirement for performance pay. Current law provides that district's failure to comply with this requirement results in the commissioner withholding disbursements until compliance is verified.

The bill deletes the provisions related to the performance pay policy and repeals the BEST salary career ladder program. However, the bill creates two new sections, beginning in the 2005-2006 fiscal year, that require each district school board to adopt differentiated pay policies for school administrators and instructional personnel. The adopted salary schedules³⁷ must allow school administrators and instructional personnel to receive differentiated pay based upon a number of factors, including, but not limited to:

- Subject areas taught (only for classroom teachers)
- Economic demographics of the school
- Responsibilities of classroom teachers, including, lead and mentoring responsibilities.
- A performance-pay policy rewarding high-performing personnel with at least a 5 percent performance-pay incentive.

Additionally, the commissioner is responsible for determining whether the district school board's adopted salary schedules comply with the requirement for differentiated pay. If a district school board's salary schedules fail to comply with the differentiated-based pay requirement then the SBE is authorized to withhold disbursements from the Educational Enhancement Trust Fund until compliance is verified.

Collective Bargaining

The bill provides that it is the intent of the Legislature that district school boards have the flexibility through the collective bargaining process to assign teachers more equitably across the school districts because the Legislature finds that there is a disparity between the teachers assigned to teach in a school with a grade of "A" versus those that are assigned to teach in a school with a grade of "F." The Legislature finds that the disparity can be found in the average years of experience, median salary, and teacher performance on certification examinations. Further, current law provides that as an authority to enforce public school improvement, the SBE may recommend actions to district school boards in order to enable students in schools designated with a grade of "F" to be academically well served by the public school system.³⁸

The bill maintains current law which already provides that school districts are prohibited from assigning a higher percentage than the school district average of first-time teachers, temporarily certified teachers, teachers in need of improvement, or out-of-field teachers to schools that are graded "D" or "F" or schools with above school district average minority and economically disadvantaged students. The

³⁷ The salary schedule for instructional personnel shall be subject to collective bargaining.

³⁸ s. 1008.33(2), F.S.

bill also maintains current law providing that school districts are authorized to provide salary incentives to meet the above-mentioned requirement and that district school boards are prohibited from signing a collective bargaining agreement that precludes providing sufficient incentives for teachers assigned to a school graded a “D” or “F.”

The bill provides that the SBE may recommend to district school boards the transfer of high quality teachers, faculty, and staff as needed to ensure adequate educational opportunities designed to improve the performance of students in a school receiving a grade of “F”.

While the bill does institute a differentiated pay policy, it does not impact the rights of parties to negotiate the significance of the required pay factors or other compensation factors. Two of the required factors included in the differentiated pay requirements, performance pay and additional teacher responsibilities, were already required by law.³⁹

The bill does require that the district school boards annually provide the DOE, in the computer format prescribed by the DOE, the negotiated collective bargaining contract for the school district. The bill subsequently requires the DOE to post on-line the collective bargaining contracts of each school district. These provisions allows for teachers to be able to compare their benefits to those of other school districts.

Professional Development for School Leaders

A growing body of evidence indicates the impact school leaders have on school improvement and student achievement.⁴⁰ Florida will soon face a shortage of experienced school leaders. The average age of school administrators in Florida is 55 and the majority of administrators are slated to retire in the next five years, resulting in a need to develop new effective school leaders.⁴¹

With the repeal of the Management Training Act in 2000, which had included 19 competencies for school principals, the DOE and the SBE began the process of developing and establishing new standards, competencies and policies for school principal selection, training, and certification. The new standards, which were approved by the SBE on April 19, 2005, focus on instructional leadership, using data for effective decision-making, and key indicators for high performing principals. The standards provide the foundation for principal preparation programs, professional development programs, principal selection programs, and principal certification requirements, including the Florida Educational Leadership Examination.

As part of the effort to develop and train highly successful principals, the bill establishes the A+ Professional Development Program for School Leaders, a comprehensive, competency-based, statewide professional development program. Administered by the DOE, the program must:

- Be based on the leadership standards of the SBE, the National Staff Development Council, and the federal requirements for professional development;
- Provide a competency-based approach that utilizes pre- and post- diagnostic evaluations to create an individualized professional development plan;
- Incorporate instructional leadership training and effective business practices; and
- Be delivered through multiple delivery systems, including school district programs, interactive technology, and state, regional or local academies.

The program must offer individuals the opportunity to obtain one of three school leadership designations as established by the bill: A + Emerging School Leader; A + High Performing School Leader; A + Sterling School Leader. See FISCAL COMMENTS section.

³⁹ See CONSTITUTIONAL ISSUES section.

⁴⁰ See *District and School Leadership* from Education Commission of the States. <http://www.ecs.org/clearinghouse/58/30/5830.pdf>

⁴¹ Testimony of Chancellor Jim Warford before the PreK-12 Committee, March 8 2005.

The DOE shall develop the criteria for the designations, with an emphasis on student learning gains.

OTHER PROVISIONS

Exceptional Students in Florida

Section 1003.01(3)(a), F.S., defines the term “exceptional student” as any student who has been determined eligible for a special program in accordance with SBE rule. Exceptional students with disabilities are those who are mentally handicapped, speech and language impaired, deaf or hard of hearing, visually impaired, dual sensory impaired, physically impaired, emotionally handicapped, specific learning disabled, hospital and homebound, autistic, developmentally delayed children, ages birth through 5 years, or children, ages birth through 2 years, with established conditions that are identified in SBE rules.

Section 1003.01(3)(b), F.S., defines the term “special education services” to mean specially designed instruction and such related services as are needed for an exceptional student to benefit from education. Special education services may include: transportation; diagnostic and evaluation services; social services; physical and occupational therapy; job placement; orientation and mobility training; braillists, typists, and readers for the blind; interpreters and auditory amplification; rehabilitation counseling; transition services; mental health services; guidance and career counseling; specified materials, assistive technology devices, and other specialized equipment; and other such services as approved by SBE rules. The bill adds speech and language pathology services to this list. See FISCAL COMMENTS section.

The DOE reported that 387,617 students were served in the exceptional student education (ESE) program in the fall of 2002. The program serves individuals aged 3 through 21, with children aged three to five being served by the program’s Prekindergarten Disabilities component. Some school districts opt to serve children from birth through two years.

Free and Appropriate Public Education (FAPE)

Federal Law

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, inclusive, including children with disabilities who have been suspended or expelled from school.⁴² Children who are placed in or referred to private schools or facilities by the state or appropriate school districts are provided special education and related services at no cost to their parents. School districts have more limited obligations to children with disabilities when the public agency made a free and appropriate public education available and the parents elected to place them in a private school or facility without the public agency’s consent or referral.⁴³

The state educational agency must exercise general supervision over all educational programs for children with disabilities in the state, including all such programs administered by any other state or local agency, and ensure that programs meet the educational standards of the State educational agency. However, the law does not limit the responsibility of agencies in the state other than the state educational agency to provide, or pay for some or all of the costs of, a free appropriate public education for any child with a disability in the state.⁴⁴

Florida Law

⁴² 20 U.S.C. s. 1412. See also 34 CFR s. 300.121

⁴³ 20 U.S.C. s. 1412(a)(10)(C)(i).

⁴⁴ 34 C.F.R. s. 300.600

Pursuant to s. 1003.57, F.S., Florida district school boards are required to provide for an appropriate program of special instruction, facilities, and services for exceptional students, as prescribed by the SBE as acceptable. State law and administrative rule require district school boards to provide for an appropriate program of special instruction, facilities, and services for exceptional students either within the district school system, in cooperation with other district school systems, or through contracts with approved private schools or community facilities that meet standards established by the commissioner. When a parent is offered an appropriate education program by the school district and the parent waives this opportunity in favor of a program selected by the parent, the parent assumes full financial responsibility for the student's education.

Residency

Rule 6A-6.0361(6)(d), Florida Administrative Code, requires a school district to verify that the student is a resident of the school district and is enrolled in, or has made application for admittance to, a district school educational program. However, the rule does not require verification that the student's parent is a resident of the district. According to DOE, there is a means for schools to record the student's state of residency; however, this information is not used to deny services to any student who lives within a district and does not include procedures for verifying parental residency.

For the purposes of public school enrollment, "residency" is not defined in Florida statute or rule. According to the DOE, a longstanding policy⁴⁵ is that it is the responsibility of the school district in which a student resides to provide eligible school aged students with disabilities a free, appropriate public education.⁴⁶ Accordingly, Florida determines that the residency status of a student in a residential placement is determined by the district in which the student resides and not the district in which the student's parent resides. This creates a financial obligation for Florida and the local district where the facility is located to provide ESE services to the child, even if the child's parents are residents of another state. Currently there is not a process in place for Florida school districts to impose on a student's home state the fiscal responsibility for educating a nonresident exceptional student.

The United States Department of Education (U.S. DOE), Office of Special Education Programs, has disseminated letters of clarification regarding residency.⁴⁷ The letters of clarification specify that it is residence that creates the duty under the statute and regulations, and not the location of the child or the school. The letters specifically provide that a child is a resident of the state in which their parent or guardian is a resident, or of which they are a ward.

Office of Program Policy Analysis and Government Accountability (OPPAGA) Study⁴⁸

In October 2003, OPPAGA reviewed the number of out-of-state children living in Florida private residential facilities and the state's cost of providing ESE services to these children. OPPAGA identified 417 ESE students in private residential facilities, 90 of whom were residents of other states and had been placed in Florida facilities by agencies and school districts from other states and parents in their home state. OPPAGA determined that Florida could avoid \$1.5 million annually in ESE costs for these students. The report noted that children may be placed in residential facilities by their parents, the local school district, or by a state agency and that while most placements are made in-state, children may be placed in an out-of-state facility, if no school district in the state offers the specific services the child needs.

Proposed Changes

⁴⁵ Florida State Plan, 1995-1997, p.63

⁴⁶ Department of Education 2005 Legislative Bill Analysis on HB 849

⁴⁷ See Letter to McAllister, Office of the Utah Attorney General, June 9, 1994 and Letter to Moody, Massachusetts Department of Education, October 24, 2995

⁴⁸ OPPAGA, Special Review, Report #03-58, October 2003

The bill provides that an exceptional student with a disability who resides in a residential facility and receives special instruction or services is considered a resident of the state in which the parent is a resident. For purposes of this section, the term "parent" is defined as either or both parents of a student or any guardian of a student. The parent's state of residence or the student's parent is required to pay the cost of the nonresident student's instruction, facilities, and services received in Florida. See FISCAL ANALYSIS section. In addition, these nonresident students shall not be reported by a school district for FTE funding in the FEFP.

The bill requires the DOE to provide each school district a statement of the specific limitations of the school district's financial obligations for exceptional students under state and federal law and to provide any technical assistance needed for developing a local plan to impose on the parent's state of residence or the student's parent the fiscal responsibility for educating the nonresident exceptional student.

The DOE is also required to develop a process that requires school districts to review the residency of each exceptional student who lives in a residential facility in Florida, prior to providing services. The SBE is authorized to adopt rules, if necessary, for this residency review process. Under the provisions of this bill, the residential facility, not the school district, is responsible for billing and collecting the out-of-state student's education and related services from the parent's state of residence. See DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR section.

The provisions created under the bill apply to any exceptional student with disabilities who resides in a residential facility including but not limited to, public schools, private schools, group home facilities, intensive residential treatment programs, intermediate care facilities for the developmentally disabled, and community residential homes.

Individual Education Plan

Current law requires that an individual education plan IEP include certain information about the child and the educational program designed to meet his or her unique needs. However, states and school systems have a great deal of flexibility about the information they require in an IEP. The IEP must include: current performance, including how the child's disability affects his or her involvement and progress in the general curriculum; annual goals; special education and related services; participation with non-disabled children; participation in state and district-wide tests; dates and places; transition services needs; needed transition services; age of majority; and measuring progress.⁴⁹ Additionally, some states and school systems have chosen to include additional information⁵⁰ in the IEP to document their compliance with other state and federal requirements.⁵¹

Currently, federal law provides information on what must be included in the IEP; however, it does not specify what the IEP should look like. No one form, approach, or appearance is required or even suggested. States may decide how their forms look and design their own IEP forms. Thus, across the United States, many different IEP forms are used.⁵² Florida is no different. School districts across the state utilize a variety of IEP forms, both computerized and non-computerized, to comply with federal and state requirements related to IEP development.

According to Florida's DOE analysis, the Individuals with Disabilities Act of 2004 (IDEA) provides that the U.S. DOE authorize a pilot program, for fifteen states to participate in an IEP demonstration

⁴⁹ <http://www.ed.gov/parents/needs/speced/iepguide/index.html>

⁵⁰ *Id* Extra elements in IEPs that may be included: holding the meeting to write, review and, if necessary, revise a child's IEP in a timely manner; providing parents with a copy of the procedural safeguards they have under the law; placing the child in the least restrictive environment; and obtaining the parents' consent

⁵¹ *Id*. Federal law requires that school districts maintain documentation to demonstrate their compliance with federal requirements.

⁵² <http://www.ed.gov/parents/needs/speced/iepguide/index.html>

program.⁵³ When the demonstration program is completed, each state will be required to implement a uniform IEP form based on the final regulations for IDEA 2004.

The bill would require the Florida DOE to coordinate the development of a streamlined IEP form, to be made available to all school districts in the state for developing, implementing, and transferring IEPs for exceptional students within the state school system.

Dependent Children of Active Duty Military

In 2004, the Legislature passed CS/CS/SB 1604 that required that dependent children of active duty military personnel who otherwise meet the eligibility criteria for special academic programs offered through public schools be given first preference for admission to such programs. The provision was adopted as part of a package of changes designed to address quality of life issues for active duty personnel stationed in Florida and their families. There are approximately 35,000 military-associated students in Florida.⁵⁴

The preference is available even if the program is being offered through a public school other than the school to which the student would generally be assigned and then even if the school at which the program is being offered has reached its maximum enrollment. Special academic programs are defined to include charter schools, magnet schools, advanced studies programs, advanced placement, dual enrollment, and International Baccalaureate. In response to questions, the DOE issued the following guidelines in a technical assistance paper:⁵⁵

- Preference must be given to all dependent children of active military personnel, including those who had ample opportunity to meet application deadlines, not just to those who transferred into the district after application deadlines.
- If a student meets the eligibility for the program, he or she must be placed in the program. This does not mean that a student who is already in the program must be withdrawn to make room.

A number of concerns have been raised regarding implementation of the law:

- Despite the DOE guidance that the required admittance of the military-dependent student does not require the withdrawal of another student to make room, districts and schools face limitations on their enrollment, such as class size and facility safety constraints, that may require them to force a student to withdraw to make room for the military-dependent student.
- Charter schools face even greater challenges in implementing the law because:
 - Unlike district-run programs such as magnet schools, they do not have the flexibility to potentially shift non-military-dependent students into similar programs at other schools.
 - Charter schools are required by s.1002.33, F.S. to enter into a contractual agreement with the sponsor that addresses the major issues regarding the operation of the school. Many contracts require charter schools to determine admissions via lottery and specify an enrollment cap. Charter schools may be forced to violate their charters to comply with the law. Charter schools also face the facility constraints faced by other schools.

The bill eliminates the requirement that preference be given to military-dependent students when the school has reached its maximum enrollment. The bill also removes charter schools from the definition of special academic program so that they are no longer subject to the preference requirements.

Indoor Environmental Quality

⁵³ Department of Education *2005 Legislative Bill Analysis on HB 849*

⁵⁴ Senate Staff Analysis and Economic Impact Statement, CS/CS/CS/SB 1622 (2004).

⁵⁵ Florida Department of Education, *Technical Assistance Paper Related to 2004 Legislation Regarding Military-Dependent Students*. August 2004. Available at <http://sss.usf.edu/pdf/DPS05-025TAP.pdf>

Current statutes and rules address a number of indoor air quality issues. In addition, many districts have already voluntarily created indoor environmental quality management plans. Current regulations related to indoor air quality include:

- Section 1013.03(9), F.S., requires the DOE to make available to school boards technical assistance, awareness training, and research and technical publications relating to life safety, casualty, sanitation, environmental maintenance, and custodial issues.
- Section 404.056(4), F.S., requires mandatory radon testing of all public and private school buildings or school sites housing students in kindergarten through grade 12.
- Section 1013.20(1), F.S., requires the SBE to adopt rules establishing standards for relocatables intended for long-term use as classroom space at a public elementary school, middle school, or high school. "The standards shall protect the health, safety, and welfare of occupants by requiring compliance with the Florida Building Code or the State Requirements for Educational Facilities for existing relocatables, as applicable, to ensure the safety and stability of construction and onsite installation; fire and moisture protection; air quality and ventilation; appropriate wind resistance; and compliance with the requirements of the Americans with Disabilities Act of 1990." Similar language appears in the Florida Building Code.

School districts are currently required to conduct safety, casualty, and sanitation inspections that should identify obvious problems. Identifying hidden indoor environmental quality problems is more complex and often cannot be achieved by visual inspection. As an example, moisture problems in wall cavities can require the use of specialized tools to detect the problem.⁵⁶

The bill requires each school district board to adopt and implement an indoor environmental quality policy. The policy may be based upon the U.S. Environmental Protection Agency's (EPA) Indoor Air Quality Tools for Schools Program. Alternatively, the district may choose to meet specific criteria:⁵⁷

- Provide, monitor and maintain indoor environmental conditions in accordance with American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standard 62;
- Be certified semiannually by a professional engineer as meeting ASHRA Standard 62; and
- Provide a copy of the engineer's certification to the commissioner whereupon the district shall be indemnified for the life of the certificate from liability related to indoor air quality.

Schools participating in the Indoor Air Quality Tools for Schools program training must conspicuously post their certificate of completion.

The bill requires the SBE to adopt rules to implement the indoor environmental quality requirements.

Land Acquisition and Facilities Advisory Board

Section 1013.512, F.S., prescribes the processes for establishing a Land Acquisition and Facilities Advisory Board (the Board) and outlines the duties of the Board. The Board is charged with reporting any deficiencies in school district land acquisition and facilities processes to the commissioner and assisting with the corrections of the deficiencies. Appropriations to the public schools under the jurisdiction of the Board are held in reserve until the Board certifies that such expenditures are consistent with their recommendations. Current statute states that once the Board certifies that correction action has been taken, the Board shall be disbanded. Upon review, House General Counsel recommended amending the statute to clarify that the Legislative Budget Commission will declare the Board disbanded once all funds are released. The bill makes this change and clarifies the procedure for disbanding a Board that has completed its work. Once the Legislative Budget Commission releases all funds remaining in reserve, the Board shall be disbanded.

Charter School Task Force

⁵⁶ Florida Department of Education 2005 Legislative Bill Analysis, HB 469, at 3.

⁵⁷ See DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR and FISCAL COMMENTS sections.

The bill provides for a thirteen member task force to study and make recommendations regarding current application and sponsorship procedures; sponsorship and organizational structure; alternative means to implement changes in sponsorship; capital outlay funding for charter schools; and the necessity and methods for the SBE to sanction school districts and charter schools for procedural violations. The task force shall consist of four Members of the Florida House of Representatives appointed by the Speaker of the House; four members of the Florida Senate appointed by the Senate President; and five members who are charter school stakeholders appointed by the Governor. The Governor shall appoint the chair of the task force from among the appointed members. Task force members will be reimbursed for per diem and travel expenses. The bill does not require a specific number of task force meetings; however, it does require meetings to be held throughout the state.

Severability Provision

The bill provides that the provisions of this act are severable. If any provision of the act or the application thereof is held invalid, then the invalidity of the provision does not affect other provisions or applications of the act which can be given effect without the invalid provision or application.

C. SECTION DIRECTORY:

- Section 1. Amends s. 20.15, F.S., codifying the Division of Accountability, Research, and Measurement in the DOE.
- Section 2. Amends s. 1000.01, F.S, deleting references to the Council for Education Policy Research and Improvement under education governance transfers.
- Section 3. Amends s. 1001.03, F.S., requiring the SBE to periodically review the Sunshine State Standards, and evaluate the extent to which they are taught at each grade level; requiring a determination of school boards provision of a complete education program.
- Section 4. Amends s. 1001.11, F.S., deleting reference to the Council for Education Policy Research and Improvement; transferring responsibility to DOE relating to reporting of progress toward performance goals.
- Section 5. Creates s. 1001.215, F.S., relating to the Just Read, Florida! Office, establishes the office in statute and provides duties.
- Section 6. Amends s. 1001.41, F.S., authorizing district school boards to adopt policies to provide each student the opportunity to receive a complete education program.
- Section 7. Amends s. 1001.42, F.S., providing for school improvement plan requirements; conforming school grade nomenclature changes; removing reference to language deleted in bill.
- Section 8. Amends section 1002.20, F.S., adding the Reading Compact Scholarship Program to the list of public and private school choice options; correcting a cross reference.
- Section 9. Amends s. 1002.38, F.S., conforming school grade nomenclature changes within provisions relating to the Opportunity Scholarship Program; modifying a program deadline.
- Section 10. Creates s. 1002.385, F.S., establishing the Reading Compact Scholarship Program.
- Section 11. Creates s. 1002.421, F.S., relating to the rights and obligations of private schools participating in state school choice scholarship programs.

- Section 12. Amends s. 1003.01, F.S., adding speech and language pathology services to the definition of “special education services.”
- Section 13. Amends s. 1003.03, F.S., relating to the class size implementation schedule; providing for class size to be calculated at the district level for 2006-2007.
- Section 14. Creating s. 1003.035, F.S., providing that the district average be used in the calculation to determine compliance with class size reduction requirements and specifying that no core-curricula class shall exceed 5 students above the maximum requirement; providing an effective date.
- Section 15. Amends s. 1003.05, F.S., deleting the requirement that dependent children of active duty military receive preference for admission to special academic programs even if maximum enrollment has been reached; removing charter schools from the definition of special academic programs.
- Section 16. Creates s. 1003.413, F.S., relating to high school reform; requiring school districts to establish certain policies; creating the Challenge High School Recognition Program.
- Section 17. Creates an unnumbered section of law to establish the High School Reform Task Force.
- Section 18. Amends s. 1003.415, F.S., adding a statement regarding the mission of middle grades, deleting the requirement for a rigorous reading requirement as part of the school improvement plans of certain schools; deleting obsolete language.
- Section 19. Creates s. 1003.4155, F.S., relating to the middle school grading system, establishing a standardized grading system for middle schools.
- Section 20. Creates s. 1003.4156, F.S., relating to general requirements for middle school promotion, establishing an academic credit system for middle schools; defining an academic credit, specifying minimum credits required for promotion from middle school; requiring certain students to complete intensive reading courses; authorizing district school boards to adopt policies allowing alternative methods for students to earn the required credits; authorizing the SBE to make rules regarding promotion standards for certain students.
- Section 21. Amends s.1003.42, F.S., revising several provisions related to required instruction in public schools.
- Section 22. Amends s. 1003.43, F.S., requiring the study of the Declaration of Independence for high school graduation.
- Section 23. Amends s. 1003.57, F.S., relating to exceptional students education; prohibiting nonresidential exceptional students living in residential facilities from being reported for FTE funding; authorizing the Board of Education to implement rules pursuant to this section.
- Section 24. Creates s. 1003.575, F.S., requiring the DOE to coordinate the development of an individual education plan form.
- Section 25. Amends s. 1003.58, F.S., conforming a cross-reference.
- Section 26. Amends s. 1003.62, F.S., conforming school grade nomenclature changes within provisions relating to academic performance-based charter school districts.

- Section 27. Amends s. 1005.22, F.S., deleting reference to the Council for Education Policy Research and Improvement under powers and duties of commission.
- Section 28. Amends 1007.33, F.S., deleting reference to the Council for Education Policy Research and Improvement under site-determined baccalaureate degree access.
- Section 29. Amends s. 1008.22, F.S., revising the duties related to the administration of the FCAT; providing for grade level and subject area testing requirements; requiring the use of the SAT and ACT as alternative assessments for the grade 10 FCAT for students who meet specified requirements; requiring the Department of Education to conduct concordance studies, as necessary, to determine SAT and ACT equivalent scores; requiring an annual report on student performance data.
- Section 30. Amends s. 1008.25, F.S., authorizing district school boards to require low-performing students to attend remediation programs outside of regular school hours; requiring the DOE to establish a uniform format for school districts to report information on student progression; requiring the department to compile that information and to submit an annual report.
- Section 31. Repeals s. 1008.301, F.S., relating to a concordance study of FCAT equivalencies for high school graduation.
- Section 32. Amends s. 1008.31, F.S., revising the K-20 education performance accountability system; deleting provisions relating to performance-based funding; revising the mission, goals, and systemwide measures; requiring the department to coordinate reporting and data collection requirements with school districts; providing authority for the SBE to adopt rules for implementation.
- Section 33. Amends s. 1008.33, F.S., allowing the SBE to recommend to school districts to transfer high-quality staff to schools designated with a grade of "F."
- Section 34. Amends s. 1008.34, F.S., providing for an annual report identifying school grades and district grades; revising the calculation and designation of school grades; revising student assessment data used in determining school grades; requiring an annual school report card.
- Section 35. Creates s. 1008.341, F.S., providing for school improvement ratings for alternative schools; and providing authority to the SBE to adopt rules for implementation.
- Section 36. Amends s. 1008.345, F.S., conforming school grade nomenclature changes within provisions relating to implementation of state system of school improvement and education accountability.
- Section 37. Amends s. 1008.36, F.S., making school receiving a school improvement rating and feeder schools serving kindergarten through third grade eligible for the Florida School Recognition Program, providing for assigning grades to feeder schools, and to require inclusion of such schools subject to the Opportunity Scholarship Program; modifying procedures for distribution, eligibility, and use.
- Section 38. Amends s. 1008.45, F.S. deleting reference to the Council for Education Policy Research and Improvement under community college accountability process.
- Section 39. Repeals s. 1008.51, F.S., relating to the Council for Education Policy Research and Improvement.

- Section 40. Amends s. 1011.62, F.S., conforming school grade nomenclature changes within provisions relating to funds for operation of schools; requiring the provision of supplemental services to certain students; establishing a research-based reading instruction allocation in the FEFP; specifying how the funds will be allocated, and how the funds may be used; requiring school districts to annually submit a plan for use of the funds; authorizing an appeal process for plan approval; requiring that teachers receive credit for and verification of training on materials purchased with the funds.
- Section 41. Amends s. 1011.64, F.S., conforming school grade nomenclature changes within provisions relating to school district minimum classroom expenditure requirements.
- Section 42. Amends s. 1011.685, F.S., providing that class size reduction operating categorical funds may be used to implement differentiated pay requirements when the class size requirements have been met.
- Section 43. Creates s. 1011.6855, F.S., providing for the creation of an operating categorical fund to fund the minimum pay for instructional personnel contingent upon a constitutional amendment.
- Section 44. Amends s. 1011.71, F.S., correcting a cross reference.
- Section 45. Amends s. 1012.21, F.S., revising the DOE's reporting duties to include the annual posting of collective bargaining contracts.
- Section 46. Amends s. 1012.22, F.S., requiring districts to provide the DOE with their negotiated collective bargaining contract.
- Section 47. Creates s. 1012.2305, F.S., establishing minimum pay for certain instructional personnel provision contingent upon a constitutional amendment.
- Section 48. Repeals s. 1012.231, F.S., relating to the BEST salary career ladder.
- Section 49. Creates s. 1012.2312, F.S., requiring each district school board to adopt a differentiated pay policy for instructional personnel; authorizing the SBE to withhold moneys under certain circumstances.
- Section 50. Creates s. 1012.2313, F.S., requiring each district school board to adopt a differentiated pay policy for school administrators; authorizing the SBE to withhold moneys under certain circumstances.
- Section 51. Creates s. 1012.2315, F.S., providing requirements for the assignment of teachers and authorizing incentives.
- Section 52. Amends s. 1012.27, F.S., requiring that in 2005-06 salary schedules be consistent with the district's differentiated pay policy.
- Section 53. Amends s. 1012.34, F.S., removing a cross-reference to material being deleted.
- Section 54. Creates s. 1012.986, F.S., establishing the A+ Professional Development Program for School Leaders to establish a coordinated statewide professional development program for school leaders; establishing school leadership designations and providing program requirements; authorizing the SBE to adopt rules to implement the program.
- Section 55. Repeals s.1012.987, F.S., relating to education leadership development.

- Section 56. Creates s. 1013.381, F.S., relating to indoor environmental quality; requiring each district school board to adopt an indoor environmental quality policy; requiring the SBE to adopt rules for implementation.
- Section 57. Amends s. 1013.512, F.S., requiring the release of funds remaining in reserve when a land acquisition and facilities advisory board certifies corrective action has been taken.
- Section 58. Creates an unnumbered section of law that establishes a Charter School Task Force.
- Section 59. Provides for severability.
- Section 60. Provides for effective date; provides exception to effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not appear to have a fiscal impact on state government revenues.

2. Expenditures:

Several sections of this bill have an impact on state government expenditures.

School Recognition Program and Opportunity Scholarship Program

Including previously ungraded K-3 schools and alternative schools in the School Recognition Program would increase the awards by an indeterminate amount.⁵⁸ It would have a neutral fiscal impact, however, as it would decrease the District Discretionary Lottery funds allocated to school districts by an equal amount.

Including previously ungraded K-3 schools in the Opportunity Scholarship Program also has a neutral fiscal impact since there is no increase in funds per student, only a change in where the funds are expended. The funds would be expended by a private school instead of a public school district. A small savings in state funds could result, should the amount of tuition and fees at the private school be less than the scholarship amount determined in the Florida Education Finance Program formula.

Reading Compact Scholarships

This bill requires the DOE to identify nationally norm-referenced tests that are comparable to the norm-referenced test portions of the FCAT and to contract with an independent private research organization to receive and analyze the results of the nationally norm-referenced tests taken by the RCS Program participants. The cost of contracting with the independent research organization is indeterminate at this time.

The funding of Reading Compact Scholarships does not require an appropriation; however, it does require transfer of FEFP and categorical program funds by the DOE from public school districts to a separate account for quarterly disbursement to the parents of students taking the scholarship to a private school.

⁵⁸ It is estimated that for K-3 schools the amount of school recognition awards would be approximately \$1 million, but there is not an estimate for alternative schools that receive a school improvement rating.

Minimum Teacher Pay

The fiscal impact will be largely determined by whether or not the class size amendment is amended and includes a provision related to teacher pay. The estimated cost to establish a minimum salary for teachers of \$35,000 and provide elevation pay of \$2,000 per teacher is \$500 million, but this will be offset by some reduction in spending on class size, due to maintaining the district average class size requirement.

Nonresident Exceptional Students

The bill will decrease the expenditures of the state currently expended on the care and education of nonresident children receiving exceptional student education in residential facilities. The anticipated amount of expenditures that could be reduced is not readily available because the DOE has not accumulated the data on student residency to calculate the anticipated savings. However, the report issued by OPPAGA indicated that an estimated \$1.5 million could be saved by the state.

The DOE will be required to provide the districts with technical assistance as necessary for developing a local plan to impose the fiscal responsibility on a parent's state of residence for educating a nonresident exceptional student as well as providing a statement of specific limitations of the district's financial obligation for exceptional students under federal and state law.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

School Recognition Program

The School Recognition Program would receive an estimated \$1.0 million in additional funds for K-3 schools, which would be spent as determined by the school advisory council of the specific schools earning the awards. District Discretionary Lottery funds would be decreased commensurate with the increase in school recognition funds. No current estimate exists for the number of alternative schools receiving a school improvement rating that would qualify for an award, but district Discretionary Lottery funds would decrease in the same manner for those awards as with the awards to K-3 schools.

2. Expenditures:

School Recognition Program and Opportunity Scholarship Program

The estimated \$1.0 million increase in School Recognition Program awards for K-3 schools would be spent as determined by the advisory council of each specific school. School district expenditures from District Discretionary Lottery funds would decrease commensurately. Again, while it has not been estimated how many alternative schools would qualify for the school recognition program based upon their school improvement ratings, the same description applies as to its effect on school district expenditures.

Public school districts that have students who are eligible for an Opportunity Scholarship could experience a decline in revenue. Currently, there are no K-3 schools that would qualify for the Opportunity Scholarship Program under the provisions of this bill.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Several sections of the bill may have an economic impact on the private sector.

State Scholarship Programs

This bill places no requirements upon private schools that choose not to participate in the state school choice scholarship programs. Participation by private schools is voluntary. However, private schools that choose to participate in the RCS Program or any other state school choice scholarship program are eligible to receive state-funded scholarship students and are responsible for complying with the private school requirements contained in this bill. The requirements will result in some compliance costs. Private schools may also incur further expenses related to hiring faculty, adding programs, etc., to accommodate the new students. Private schools may receive additional resources from students able to participate in this program.

Supplemental Educational Services

The bill provides that parents of third grade and high school students who meet certain criteria be offered the opportunity to choose supplemental educational services from their school district or a list of providers approved by the Department of Education. Private providers approved by DOE may experience an increase in demand for their services.

Minimum Teacher Pay

The establishment of a minimum beginning salary for public school teachers of \$35,000 may affect the labor market for teachers. To the extent private schools pay a salary less than \$35,000 to beginning teachers; this amendment will likely increase the costs to private schools of finding new teachers.

Nonresident Exceptional Students

The bill may have an economic impact on the private sector because the residential facility bears the responsibility of billing and collecting payment for educational and related services from a nonresident student's home state. Residential care facilities providing services to nonresident exceptional education students did not have such a responsibility prior to this bill, and there could be problems on collecting the money owed for services by the parent's state of residence or the student's parent. There may also be timing consequences for the residential facility and/or the student caused by delays in the collection of fees from the parent's state of residence. If parents' states of residence are slow in payment or refuse to pay for the services, the number of nonresident students receiving exceptional student services in the state could decrease.

Indoor Environmental Quality

There could be an indeterminate benefit to the professional engineering firms hired to certify compliance with the voluntary standards in the bill.

D. FISCAL COMMENTS:

Several sections of the bill have a potential fiscal impact.

Research-Based Reading Instruction Allocation

The fiscal impact of the research-based reading instruction allocation will be determined in the General Appropriations Act (GAA). HB 1885 includes within the FEFP \$74 million for the Research-Based Reading Instruction Allocation, with each district receiving \$50,000 and the remaining balance allocated on each district's share of K-12 base funding. For comparison, in the 2004 GAA, \$25 million was provided for supplemental reading instruction within the FEFP. Those funds were allocated based on FTE enrollment. An additional \$46 million in state funds were provided outside the FEFP for reading programs in Fiscal Year 2004-05.

Supplemental Educational Services

The fiscal impact of the requirement to provide supplemental educational services to certain students will also be determined in the GAA. The bill requires that such services be provided to third and tenth grade students meeting certain criteria, with the per-student amount of funding to be determined in the GAA.

Funding for supplemental educational services will be provided from the Supplemental Academic Instruction (SAI) categorical. The SAI categorical was funded at \$653.9 million in Fiscal Year 2004-05. As provided in General Appropriations Act proviso, the first priority of funds is for the provision of supplemental intensive instruction, consistent with Sunshine State Standards, including summer school and intensive English immersion instruction, for students in grades 3 and 10 who scored FCAT Level I. The current House budget funds the SAI at \$670.4 million.

Middle School Reform

The fiscal impact of middle school promotion requirements is indeterminate, but may be positive. For those districts that currently retain a student for an entire year if the student fails one course, the bill would have a positive impact because it establishes a credit system for promotion, encouraging districts to establish course-level credit recovery. This allows students to "catch up" with their class, and not be retained for an entire year and repeat classes they have already passed, resulting in a cost savings. Any increase in students retained under the credit system would likely be offset by the lower costs from the students retaking only specific courses instead of an entire school year.

High School Reform

Establishing the required policies should have a minimal fiscal impact on school district expenditures. Funding for summer reading institutes for rising ninth graders will be provided in the Research-Based Reading Instruction Allocation within the FEFP, if the allocation is established in law and included in the 2005-2006 General Appropriations Act. Currently House Bill 1885 contains \$74 million for the Reading Program.

Funding to support the High School Reform Task Force will be provided by the Department of Education and, for school district employees who participate, by their employing school district.

A+ Professional Development Program for School Leaders

The fiscal impact of the professional development program for school leaders will also be determined in the General Appropriations Act. HB 1885 includes \$8.5 million for the A+ Plus Initiative, including \$2 million to provide \$5,000 bonuses to 400 principals for attaining certain school leader designation levels.

Exceptional Students in Florida

The bill requires the DOE to develop a process for mandatory school district reviews of the residency of each exceptional student who lives in a Florida residential facility, prior to the provision of services. The additional procedures required for determination of a student's residency should not have a material fiscal impact on the department or on school districts.

Adding speech and language pathology services into the definition of "special education services" will have an indeterminate fiscal impact. Individual education plan (IEP) teams will decide whether or not a student can benefit from speech or language therapy. Depending upon the number of IEP teams that determine students can benefit, it may be necessary for districts to hire additional staff to provide the services.

Before this change, Florida had been on probation for over 5 years in violation of the Individuals with Disabilities Education Act. This change will bring Florida into compliance with the requirement of

providing speech and language pathology services and prevent the potential for lawsuits against Florida related to its noncompliance.

Indoor Environmental Quality

Should a school district choose to meet the ASHRAE standard and certification criteria established in section 1013.381(1)(b), they may incur additional costs. These costs could be offset by the resulting indemnity from liability related to indoor air quality.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a city or county to expend funds or to take any action requiring the expenditure of funds.

The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

This bill does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

The Reading Compact Scholarship may raise constitutional issues relating to Section 3, Art. I of the State Constitution which specifies that “[n]o revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution.” The bill allows for sectarian, nonsectarian, parochial, religious, and denominational private schools to be eligible to participate in the state school choice scholarship programs.

In *Bush v. Holmes*,⁵⁹ an *en banc* panel of the First District Court of Appeal held that the Florida Opportunity Scholarship Program violated the no-aid provision of the State Constitution because the program uses state revenues to support sectarian schools. In its November 12, 2004, opinion, the district court certified this question to the Florida Supreme Court as a question of great public importance.

Also at issue in *Holmes* was whether the “no-aid” provision of the State Constitution violates the Free Exercise Clause⁶⁰ of the First Amendment to the federal constitution. The district court of appeal concluded that the no-aid provision does not offend the Free Exercise Clause. The matter is pending before the Florida Supreme Court and could ultimately be reviewed by the United States Supreme Court to interpret the Free Exercise Clause’s impact on Florida’s no-aid provision.

The provisions relating to teacher assignment and the differentiated-pay policy may raise some constitutional issues related to collective bargaining. The Florida Constitution guarantees the right of employees to bargain collectively through a labor organization. Art. 1, s. 6, Fla. Const. Chapter 447, Part II, Florida Statutes, governs the collective bargaining process for public employees in Florida. Specifically, s. 447.301(2), F.S., provides that public employees shall have the right to be represented by any employee organization of their own choosing and to negotiate collectively, through a certified bargaining agent, with their public employer in the determination of the terms and conditions of their employment. Public employees shall have the right to be represented in the

⁵⁹ Case Nos. 1D02-3160, 1D02-3163 and 1D02-3199 (Fla. 1st DCA Nov. 12, 2004).

⁶⁰ “Congress shall make no law respecting an establishment of religion, *or prohibiting the free exercise thereof*.” (Emphasis added.)

determination of grievances on all terms and conditions of their employment. Public employees shall have the right to refrain from exercising the right to be represented.

The Florida Supreme Court has held that the Legislature may not interfere with a collectively-bargained contract once that contract has been funded, on the grounds that such interference violates the constitutionally guaranteed right to collective bargaining and the right to contract. *Chiles v. United Faculty of Florida*, 615 So. 2d 671 (Fla 1993). However, the Legislature has no legal obligation to fund a collectively-bargained contract between public employers and public employees. *State of Florida v. Florida Police Benevolent Association, Inc.*, 613 So. 2d 415 (Fla. 1992).

However, s. 447.309(3), F.S., renders ineffective any provision of a collective bargaining agreement that conflicts with any law, ordinance, rule, or regulation over which the chief executive officer of the public employer has no amendatory power unless the Legislature amends the provision of law, etc., which is in conflict. Therefore, no collective bargaining agreement may contain terms in conflict with the bill (once enacted). It is not clear whether this will affect existing collective bargaining agreements or will be limited to those entered into in the future.

B. RULE-MAKING AUTHORITY:

The bill requires the SBE to adopt rules pursuant to ss. 120.536(1) and 120.54 relating to:

- s. 1002.385, F.S., Reading Compact Scholarship Program.
- s. 1002.421, F.S., Rights and obligations of private schools participating in state school choice scholarship programs.
- s. 1003.4156, F.S., Middle school promotion.
- s. 1003.57, F.S., Exceptional education student residency.
- s. 1008.31, F.S., Education performance accountability.
- s. 1008.341, F.S., Alternative school improvement ratings.
- s. 1012.986, F.S., A+ Professional Development Program for School Leaders.
- s. 1013.381, F.S., Indoor environmental quality.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES