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CHAMBER ACTION

1 The PreK-12 Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to supplemental educational services;
7 providing for student access to and provider
8 accountability for supplemental educational services in
9 Title I schools; providing definitions; providing
10 responsibilities of the Department of Education, local
11 educational agencies, providers of supplemental
12 educational services, and parents to provide additional
13 academic instruction designed to increase the academic
14 achievement of eligible students; providing criteria that
15 must be met by a provider approved by the department;
16 providing for department monitoring and evaluation of
17 provider performance; providing a complaint process for
18 determination of provider and local educational agency
19 compliance with law; providing an effective date.

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

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23 Section 1. Supplemental educational services in Title I
24 schools; student access and provider accountability.--

25 (1) DEFINITIONS.--As used in this section:

26 (a) "Adequate yearly progress" or "AYP" means performance
27 based on a series of performance goals that each school, each
28 local educational agency, and the state must achieve within
29 specified timeframes in order to meet the 100-percent
30 proficiency goal established by the federal No Child Left Behind
31 Act of 2001.

32 (b) "Eligible student" means a student from a low-income
33 family who attends a Title I school in the school's second year
34 of school improvement, corrective action, or restructuring, as
35 defined by the No Child Left Behind Act of 2001.

36 (c) "Instructor" or "tutor" means a person employed by a
37 supplemental educational service provider to deliver instruction
38 in reading, language arts, or mathematics to eligible students
39 enrolled in the provider's program.

40 (d) "Local educational agency" or "LEA" means a local
41 board of education.

42 (e) "No Child Left Behind Act of 2001" or "NCLB" is a
43 reauthorization of the Elementary and Secondary Education Act of
44 1965, which is the principal federal law affecting education
45 from kindergarten through high school. The NCLB is designed to
46 improve student achievement and close achievement gaps. States
47 are required to develop challenging academic standards, educate
48 all students to 100-percent proficiency by 2014, and create and
49 implement a single, statewide accountability system.

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50 (f) "Parent" means the person or persons legally
51 responsible for the guardianship of the student, including a
52 legal guardian.

53 (g) "Supplemental educational service providers" or "SES
54 providers" are faith-based organizations, for-profit and
55 nonprofit businesses, local educational agencies, schools,
56 institutes of higher education, community groups, and regional
57 educational service agencies approved by the Department of
58 Education to provide additional academic instruction designed to
59 increase the academic achievement of eligible Title I students.

60 (h) "Supplemental educational services" or "SES" means
61 additional academic instruction provided outside the regular
62 school day that is designed to increase the academic achievement
63 of low-income students, as defined by eligibility for free or
64 reduced-price meals, who attend qualifying schools as defined by
65 the No Child Left Behind Act of 2001.

66 (i) "Title I" is the Elementary and Secondary Education
67 Act of 1965 program that focuses on improving the academic
68 achievement of disadvantaged students by ensuring that all
69 students have a fair, equal, and significant opportunity to
70 obtain a high-quality education and reach, at a minimum,
71 proficiency on challenging state academic standards and
72 assessments.

73 (2) REQUIREMENTS.--

74 (a) State responsibilities.--The Department of Education
75 shall:

76 1. Consult with parents, teachers, school districts, and
77 interested members of the public to identify a large number of

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78 | SES providers so that parents have a wide variety of high-
79 | quality choices.

80 | 2. Provide and disseminate broadly an annual notice to
81 | potential providers outlining the process for obtaining approval
82 | to be an SES provider. There shall be at least two opportunities
83 | each year for potential providers to submit their applications
84 | to the department.

85 | 3. Develop and apply objective criteria for approving
86 | potential providers. Each provider's SES program shall:

87 | a. Include an appropriate, diagnostic assessment for use
88 | in identifying a student's weaknesses and achievement gaps upon
89 | which to build an individual student learning plan and learning
90 | goals.

91 | b. Use targeted remediation or instruction that is aimed
92 | at addressing a student's skill gaps revealed during the
93 | assessment and that is based upon an individual student learning
94 | plan.

95 | c. Include a post assessment linked to the diagnostic
96 | assessment to determine whether student learning gains occurred
97 | and to further develop a plan for either reteaching skills or
98 | identifying new skills for instruction.

99 | d. Align with the Sunshine State Standards in the area of
100 | reading or mathematics, or both.

101 | e. Supplement the academic program a student experiences
102 | in the regular school day.

103 | f. Use high-quality, research-based instructional
104 | practices that are specifically designed to increase students'
105 | academic achievement.

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106 4. Maintain an updated list of approved providers.

107 5. Exercise authority to investigate and remove providers
108 from the approved list based on evaluation results.

109 6. Make available to school districts a list of available
110 approved providers in their general geographic locations.

111 7. Develop, implement, and publicly report on monitoring
112 standards for providers to ensure the quality and effectiveness
113 of services offered by approved providers.

114 8. Ensure that an LEA has fully met parental demands for
115 SES. In determining whether an LEA has fully met parental
116 demands for SES, the department shall consider whether an LEA
117 has:

118 a. Appropriately notified all eligible parents of the
119 availability of SES.

120 b. Adequately publicized options to parents through
121 multiple forums in understandable formats and languages.

122 c. Offered parents a reasonable period of time to
123 investigate their options and submit their requests for SES.

124 9. No later than May 1 each year, notify LEAs of the
125 specific schools that are in the second year of school
126 improvement, corrective action, or restructuring and have not
127 achieved AYP since such identification.

128 10. Place on its Internet website a standard, downloadable
129 enrollment application to be used by parents of eligible
130 students, which must be used by all LEAs for SES enrollment
131 purposes.

132 11. Convene an advisory committee to assist it in
133 developing regulations to guide the selection and oversight of

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134 SES providers. These regulations shall be designed in order to
135 ensure that qualified providers utilize sound practices, provide
136 financial accountability, and utilize recommended or sufficient
137 metrics to best gauge provider effectiveness, such as
138 effectiveness in raising student achievement. The committee
139 shall include:

140 a. Two members appointed by the Speaker of the House of
141 Representatives.

142 b. Two members appointed by the President of the Senate.

143 c. Two district school board members appointed by the
144 Governor.

145 d. Parents appointed by the Governor.

146 e. Seven providers representing the different types of
147 providers in the SES field, such as on-line providers and small
148 and large for-profit, nonprofit, community-based, district-
149 based, and faith-based providers, appointed by the Governor.

150
151 The Commissioner of Education or his or her designee shall chair
152 the committee and submit for approval a proposal to the
153 Legislature no later than the end of the 2007 legislative
154 session.

155 (b) LEA responsibilities.--An LEA shall:

156 1. No later than 90 days prior to the start of the school
157 year, notify parents of eligible students about the availability
158 of SES. Notification shall meet the following criteria:

159 a. Be sent at least twice annually.

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160 b. Be provided in an understandable and uniform format
161 and, to the extent practicable, in a language the parents can
162 understand.

163 c. Describe how parents may obtain services.

164 d. Provide a minimum of 20 school days for parents to
165 select and notify the LEA regarding a selected provider.

166 e. Create a streamlined, one-step SES parent registration
167 and provider selection process that is user friendly.

168 2. Help parents choose a provider, if such assistance is
169 requested, making sure that such assistance is unbiased and does
170 not provide advantage for one provider over another, including
171 the LEA if such LEA is an approved provider, and obtain
172 permission from parents to release assessment data to a selected
173 provider.

174 3. Determine and prioritize students who shall receive
175 services if not all students can be served. Determination shall
176 be made in accordance with eligibility criteria established in
177 federal law and with guidance from the United States Department
178 of Education, ensuring that prioritization does not take place
179 in advance of actual demand being documented and shall be based
180 on the 20-percent set-aside minus any actual costs associated
181 with providing transportation for public school choice pursuant
182 to subparagraph 18.

183 4. Determine the per-student spending limit according to
184 federal law only, which amount shall not be reduced or otherwise
185 altered.

186 5. Ensure that the opportunity to acquire SES is offered
187 to eligible students on a continuous basis or, at a minimum,

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188 twice every school year, such as once at or near the start of
189 the school year and once at or near the start of each new
190 calendar year. An LEA that does not offer at least two
191 opportunities for SES enrollment shall not amend unobligated SES
192 into the general Title I budget.

193 6. Enter into an agreement with a provider selected by the
194 parent of an eligible student no later than 45 days after the
195 beginning of the school year or within 45 days after receiving
196 notification of school improvement status. The same procedure
197 shall be followed for subsequent enrollments during the school
198 year. An LEA that does not begin to offer SES within such time
199 periods shall not amend unobligated SES funds into the general
200 Title I budget. The agreement shall include, at a minimum:

201 a. A statement of specific achievement goals for each
202 eligible student whose parent elects to receive SES from the
203 approved provider.

204 b. A description of how student progress will be measured.

205 c. Progress reports for each student to whom a provider
206 gives services under the agreement.

207 d. Procedures for obtaining parental consent to release
208 assessment data to a selected provider.

209 e. Procedures for termination of the agreement with the
210 provider based on specific and material cause and include an
211 opportunity for the provider to cure any such breach.
212 Termination for convenience clauses shall not be allowed.

213 f. The payment process for students receiving SES, with
214 reimbursement for services to occur within 60 days following
215 submission of a complete invoice.

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- 216 g. Records of attendance for each student receiving SES.
- 217 h. Security of information relating to students receiving
- 218 SES.
- 219 i. The procedure for facility access for providers, using
- 220 a fair, transparent, and objective process, to operate on site
- 221 in a school or schools identified for school improvement,
- 222 corrective action, or restructuring, free of charge or for a
- 223 reasonable fee, on the same basis and terms as are available to
- 224 other groups that seek access to the school building.
- 225 j. The process for records maintenance of a provider's SES
- 226 to students.
- 227 k. Guidelines specifying secular, neutral, and
- 228 nonideological instruction and content.
- 229 1. An outline of applicable federal, state, and local
- 230 laws, and rules and regulations required by law, in connection
- 231 with providing tutorial service.
- 232 7. Establish monitoring procedures to ensure that
- 233 providers fulfill their contractual obligations. Monitoring
- 234 should include tracking student progress toward meeting the
- 235 state's academic standards.
- 236 8. Select an approved provider or providers, using a fair,
- 237 transparent, and objective process, to operate on site in a
- 238 school or schools identified for school improvement, corrective
- 239 action, or restructuring, free of charge or for a reasonable
- 240 fee, on the same basis and terms as are available to other
- 241 groups that seek access to the school building. The LEA shall
- 242 not select a provider or providers based on a reduced per-
- 243 student amount as calculated under federal law or other criteria

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244 that would otherwise be a department responsibility or
245 programmatic design criteria, such as the requirement of
246 specific student-tutor ratios.

247 9. Enter into a compact with the provider, parent, and
248 student. The compact, which shall be maintained for monitoring
249 purposes, shall include, at a minimum:

250 a. A notification letter to the parent of a student who is
251 eligible to receive SES from an approved provider.

252 b. Procedures regarding how the SES provider may contact
253 schools and parents regarding available services.

254 c. Development of a collaborative relationship with the
255 LEA to ensure that issues and concerns are handled in a timely
256 and efficient manner.

257 d. Specific achievement goals for the student, which shall
258 be developed in consultation with the student's parent.

259 e. An established timetable for improving the student's
260 achievement.

261 f. Selection of a provider from the department's approved
262 provider list.

263 g. Scheduled tutoring sessions.

264 10. Assist the department as needed in identifying
265 potential providers within the school district.

266 11. Provide the information the department needs to
267 monitor the quality and effectiveness of the SES offered by
268 providers as specified in federal law.

269 12. Protect the privacy of students who receive SES. The
270 LEA shall provide achievement data of students to providers
271 serving those students.

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272 13. Notify parents immediately if a provider becomes
273 ineligible to serve as an SES provider. Notification shall
274 include the steps parents must follow in order to secure another
275 provider.

276 14. Provide approved providers with registration forms and
277 logistical information, including the procedures parents must
278 follow in obtaining SES for their children.

279 15. While appealing an AYP decision, continue to provide
280 services while the appeal is being resolved and a final AYP
281 determination is being made. If an appeal is granted, the LEA
282 shall continue to serve students currently receiving SES until
283 the end of the contract period but is not obligated to provide
284 SES to additional students.

285 16. Include in a school improvement plan steps to ensure
286 that eligible students will receive SES as required by law
287 whenever a school is classified as needing improvement for a
288 second or subsequent year.

289 17. Ensure that eligible students from any school that is
290 in the second year of school improvement, corrective action, or
291 restructuring and has not achieved AYP at least once since such
292 identification shall be offered SES before the start of the
293 school year.

294 18. Set aside up to 20 percent of its Title I, Part A
295 allocation for SES. Before determining that an amount less than
296 20 percent of its allocation is needed for choice-related
297 transportation and SES, an LEA shall document to the department
298 that it has fully met demands for these services. An LEA must
299 document, and make publicly available, that it has:

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300 a. Appropriately notified all parents of eligible students
301 of the availability of public school choice and SES.

302 b. Adequately publicized the options to parents in
303 understandable formats and multiple forums.

304 c. Offered parents a reasonable period of time to
305 investigate their options and submit their requests for either
306 public school choice or SES.

307
308 LEAs may redesignate unused SES funds for other Title I purposes
309 by the May 15 consolidated application budget amendment deadline
310 by ensuring that a minimum of 50 percent of the students
311 eligible to receive SES are served by an approved provider. LEAs
312 not meeting the 50-percent requirement shall submit to the
313 department a list of eligible students, students receiving
314 services, and otherwise eligible students on a wait list. LEAs
315 must obtain documentation from the parents of unserved, but
316 otherwise eligible, students that they decline to participate in
317 SES for that school year. LEAs that are unable to meet the 50-
318 percent requirement despite reasonable efforts to comply with
319 these provisions may submit a request to the department for
320 authorization to redesignate unused SES funds. Redesignation
321 requests shall be approved if the department finds that the LEA
322 has met the requirements of subparagraph (a) 8.

323 (c) Provider responsibilities.--The provider shall:

324 1. Agree to negotiate directly with LEAs to determine
325 scheduled sessions per student. Cost of services shall not
326 exceed the per-student spending limit calculated by each LEA.

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327 2. Set specific achievement goals for each student, which
328 shall be developed in consultation with each student's parent.

329 3. Provide a description of how each student's progress
330 will be measured and how each student's parent and instructors
331 will be regularly informed of that progress.

332 4. Establish a timetable for improving each student's
333 achievement.

334 5. Agree not to disclose to the public the identity of any
335 student eligible for or receiving SES without the written
336 permission of the student's parent.

337 6. Agree to meet all applicable federal, state, and local
338 health, safety, and civil rights laws.

339 7. Ensure that all instruction and content are secular,
340 neutral, and nonideological.

341 8. Ensure that instruction is consistent with student
342 achievement goals.

343 9. Agree to abide by the education industry association's
344 current version of the SES code of ethics.

345 (d) Parent responsibilities.--The parent shall:

346 1. Request SES for the student.

347 2. Select a provider from the department's approved
348 provider list.

349 3. Transport students to and from the place of service
350 when not provided by the provider.

351 4. Work with the provider to set achievement goals for the
352 student.

353 5. Maintain open communication with a provider about a
354 student's progress.

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- 355 (e) Provider criteria.--
- 356 1. Providers shall meet the following criteria:
- 357 a. Have a demonstrated record of effectiveness in
358 improving student academic achievement.
- 359 b. Document that the instructional strategies used by the
360 provider are of high quality, based upon research, and designed
361 to increase student academic achievement.
- 362 c. Document that services are aligned with the Sunshine
363 State Standards in the area of reading or mathematics, or both.
- 364 d. Provide evidence that the provider is financially
365 sound.
- 366 e. Document that the provider will provide SES consistent
367 with all applicable federal, state, and local health, safety,
368 and civil rights laws.
- 369 f. Meet all requirements set forth in guidelines issued by
370 the department, including, but not limited to, reporting
371 requirements, application requirements, deadlines, timelines,
372 and standards.
- 373 g. Provide instruction that is secular, neutral, and
374 nonideological.
- 375 2. Providers applying for statewide provider status upon
376 request shall serve students in any LEA regardless of the
377 geographical location. Providers approved for statewide provider
378 status may be removed from the provider list if this requirement
379 is not met. Providers removed from the statewide list may
380 reapply and specify a geographical area for their service.
- 381 (f) Monitoring and evaluation.--

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382 1. The department shall monitor, at least annually, all
383 providers currently serving students. Monitoring shall be
384 conducted at a representative sample of the locations at which
385 the provider serves participating students.

386 a. The department shall schedule with the provider a
387 mutually agreeable date and time for a monitoring visit. Prior
388 to a monitoring visit, the department shall send to the
389 provider, in writing, confirmation of the scheduled date and
390 time.

391 b. Prior to a monitoring visit, the department shall
392 notify the provider of all documentation necessary to
393 demonstrate compliance with all applicable state and federal
394 laws related to SES. The provider may request technical
395 assistance from the department in identifying the relevant
396 documents.

397 c. A provider's performance on each monitoring standard
398 and a provider's overall performance rating shall be indicated
399 on the SES provider monitoring form. The department shall send
400 to the provider, in a timely manner, a copy of the completed
401 monitoring form that includes notes regarding items of
402 documentation that are missing or incomplete.

403 2. The department shall develop specific procedures to
404 annually evaluate all providers that have served students for 2
405 or more consecutive years in reading, language arts, or
406 mathematics. These procedures shall:

407 a. Account for, and be fair to, providers that serve both
408 large and small populations of students and that use varying
409 methods of instruction.

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410 b. Be fair and sensitive enough to record gains of
411 individual students, especially students whose achievement level
412 is several grades behind grade level.

413 c. Isolate the effects of SES from other variables that
414 might affect a student's achievement using regression analysis,
415 comparison groups, or other valid and reliable statistical
416 means.

417 d. Collect qualitative data on parental satisfaction with
418 provider services.

419 e. Include safeguards against potential conflicts of
420 interests when the LEA is also an approved provider and is
421 involved in provider monitoring and evaluation.

422 3. If the department determines that a provider has failed
423 to contribute to increasing the academic proficiency of students
424 for 2 or more consecutive years in reading, language arts, or
425 mathematics in a specific LEA, the department shall remove the
426 provider from the approved provider list for that LEA.

427 4. The provider shall have the opportunity to appeal the
428 department's decision to the State Board of Education. The
429 provider may reapply to the department for approval after a 1-
430 year waiting period.

431 5. The department shall require an LEA to submit:

432 a. The parental notification letters the LEA has developed
433 and utilized to inform parents of eligible students.

434 b. At least twice during the school year, updated
435 information on how many students in the LEA are eligible for SES
436 and how many students make use of SES.

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437 c. How much money, in total dollars and per student, is
438 being spent by the LEA on SES.

439 (g) Complaint process.--

440 1. The department shall monitor complaints from parents,
441 students, SES providers, school districts, and other individuals
442 to determine whether LEAs and SES providers are in compliance
443 with the applicable state and federal laws, rules, regulations,
444 and guidance governing the provision of SES. The department
445 shall annually provide a summary report to the State Board of
446 Education.

447 2. An organization or individual may file with the
448 department a signed, written complaint setting forth allegations
449 of noncompliance. The written complaint shall include, at a
450 minimum:

451 a. A clear statement of the allegation.

452 b. A summary of the facts upon which the allegation is
453 based.

454 c. Any documentation supporting the allegation.

455 d. The complainant's contact information, including the
456 name of an individual complainant or an authorized
457 representative of the complainant organization and the address
458 and telephone number of the individual or representative.

459 3. Complaints received from an organization or individual
460 shall be signed and addressed in writing to the department.

461 4. The department shall acknowledge, in writing, its
462 receipt of a complaint within 15 business days.

463 5. The department shall, in a timely manner, commence an
464 investigation of the allegations set forth in the complaint and

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465 make an independent determination as to whether the allegations
466 warrant further review or action.

467 6. If necessary, the department may conduct an onsite
468 visit to clarify any issues raised by the complaint. An onsite
469 investigation team may examine relevant records and conduct
470 interviews of relevant persons to determine whether there has
471 been a violation of any applicable state or federal law, rule,
472 regulation, or guideline.

473 7. The department shall send written notification to all
474 appropriate parties of the steps necessary to resolve the
475 complaint, including technical assistance activities,
476 negotiations, and corrective actions to achieve compliance. This
477 notification may include specific requirements and timelines
478 that must be met in order to ensure that providers other than
479 LEAs continue to receive SES funds from the LEA. LEAs that are
480 providers shall meet the requirements in order to ensure that
481 funds equal to the amount of their SES set-aside are available
482 in the department's grants accounting system.

483 8. Upon conclusion of the department's investigation, the
484 department shall take appropriate action to remedy violations of
485 applicable laws, rules, regulations, or guidelines, including
486 removal of a provider from the approved provider list.

487 9. If the department makes the decision to remove a
488 provider from the approved provider list, the LEA shall be
489 notified no later than 10 business days after the department's
490 action. Each provider notified of the decision shall have the
491 right to appeal such decision prior to its becoming final.

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492 10. If an LEA does not comply with providing SES to
493 eligible students within the established timeframe, the
494 department shall withhold funds equal to the amount of the LEA's
495 SES set-aside funds until the LEA complies.

496 11. If funds are withheld from an LEA for not providing
497 SES to eligible students within the specified timeframe, the
498 department may enter into agreements with providers in lieu of
499 the LEA.

500 Section 2. This act shall take effect July 1, 2006.