

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

In 1984, the Legislature required that English language instruction be provided for a student whose native language is other than English and specified that the instruction be designed to develop the student's mastery of four language skills: listening, speaking, reading, and writing.¹

In 1989, attorneys from Multicultural Education, Training, and Advocacy, Inc. (META) advised the Florida Department of Education (DOE) of META's intention to sue the State of Florida on behalf of eight minority rights advocacy groups in the state, including the League of United Latin American Citizens (LULAC). META claimed violations of federal and state provisions concerning the education of Florida's limited English proficient (LEP) students.²

In response, the 1990 Legislature required school districts, among other things, to:³

- Identify LEP students through assessment;
- Provide LEP students with instruction in English using strategies for teaching English for speakers of other languages (ESOL);
- Provide LEP students with ESOL instruction or home-language instruction in the basic subject areas of mathematics, science, social studies, and computer literacy; and
- Provide qualified teachers.

Instead of pursuing litigation, META and DOE negotiated a settlement agreement, which on August 14, 1990, was approved by a Consent Order issued by a federal district court judge.⁴ Under the 1990 Consent Order, DOE agreed to the equal treatment of LEP students; proper identification and assessment of LEP students; and adequate placement and programming, certified staff, and supplemental services when needed, for LEP students.⁵ Section IV of the Consent Order,⁶ among other things, created four categories of school personnel and established separate ESOL training requirements for each of the four categories. In September 2003, DOE and META approved a joint stipulation modifying the 1990 Consent Order. The training requirements for the four categories of school personnel, as modified by the 2003 stipulation, are:

¹ Section 2, chapter 84-336, Laws of Florida; former section 233.058, Florida Statutes.

² Rosa Castro Feinberg

³ Section 41, chapter 90-288, Laws of Florida; former section 233.058, Florida Statutes.

⁴ *League of United Latin American Citizens (LULAC) et al. vs. Florida Board of Education et al.*, No. 90-1913 (S.D. Fla. Aug. 13, 1990).

⁵ National Clearinghouse for English Language Acquisition and Language Instruction Educational Programs, at <http://www.ncela.gwu.edu/expert/faq/07court.html> (last visited Mar. 21, 2007).

⁶ Office of Multicultural Student Language Education, Florida Department of Education, at <http://www.firn.edu/doe/aala/cdesec4.htm> (last visited Mar. 21, 2007).

- Category I. Teachers of English/language arts must have:
 - ESOL certification through earning a bachelor's or higher degree in Teaching ESOL (TESOL) and passing the ESOL subject area examination of the Florida Teacher Certification Examinations (FTCE);⁷
 - ESOL certification through passing the ESOL subject area examination and 120 inservice points within 3 years after certification; or
 - ESOL endorsement through completing 15 semester hours of college credit or 300 inservice points (3 semester hours or 60 inservice points within 2 years after assignment of an LEP student and 3 semester or 60 inservice points each subsequent year that the teacher is assigned an LEP student until completing 15 semester hours or 300 inservice points).⁸
- Category II. Teachers of mathematics, science, social studies, and computer literacy must have, within 1 year of assignment of an LEP student, ESOL endorsement through completing 3 semester hours of college credit or 60 inservice points.⁹
- Category III. Teachers of other subjects not listed in Category I or Category II must have, within 1 year of assignment of an LEP student, ESOL endorsement through completing 3 semester hours of college credit or 18 inservice points.¹⁰
- Category IV. School administrators and guidance counselors must have 3 semester hours of college credit or 60 inservice points.

The required competencies of the ESOL training (college credit or inservice points) include methods of teaching English for speakers of other languages, ESOL curriculum and materials development, cross-cultural communication and understanding, and testing and evaluation of ESOL.¹¹ The training competencies for Category I ESOL teachers also include applied linguistics.¹²

As a term of the Consent Order, the Miami Division of the United States District Court for the Southern District of Florida retains jurisdiction for purposes of overseeing implementation of the Consent Order. As occurred in 2003, changes to the state's ESOL policies which are inconsistent with the Consent Order require modification of the Consent Order by court order after DOE negotiates the change with META.

Requirements for Reading Teachers:

In 2002, following the establishment of the *Just Read, Florida!* initiative¹³ and passage of the federal *No Child Left Behind Act*,¹⁴ the State Board of Education established specialization requirements for a reading endorsement.¹⁵ The reading endorsement requires 15 semester hours of college credit or 300 inservice points in reading coursework based upon scientifically based reading research with a focus on both the prevention and remediation of reading difficulties.¹⁶

⁷ See Rule 6A-4.0245, Florida Administrative Code.

⁸ See Rule 6A-4.0244, Florida Administrative Code.

⁹ See Rule 6A-6.0907(1) and (2), Florida Administrative Code.

¹⁰ See Rule 6A-6.0907(3), Florida Administrative Code.

¹¹ See Rules 6A-4.0244(1)(b) and 6A-6.0907, Florida Administrative Code.

¹² Rule 6A-4.0244(1)(b)4., Florida Administrative Code.

¹³ On September 7, 2001, former Governor Jeb Bush approved Executive Order 01-260, which created the *Just Read, Florida!* initiative.

¹⁴ On January 8, 2002, President George W. Bush signed into law the federal *No Child Left Behind Act of 2001*. Public Law 107-110 (Jan. 1992). The act, among other things, requires states to ensure that all teachers teaching core academic subjects ("English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography," Title 20, United States Code, section 7801(11)) in public schools are highly qualified. Title 20, United States Code, section 6319(a)(2).

¹⁵ Rule 6A-4.0292, Florida Administrative Code.

¹⁶ *Id.*

The certification requirements for a teacher to teach a course are listed in *Course Code Directory and Instructional Personnel Assignments*, which DOE updates annually.¹⁷ By June 30, 2006, DOE required reading teachers to have a reading certification or endorsement.¹⁸ The 2007-2008 course code directory reflects that a teacher who teaches English, language arts, reading, or intensive reading must be certified in reading or have the reading endorsement.¹⁹

In 2004, DOE created a crosswalk that allows a teacher to receive 80 inservice points of credit for the reading endorsement based on earning the 300 inservice points required for the ESOL endorsement.²⁰ The crosswalk awards the 80 inservice points based on the competencies of the reading inservice training which are addressed by competencies covered in the ESOL inservice training. Thus, a teacher with the ESOL endorsement is required to earn 220 inservice points in reading to complete the reading endorsement.²¹

Intersection of ESOL and Reading Requirements:

According to DOE, reading courses reported for ESOL funding must be assigned a teacher that has ESOL Category I training (300 inservice points), and reading courses reported as non-ESOL may be assigned a teacher with ESOL Category III training (18 inservice points).²²

In 2001, as part of the *Just Read, Florida!* initiative, DOE was directed to recommend statewide standards for reading programs based on the latest scientific research, instructional strategies, and reading course requirements for middle school and high school students who are not reading at grade level.²³ In 2002, the Legislature added “reading” to the list of basic subject areas requiring ESOL instruction or home-language instruction.²⁴

Beginning with the 2005-2006 school year, DOE requires that all students in grades 6-12, scoring at the two lowest achievement levels (levels 1 and 2) on the reading portion of the Florida Comprehensive Assessment Test (FCAT), must enroll in an intensive reading course.²⁵ Before this requirement for intensive reading, according to DOE, most reading instruction for LEP students was provided by the students’ ESOL teacher, not a reading teacher. Since LEP students, by definition, score lower on the reading portion of the FCAT, LEP students are among the students required to enroll in the intensive reading courses.

¹⁷ Rule 6A-1.09441, Florida Administrative Code.

¹⁸ Florida Department of Education, Memorandum from Jim Warford and Mary Laura Openshaw to District School Superintendents, No. 2005-82 (June 23, 2005), available at http://info.fldoe.org/docushare/dsweb/Get/Document-3062/k12_05-82.pdf.

¹⁹ Florida Department of Education, *2007-2008 Course Code Directory and Instructional Personnel Assignments* (Feb. 1997), available at <http://www.firn.edu/doe/curriculum/ccd2.htm>.

²⁰ Florida Department of Education, *ESOL Endorsement to Reading Endorsement Crosswalk* (2004), available at <http://www.firn.edu/doe/aala/pdf/esolendorsement.pdf>.

²¹ *Id.*; see also Florida Department of Education, Memorandum from Jim Warford and Mary Laura Openshaw to District School Superintendents, No. 2005-26 (Mar. 4, 2005), available at <http://info.fldoe.org/docushare/dsweb/Get/Document-2802/reesol.pdf>.

²² Florida Department of Education, *Timelines for Completion of the ESOL Training Requirements*, nn. 1 & 3 (July 2004), available at http://info.fldoe.org/docushare/dsweb/Get/Document-3063/k12_05-82a.pdf.

²³ Executive Order 01-260 (Sept. 7, 2001).

²⁴ At the 2002 Special Session “A,” the Legislature enacted a general revision to the Florida K-20 Education Code. Within the revision, current section 1003.56, Florida Statutes, was created and a substantially similar section 233.058, Florida Statutes, was repealed. Sections 150 and 1058, chapter 2002-387, Laws of Florida. As previously discussed, former section 233.058, Florida Statutes, required school districts to provide LEP students with ESOL instruction in English and ESOL or home-language instruction in the basic subject areas of mathematics, science, social studies, and computer literacy. When creating section 1003.56, Florida Statutes, the education-code revision added “reading” to the list of basic subject areas requiring ESOL instruction or home-language instruction.

²⁵ Florida Department of Education, Memorandum of Jim Warford and Mary Laura Openshaw to District School Superintendents, No. 2005-82 (June 23, 2005), available at http://info.fldoe.org/docushare/dsweb/Get/Document-3062/k12_05-82.pdf.

Before the requirement of intensive reading for students with low FCAT reading scores, most reading teachers taught supplemental reading courses reported as non-ESOL, which consequently required the teacher to have ESOL Category III training (18 inservice points). As reading teachers are increasingly assigned to teach intensive reading courses containing LEP students reported for ESOL funding, the teachers are required to meet Category I ESOL training requirements (300 inservice points).

The Department of Education is currently developing a “reverse crosswalk” that allows a teacher to receive nearly 120 inservice points of credit for the ESOL endorsement based on earning the 300 inservice points required for the reading endorsement.²⁶ The reverse crosswalk will award nearly 120 inservice points based on the competencies of the ESOL inservice training which are addressed by competencies covered in the reading inservice training. Thus, a teacher with a reading endorsement will be required to earn approximately 180 inservice points in ESOL to complete the ESOL endorsement.

According to DOE, there are approximately 49,085 teachers with an ESOL certification or endorsement, 7,837 teachers with a reading certification or endorsement, and 7,132 teachers who have certification or endorsement in both ESOL and reading.

Proposed Changes:

The bill establishes inservice requirements for ESOL teachers. The bill specifies that teachers providing ESOL instruction must comply with the following inservice requirements:

- Primary teacher of English/language arts: 300 inservice hours or the equivalent;
- Teacher of core subjects of reading, intensive reading, mathematics, science, social studies, or computer literacy: 60 inservice hours or the equivalent;
- Teacher of noncore subjects: 18 inservice hours or the equivalent.
- School administrator or guidance counselor: 60 inservice hours or the equivalent.

The bill in effect reduces the ESOL inservice requirements for most reading teachers from 300 inservice hours to 60 inservice hours.

The effect of the bill is unclear in three aspects. First, the bill does not specify whether the “reverse crosswalk” for awarding a teacher with a reading endorsement credit against the ESOL endorsement requirements continues to apply. Since the proposed reverse crosswalk awards credit for nearly 120 inservice points, the bill may eliminate the ESOL inservice requirement altogether for a teacher with a reading endorsement.

Second, the bill requires 300 inservice hours for a primary English instructor who is an English/language arts teacher. The bill does not specify, however, whether this inservice requirement applies to teachers with ESOL certification through:

- Earning a bachelor’s or higher degree in Teaching ESOL (TESOL) and passing the ESOL subject area examination of the Florida Teacher Certification Examinations (FTCE); or
- Passing the ESOL subject area examination and 120 inservice points within 3 years after certification.

Thus, the bill may increase the inservice hours required for these two groups of Category I ESOL teachers.

²⁶ Florida Department of Education, *Reading to English for Speakers of Other Languages (ESOL) – Reverse Crosswalk* (Feb. 2007) (current draft awards 118.5 inservice points).

Finally, the bill establishes inservice requirements for ESOL teachers, but does not specify any requirements for the contents of the inservice training. Thus, the bill is unclear whether inservice hours earned in subjects other than ESOL would count toward the inservice requirements for ESOL teachers.

Although the Consent Order does not specify whether reading is a Category I, II, or III subject area, the modifications of the inservice requirements proposed by the bill may require DOE to negotiate modification to the Consent Order with final approval in federal court.

The bill provides an effective date of July 1, 2007.

C. SECTION DIRECTORY:

Section 1. Creates section 1012.587, Florida Statutes, which establishes ESOL inservice requirements.

Section 2. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Department of Education estimates that the bill may create an appropriations impact of \$100,000. According to the department, the bill may require changes to current inservice programs, causing DOE to incur costs in contracting for changes to online programs training facilitators on the programs in each school district.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require a county or municipality to spend funds or take an action requiring expenditures; reduce the authority that counties and municipalities had as of February 1, 1989, to raise revenues in the aggregate; or reduce the percentage of a state tax shared in the aggregate with counties and municipalities as of February 1, 1989.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not create new authority for rulemaking; however, the bill will in effect require the State Board of Education to amend several rules concerning specialization requirements for certification or endorsements in ESOL and reading.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES