

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1427 Education
SPONSOR(S): Bendross-Mindingall and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) PreK-12 Committee		Hassell	Mizereck
2) Education Appropriations Committee			
3) Education Council			
4) _____			
5) _____			

SUMMARY ANALYSIS

The bill makes controlled open enrollment mandatory for every school district in the state, and creates a new public school choice option of academy programs. The bill requires school districts to transport students to academies and schools outside their district and to students in controlled open enrollment programs. Mandating school districts to provide transportation will cause school district expenditures for transportation to increase significantly.

This bill removes the Opportunity Scholarship Program’s public school choice option for a student attending failing school, thus eliminating 1688 students from participating in this public school choice option.

The bill creates “academy programs” which are multiple programs within one school facility that allow students to concentrate on unique and specialized tracks of study of their choosing. The bill does not identify examples of “unique and specialized tracks” of studies nor does it differentiate these programs from existing programs such as magnet schools, charter schools, charter technical career centers and other public school choice options.

The bill requires the DOE to develop and implement an FCAT pretest. If all students (approx. 1.8 million) were required to take a pre-test, the cost would be over \$30 million annually. See FISCAL COMMENT under STATE EXPENDITURES.

The bill removes the current school grading system and replaces it with two undefined categories of “Inadequate” and “Adequate.” Under this system, parents will only know whether the school is passing or failing, not how well their child’s school is doing. Schools could potentially escape the “inadequate” designation even though they have failed to improve the student learning gains of their students attending their school. These schools would not be held accountable for their failure to educate their students.

The bill removes the School Recognition Program and replaces it with the Every Child Matters Program. The Every Child Matters program is created to provide a curriculum-based year-round measurement for all public school kindergarten students and for remediation and intervention services for K-12 students not meeting performance expectations. However, since 2003, all public school kindergarten students have been required to participate in the statewide kindergarten screening tests administered by each school district within the first 30 school days of each school year.

The bill may involve some constitutional issues. See CONSTITUTIONAL ISSUES section of this analysis.

The bill provides for an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government- The bill eliminates each public school district's authority to choose to offer a controlled open enrollment program. The bill increases the district's responsibility to provide transportation to students in controlled open enrollment programs and to students attending academies or schools within or outside the district's school zone.

Promote Personal Responsibility- The bill eliminates the Opportunity Scholarship Program's public school choice option for a student attending failing school, which eliminates 1688 students from participating in this public school choice option.

B. EFFECT OF PROPOSED CHANGES:

PUBLIC SCHOOL CHOICE

Background

Florida law provides that parents of public school students may seek whatever public school choice options applicable to their students and available to students in their school districts.

Controlled open enrollment is a public education delivery system that allows school districts to make student school assignments using parents' indicated preferential public school choice as a significant factor. School districts are not required to offer the controlled open enrollment program but may offer it in addition to any existing choice programs. Each school board is required to develop a plan describing the controlled open enrollment program within their public school system based on a system of priorities that includes the consideration of several factors, including but not limited to, application process, lottery procedure, availability of transportation, and procedures to maintain socioeconomic, demographic, and racial balance.¹

According to the 2004-2005 Survey 3, 45 school districts reported through the state automated student information system implementation of a controlled open enrollment plan for one or more students: Alachua, Baker, Bay, Brevard, Charlotte, Citrus, Collier, Miami-Dade, Desoto, Escambia, Franklin, Hamilton, Hardee, Hendry, Hillsborough, Holmes, Indian River, Jackson, Lake, Lee, Leon, Madison, Manatee, Marion, Martin, Monroe, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Putnam, St. Johns, St. Lucie, Santa Rosa, Sarasota, Seminole, Suwannee, Taylor, Volusia, Wakulla, Walton, and Washington.

Each school district is required to provide transportation for students who meet one of the criteria established by statute and rule.² Florida's school districts operate approximately 15,200 school buses on a typical school day, transporting over 1,054,000 students to and from school and between schools. The 2004-05 Legislature appropriated \$440,240,965 million to school districts in order to fund transportation services. Each school district receives a portion of these funds for the transportation of eligible students. Each school district's allocation is calculated based on the membership of students to

¹ s. 1002.31, F.S.

² s. 1006.21, F.S., and Rule 6A-3.001 F.A.C provides transportation for the following: a student lives two miles or more from school; a student has a disability, regardless of distance from school; a student is pregnant or a student parent, including the child of a student parent, and is enrolled in a teenage parent program; a student is enrolled in a state pre-kindergarten disability program, regardless of distance from school; a student is transported from one school to another to participate in an instructional program or service for vocational students, dual enrollment students, or students with disabilities; a student is in elementary school not to exceed grade six and the student is subjected to hazardous walking conditions according to s. 1006.23, F.S.

be transported according to s. 1011.68, F.S.,³ multiplied by the transportation allocation per student. The actual expenditures by school districts for transportation in Fiscal Year 2004-05 were \$806,216,744.76. School districts were required to reprioritize their school budgets to pay for transportation costs that exceeded the appropriated amount.

Effects of Proposed Changes

The bill makes controlled open enrollment mandatory for every school district in the state. It also provides that parents of public school students may seek any public school choice options available in their school districts, and creates a new public school choice option of academy programs. Furthermore, school districts are no longer allowed to consider the availability of transportation in their controlled open enrollment programs. With the implementation of these two school choice options, school districts could potentially be responsible for transporting students all over the district since the school district is no longer allowed to use the availability of transportation as a factor in providing school choice options. Thus, mandating school districts to provide transportation for controlled open enrollment programs, to students in academy programs, and to schools and academies outside the district school zone could potentially cause school districts to spend exponentially more for transportation than they are currently spending. Further, transportation expenses will most likely increase due to the increasing cost of fuel.

The Opportunity Scholarship Program's (OSP) public school choice option for a student attending failing school is removed by this bill. In the October 2005 survey, 1688 students were reported by school districts as participating in the OSP public school choice option. By eliminating this program, the bill effectively eliminates 1688 students from participating in this public school choice option that was not deemed unconstitutional by the Florida Supreme Court in *Bush v. Holmes*.

Academy programs, as defined in this bill, are multiple programs within one school facility that allow students to concentrate on unique and specialized tracks of study of their choosing. The bill does not identify examples of "unique and specialized tracks" of studies nor does it differentiate these programs from existing programs such as magnet schools, charter schools, charter technical career centers and other public school choice options.

The Department of Education (DOE) is required to develop a plan for school districts to establish academy programs in every public school, elementary, middle, and high school, where feasible, by January 2007. The bill does not define feasible. Also, it does not specify the number of programs that each school must offer or the number of students that can be assigned to each academy. The bill requires the DOE plan to be based on three factors: the requirement that students take core-curricula classes; the requirement of a waiver provision to exempt individual schools from the academy requirement; and the requirement that parents be able to move their child if they are unhappy with the program.

The bill grants parents the authority to transfer their child to another academy program or public school program within their school district if they are unhappy with the program or academy. Under this provision, school districts are also required to provide the transportation of such students to attend a school or an academy outside of their school zone, and will be reimbursed, if funding permits, from the Every Child Matters Program funds.

ACCOUNTABILITY

Background

In 1999, the Legislature enacted the A+ Education Plan for Education based on high performance standards and expectations for student performance, clear measurement and accountability, and state

³ s. 1011.68, F.S., Funds for student transportation.

support and assistance, and rewards and consequences for results.⁴ The basic provisions of the A+ Education Plan included annual student testing in grade 3 through 10, annual school report cards based upon student performance and progress, school recognition in the form of rewards for schools that improved student learning and maintained high performance and assistance for struggling schools, and school choice for parents of students in failing schools.

Over the years, the Legislature and the State Board of Education have continued to revise accountability measures in the following ways:

- Providing remediation and eliminating social promotion in 3rd grade for students who did not have the reading skills to succeed in the 4th grade.
- Increasing the requirements for high school graduation from an 8th grade level exit exam to a 10th grade level exam.
- Revising the ways that schools are graded by increasing writing standards and including students with disabilities and limited English proficient student's scores.
- Making reading instruction a primary focus in elementary years, providing reading coaches, and utilizing the latest in research-based reading.

Florida Comprehensive Accountability Test (FCAT)

The FCAT was developed in the mid-1990's. Writing was first administered in 1995, math and reading were first tested in 1997 and the test was first used for accountability in 1998. The FCAT was developed by teachers based upon Sunshine State Standards (SSS). The SSS were developed by educators from throughout the state and approved by the State Board of Education (SBE) in 1996 to provide expectations for student achievement in Florida. The SSS were written in seven subject areas, each divided into four separate grade clusters (preK-2, 3-5, 6-8, and 9-12) so that school districts had the flexibility in the design of their curriculum.

Florida currently requires public school students in grades 3 through 10 to take the reading and math portions of the FCAT each year. Students in grades 4, 8, and 10 must also take the writing portions of the FCAT, and students in grades 5, 8, and 10 must take the science portion of the FCAT. For students who do not attain minimum performance expectations on the 10th grade FCAT, the FCAT must be administered for up to three times each year.

In 1998-99, 51% of all 4th grade students, 23% of African American 4th grade students, and 38% of Hispanic 4th grade students were reading on grade level. In 2004-05, 71% of all 4th grade students, 56% of African American 4th grade students, and 66% of Hispanic 4th grade students were reading on grade level.

Florida leads the nation in 4th grade reading improvement and is competitive in its writing ranking. According to the National Assessment of Educational Progress⁵, in 1998-99, the 4th grade reading median score was 206. The median score in 4th grade reading for African American students and Hispanic students was 196 and 198, respectively. In 2004-05, the 4th grade reading median score was 218. The median score for African American 4th grade students on reading was 198 and the median score for Hispanic 4th grade students was 21. In 2003, Florida ranked 8th in the nation on 4th grade writing.

Student Progression and Remediation

Current law requires school districts to report to DOE 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

⁴ ch. 99-398, L.O.F.

⁵ NAEP, a nationally renowned source, that provides state-level comparisons in the subject areas of reading, writing, mathematics and science, at grades 4 and 8. The assessments are given periodically, in a sample of schools, so the subject areas on which data are available vary from year to year. For more information -- <http://nces.ed.gov/nationsreportcard/about/>

of all students retained in grade 3 through 10, by grade, and the total number of students who were promoted for good cause, by each category of good cause.⁶

The percentage of 4th grade students scoring at achievement level 1 in reading has declined since 1999. In 1999, 60% African American students, 45% Hispanic students, and 23% white students were scoring level 1 in reading. In 2005, 25% African American students, 19% Hispanic students, and 9% white students were scoring level 1 in reading.

A total of 155,000 more students are reading on grade level in 2005 than in 2001. More specifically, 36,000 more African American, 64,000 more Hispanic students are, and 27,000 more Students with Disabilities are reading on grade level.

School Grading

Schools are graded annually and are identified as being one of the following:

- “A” making excellent progress,
- “B” making above average progress,
- “C” making satisfactory progress,
- “D” making less that satisfactory progress,
- “F” failing to make adequate progress.

School performance grade categories are based on a combination of student achievement scores, student learning gains as measured by FCAT assessments in grades 3 through 10, and the improvement of the lowest 25th percentile of students in reading, math, or writing, unless those students were performing above satisfactory. School performance grades of every school in the state of Florida are available online for public review and accountability.

In 1998-99, there were 202 “A” schools, 313 “B” schools, 1230 “C” schools, 601 “D” schools, and 76 “F” schools. In 2001, school grading was revised and the measurement of school grades was made more difficult by increasing writing standards and including students with disabilities and limited English proficient student’s scores. In 2004-05, there were 1255 “A” schools, 588 “B” schools, 619 “C” schools, 230 “D” schools, and 78 “F” schools.

High School Graduation Requirements

Florida has had graduation test requirements for over 25 years. Prior to the A+ Education Plan, the High School Competency Test (HSCT) was the test measurement used as the high school exit exam. The HSCT was an 8th grade level test and 10% of high school students did not receive a diploma solely because they could not pass the test. However, in 2002, the FCAT, a 10th grade level test, replaced the HSCT. In 2005, 7% of high school students did not receive a diploma because of nonpassage of the test.

Students may not graduate from high school with a standard diploma if they do not meet the required credits and grade point average(GPA) requirements, complete all district requirements, and pass the 10th grade FCAT in reading, writing, and mathematics, unless they are exempt or subject to a waiver of the assessment requirement. SBE rule designates the passing score for each part of the FCAT.

The graduation rates from 1998 to 2003-2004 have increased by 11.4% for all students, 8.6% for African Americans students, and 11.2% for Hispanic students. In 1998, the graduation rate for all

⁶ s. 1008.25(6)(b), F.S., provides for six good cause exemptions: 1) student with a disability that does not take the FCAT, 2) Limited English Proficient (LEP) student who has had less than 2 years of English for Speaker’s of Other Languages (ESOL) instruction, 3) student with a disability who takes the FCAT and has previously been retained, 4) any student with a reading deficiency who has previously been retained twice, 5) student demonstrates proficiency on an alternate assessment, or 6) student demonstrates proficiency through a student portfolio.

students was 60.2%. The graduation rates for African American students and Hispanic students were 48.7% and 52.8%, respectively. However, in 2004, the graduation rates of all students rose to 71.6%, and the graduation rates of African American and Hispanic students rose to 57.3% and 64%, respectively.

Florida School Recognition Program

The Florida School Recognition Program⁷ provides lottery-funded 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. In Fiscal Year 1998-1999, 319 schools shared \$27,603,881 million in School Recognition funds. In Fiscal Year 2004-05, 1425 schools shared \$117,190,888 million in School Recognition funds.

Funds may be used to reward faculty and staff, purchase educational equipment or materials, and hire temporary personnel. The school’s staff and advisory council jointly determine the specific use of the funds. If no agreement is reached by November 1, the award is equally distributed to all classroom teachers currently teaching in the school.⁸

Funding

Public school funding, not adjusted for inflation, for Fiscal Year 1998-99 was \$4,836.73 per student. In Fiscal Year 2004-05, public school per student funding, not adjusted for inflation, increased to \$5,757.77. The total funds increased approximately \$3.96 billion from 1998-99 to 2004-05. Additionally, Supplemental Academic Instruction funds are provided for remediation of low-performing students. In 2005-06, \$670,341,490 was appropriated in SAI funds. SAI funds are designated to be used “in the most effective and efficient way to best help that student progress from grade to grade and to graduate.”⁹

Effects of Proposed Changes

The bill requires that as part of the constitutional mandate to provide a “uniform, efficient, safe, secure, and high quality system of free public schools” the Commissioner of Education must adopt performance standards, set goals, and provide resources necessary to ensure that Florida ranks in the top half of the state-by-state education performance comparison compiled by the United States Department of Education.

Florida currently participates in the administration of the National Assessment of Education Progress (NAEP) test.¹⁰ Furthermore, current statutory law provides for a comprehensive student assessment program for public schools to improve public schools and to be accountable to public school parents. The student assessment program includes national education comparisons, a statewide assessment program, district testing programs, school testing programs, and required analyses by the Commissioner of Education.¹¹ The bill fails to identify the performance standards not already established in law, fails to articulate goals not already established in law, or identify resources different than those currently being utilized to carry out this mandate. This requirement could encourage the Commissioner of Education make student and school performance measures less stringent in order to meet such an obligation.

⁷ s. 1008.22, F.S.

⁸ Id.

⁹ s. 1011.62(1)(f), F.S.

¹⁰ s.1008.22(2), F.S.

¹¹ s. 1008.22, F.S.

The bill also requires the DOE to develop and implement an FCAT pretest to be administered during the first week of the new school year to assess the strengths and weaknesses of each student. SEE FISCAL COMMENT under STATE EXPENDITURES.

The bill revises the duties of the SBE so that they are required to intervene in the operation of a school district system when one or more of the schools in the school district have failed to make adequate progress for “2 school years in a 3 year period”, rather than the current law requirement of a 4 year period. The bill also redefines “2 years in any 3-year period” and “2 years in a 3 year period” to mean that in any year a school has a performance grade category of “Inadequate progress.” The bill removes the current school grading system of “A”, “B”, “C”, “D”, or “F” and replaces it with two undefined categories of “Inadequate” and “Adequate.” The bill requires the SBE to define these terms.

Even though the bill does not define “Inadequate progress” it states that school cannot receive a performance category of “Inadequate” if the school or academy has an overall increase in student achievement of 10% in each subject area over the previous year or if it falls below its previous year’s score but maintains “adequate” performance standards compared to other schools in the state. The failure of this bill to define certain terms leads to much uncertainty. For example, it is unclear as to whether a school needs to make a 10% improvement overall, or if it needs to be a 10% improvement in reading, math, writing, science, learning gains in reading, learning gains in math, and learning gains in the lowest 25th percentile. Whereas the DOE does collect and maintain data on reading, writing, mathematics, and science, the DOE does not maintain performance data on other subject areas such as history or music.

Although a system of labeling schools based on “adequate” or “inadequate” would be similar to the NCLB legislation, which states that a school is either making progress, or is not making progress, the current school grading system is understood. Parents understand what an “A”, “B”, “C”, “D” and “F” mean. Equally important is that this bill allows for no gradation between schools; either schools will be passing or will not be passing. Currently, the school grading system gives parents information on their child’s school. Under the “adequate” or “inadequate” system, parents will only know whether the school is passing or failing, not how well their child’s school is doing. Under this proposed legislation, schools could potentially escape the “inadequate” designation even though they have failed to improve the student learning gains of their students attending their school. These schools would not be held accountable for their failure to educate their students.

The bill revises the designation of school performance categories so that an academy program or a school performance category designation of inadequate or adequate is based fifty-percent on the students’ FCAT scores and fifty percent on other measures, where appropriate. The bill identifies the following measures: performance in non-FCAT courses; NAEP scores; dropout rates, retention; expulsions; attendance; delinquencies; school crime rate; effectiveness of Advanced Placement courses; Florida Bright Futures Scholarship Program awards; college acceptance rates; and rate of placement of vocational students in the workforce. However, the bill does not establish a method for a school district to use to measure this aggregate data.

Furthermore, the DOE cannot quantify graduation and retention rate data prior to the current year releases of school performance designations. NAEP data is not available at the student or school level because it is a random sample used as a state level measurement only. It is important to note that out-of-school suspensions, attendance (absent for more than 20 days), and drop out rates were all performance measures previously removed from the school grading system because the thresholds were so low that all schools met the criteria. Under this proposed legislation, it is possible that schools will be more likely to encourage less discipline and encourage more social promotion because their school performance designation depends on it.

The bill removes the School Recognition Program and replaces it with the Every Child Matters Program. By removing the school recognition fund program, school districts that make academic achievements and learning gains with their students will no longer get rewarded for their achievements.

The bill creates the Every Child Matters program, subject to Legislative appropriation, in order to provide a curriculum-based year-round measurement for all public school kindergarten students and for remediation and intervention services for K-12 students not meeting performance expectations. Under current law, all public school kindergarten students are required to participate in the statewide kindergarten screening tests.¹²

The bill directs the funds to be used for the administration of the Dynamic Indicators of Basic Literacy Skills (DIBELS) to all public school kindergartners, for nonrecurring expenditures for remediation of low-performing students, for educational equipment or materials to assist low-performing students, temporary personnel to assist the school with low-performing students, contracts with private sector participants for remediation services, and transportation of students to academy programs.

It is unclear as to how these funds, if appropriated, will be disbursed among school districts and whether or not the assistance will be disbursed equally among each of the required categories. Thus, students may not be able to receive the much needed assistance in reading because the school district has to share the funds programs for student transportation.

The bill also requires the DOE to provide training and informational resources for educators to administer the DIBELS. As previously stated, since 2003, all public school kindergarten students have been required to participate in the statewide kindergarten screening tests administered by each school district within the first 30 school days of each school year.¹³

C. SECTION DIRECTORY:

Section 1. Amends s. 1002.20, F.S., adding academy programs to public school choice options.

Section 2. Amends s. 1002.31, F.S., requiring districts to offer controlled open enrollment within the public schools; revising components of the programs.

Section 3. Creates s. 1002.391, F.S., creating the academy programs in public schools; requiring the Department of Education to develop a plan for the creation of the academy programs in public schools; authorizing the transfer of students to different academy programs; requiring school districts to provide transportation outside of their school zone; providing reimbursement for reasonable costs associated with student transportation.

Section 4. Amends s. 1008.22, F.S., requiring the Commissioner of Education to adopt performance standards, set goals, and provide resources so that Florida ranks in the top half of the state-by-state comparisons compiled by the United States Department of Education; requiring development and implementation of FCAT pretest.

Section 5. Amends s. 1008.33, F.S., revising requirements relating to State Board of Education enforcement of public school improvement; specifying academy and school performance categories.

Section 6. Amends s. 1008.34, F.S., revising provisions relating to the school and school district performance grading system; providing for performance grade categories for academy programs and schools; providing basis for category designations; providing school district tools for maintenance of high performing standards.

Section 7. Amends s. 1008.36, F.S., renaming School Recognition Program to Every Child Matters Program; revising intent, purpose, participation, and use of funds; requiring the department to provide training and resources for certain student testing by educators; requiring the department to establish

¹² s. 1002.69; statewide kindergarten screening; kindergarten readiness rates.

¹³ s. 1002.69; statewide kindergarten screening; kindergarten readiness rates.

policies and procedures for the development of individual education plans for low-performing students who need remediation and intervention services.

Section 8. Provides for an 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:

FCAT PRETEST

The costs would be very similar to the current costs for administering the FCAT program. The current estimated cost per K-12 student is \$16.67 per year. Therefore, for example, the cost for developing, administering, and grading a pretest for Florida's 3rd graders (approx. 203,000 students) would be close to \$3.4 million annually. If all students (approx. 1.8 million) were required to take a pre-test, the cost would be over \$30 million annually.

TRANSPORTATION

Requiring school districts to provide transportation to all students in controlled open enrollment programs and to students attending academy programs within and outside of their school district will increase the district's expenditures for transportation. It is indeterminate how many students will participate in the controlled open enrollment program, the academies within their school district, or the academies and schools outside of their school district. However, because the school districts will have this new responsibility, there will be a substantial increase in state and local expenditures for transportation.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

This bill does not appear to have a fiscal impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

See FISCAL IMPACT ON STATE EXPENDITURES.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

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

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

2. Other:

It is unclear how funding of education from district-to-district under this bill would be uniform and equitable.

B. RULE-MAKING AUTHORITY:

The bill does not grant rule-making authority for the SBE for the development of the academy programs.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES