

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1257 Educational Facilities  
**SPONSOR(S):** Richardson  
**TIED BILLS:** **IDEN./SIM. BILLS:**

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Education Innovation &amp; Career Preparation</u>	<u>5 Y, 0 N</u>	<u>Beagle</u>	<u>White</u>
2) <u>Schools &amp; Learning Council</u>	<u>13 Y, 0 N, As CS</u>	<u>Beagle</u>	<u>Cobb</u>
3) <u>Policy &amp; Budget Council</u>	<u></u>	<u></u>	<u></u>
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### SUMMARY ANALYSIS

Chapter 1013, F.S., entitled "Educational Facilities," governs state and local officials in establishing and maintaining educational plants that provide for public educational needs throughout the state. This chapter specifies that public educational and ancillary plants are required to conform to the Florida Building Code and Florida Fire Prevention Code, and that the location, construction, and utilization of such plants must be consistent with local government comprehensive land use plans and land development regulations.

Such plants, however, are exempt under s. 1013.371, F.S., from: state building codes, other than the Florida Building Code and Florida Fire Prevention Code; specified building permits and fees; ordinances; road closures; and impact fees or service availability fees. The Council Substitute for HB 1257 (bill) expands this exemption to provide that educational and ancillary plants located in the Florida Keys or the City of Key West are exempt from chapter 380, F.S., land development regulations, and local comprehensive plans.

Current Florida statute also provides that educational facilities, when feasible, must be constructed using low energy use designs, solar energy, or waste heat recovery systems. The U.S. Green Building Council (USGBC) is a national building industry organization that promotes environmentally friendly building practices. The Leadership in Energy and Environmental Design (LEED) Green Building Rating System is a rating system developed by USGBC that measures a building's environmental performance in specified categories. LEED offers four building certification levels: "certified," "silver," "gold," and "platinum."

The bill establishes the Green Schools Pilot Project to enable selected school districts to utilize LEED silver or higher building certification standards in new building projects. The bill requires the State Board of Education (SBE) to select three school districts for participation in the pilot project based on specified criteria. Each participating school district must commit to building a minimum of one school that meets the LEED silver-level or higher certification standards. These schools are to be designated as "green schools."

The bill appropriates \$3.5 million from the Public Education Capital Outlay and Debt Service Trust Fund (PECO) for the Green Schools Pilot Program. Please see FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. HOUSE PRINCIPLES ANALYSIS:

**Provides Limited Government** -- The bill creates an additional exemption to existing regulations governing public educational and ancillary plants.

### B. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### Regulation of Florida Educational Facilities and Plants

Chapter 1013, F.S., entitled "Educational Facilities," governs state and local officials in establishing and maintaining educational plants that provide for public educational needs throughout the state.<sup>1</sup> For purposes of the chapter, the term:

- "Ancillary plant" means, "the building site, and site improvements necessary to provide such facilities as vehicle maintenance, warehouses, maintenance, or administrative buildings necessary to provide support services to an educational program."
- "Educational facility" means, "the buildings and equipment, structures, and special educational use areas that are built, installed, or established to serve primarily the educational purposes and secondarily the social and recreational purposes of the community and which may lawfully be used as authorized by the Florida Statutes and approved by boards."
- "Educational plant" means, "the educational facilities, site, and site improvements necessary to accommodate students, faculty, administrators, staff, and the educational program of each plant."<sup>2</sup>

Public educational and ancillary plants are required to conform to the Florida Building Code and Florida Fire Prevention Code.<sup>3</sup> Additionally, the location, construction, and utilization of such plants must be consistent with comprehensive land use plans<sup>4</sup> developed by local governments.<sup>5</sup> To this end, local governments and district school boards are required to enter into interlocal agreements that coordinate district school board actions related to educational facilities renovation and construction with the requirements of the comprehensive land use plan.<sup>6</sup> Further, any development of land, including the construction of educational plants, must be consistent with land development regulations.<sup>7</sup> "Land development regulations" are defined to include local zoning, subdivision, building, and other regulations controlling the development of land.<sup>8</sup>

Public educational and ancillary plants, however, are exempt from:

- All state building codes, other than the Florida Building Code and Florida Fire Prevention Code;
- County, municipal, or other local amendments to the Florida Building Code and Florida Fire Prevention Code;

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<sup>1</sup> Section 1013.02, F.S.

<sup>2</sup> Section 1013.01(1), (6), and (7), F.S.

<sup>3</sup> Section 1013.371, F.S.

<sup>4</sup> Comprehensive land use plans determine the necessity and location of public facilities, including public schools. Such plans must encourage the efficient utilization of such facilities and set forth guidelines for construction, costs, debt management, and capital and transportation improvements associated with public facilities. Section 163.3177, F.S.

<sup>5</sup> Section 163.3177, F.S.

<sup>6</sup> Section 163.3177, F.S.

<sup>7</sup> Sections 163.3161 and 163.3194, F.S. *See also* Op. Att'y Gen. Fla. 04-42 (2004).

<sup>8</sup> Section 380.031(8), F.S.

- Building permits, and assessments of fees for building permits, except as provided in s. 553.80, F.S.;
- Ordinances;
- Road closures; and
- Impact fees or service availability fees.<sup>9</sup>

#### Areas of Critical State Concern; Florida Keys

Florida law authorizes the Department of Community Affairs (DCA) to recommend to the Administration Commission<sup>10</sup> specific areas of critical state concern.<sup>11</sup> Only areas with important environmental or natural resources that would be endangered by uncontrolled private or public development may be designated as areas of critical state concern.<sup>12</sup> Prior to designating an area of critical state concern, the Governor must appoint a resource planning and management committee to collaborate with the DCA in establishing a comprehensive land use and resource planning system for the area.<sup>13</sup> The DCA must report the committee's findings and recommend actions that local, state, and regional government agencies must accomplish in order to implement the system.<sup>14</sup>

Section 380.0552, F.S., designates the Florida Keys as an area of critical state concern and, among other things, establishes a resource planning and management committee to formulate a comprehensive land use planning and resource management system designed to protect the natural environment, preserve the community, and support the economy of the Florida Keys. Any new land development regulation or element of a local comprehensive plan, as well as any change to an existing regulation or plan, that is made by local authorities must be approved by the DCA. The DCA may also recommend to the Administration Commission the enactment, amendment, or rescission of a land development regulation or element of a local comprehensive plan.<sup>15</sup>

#### Energy Efficient Contracting for Educational Facilities

Section 1013.23, F.S., sets forth the legislative finding that investment in educational facilities can reduce the amount of energy consumed and produce immediate and long-term savings. Accordingly, the section encourages school districts, community colleges, and state universities to: (a) implement energy conservation measures for reducing energy consumption and costs; and (b) improve facilities' indoor air quality and improve energy efficiency.<sup>16</sup> Such entities may contract with energy performance contractors to assist it in meeting these goals.<sup>17</sup> When feasible, Florida law provides that educational facilities must be constructed using low energy use designs, solar energy, or waste heat recovery systems.<sup>18</sup>

#### U.S. Green Building Council

The USGBC is a national building industry organization that promotes environmentally friendly building practices. The USGBC is a nonprofit organization consisting of 7,500 member organizations and 75 regional chapters. According to the USGBC, its core purpose is "to transform the way buildings and communities are designed, built and operated, enabling an environmentally and socially responsible, healthy, and prosperous environment that improves the quality of life."<sup>19</sup> The USGBC provides resources and conducts workshops to educate and assist members of the building industry, state and

<sup>9</sup> Section 1013.371, F.S.

<sup>10</sup> Section 14.202, F.S., establishes an Administration Commission consisting of the Governor and the Cabinet.

<sup>11</sup> Section 380.05, F.S.

<sup>12</sup> Section 380.05(2), F.S. Statute provides the following examples for appropriate areas that may be designated critical state concerns: state or federal parks, forests, wildlife refuges, wilderness areas, aquatic preserves, major rivers and estuaries, state environmentally endangered lands, Outstanding Florida Waters, and aquifer recharge areas.

<sup>13</sup> Section 380.045(1), F.S.

<sup>14</sup> *Id.*

<sup>15</sup> Section 380.0552, F.S.

<sup>16</sup> Section 1013.23, F.S.

<sup>17</sup> *Id.*

<sup>18</sup> Section 1013.44, F.S.

<sup>19</sup> U.S. Green Building Council, About USGBC *available at* <http://www.usgbc.org/DisplayPage.aspx?CategoryID=1>.

local governments, and the general public in implementing “green” building practices.<sup>20</sup> There are four USGBC chapters in Florida.<sup>21</sup>

### Leadership in Energy and Environmental Design

Developed by the USGBC, the LEED building rating system “is the nationally accepted benchmark for the design, construction, and operation of high performance green buildings.”<sup>22</sup> LEED is a rating system that measures a building’s environmental performance in five categories:

- Sustainable site development;
- Water savings;
- Energy efficiency;
- Materials selection, and
- Indoor environmental quality.

Each category consists of various subtopics. Each subtopic is assigned a point value. A building is rated based on its total number of points and assigned one of four certification levels: “certified,” “silver,” “gold,” and “platinum.”<sup>23</sup>

### Effect of Proposed Changes

*Regulation of Florida Educational Facilities and Plants:* The bill amends s. 1013.371(1)(a), F.S., to specify that educational and ancillary plants located in the City of Key West or in the portions of the Florida Keys designated as areas of critical state concern<sup>24</sup> are exempt from chapter 380, F.S., land development regulations defined in s. 380.031(8), F.S., and local comprehensive plans defined in s. 380.031(10), F.S.

*Green Schools Pilot Project:* The bill creates s. 1013.441, F.S., to establish the Green Schools Pilot Project. This project enables selected school districts to utilize LEED building certification standards in new building projects and in the renovation of existing schools. The bill requires the DOE, in consultation with the Florida Energy Office, to establish an application process for the pilot project by August 1, 2007. The bill requires the SBE to select three school districts for participation in the pilot project by August 1, 2008. One school district each must be selected from each of the following:

- A county with a population of one million or more residents;
- A county with a population 250,000 to 999,999 residents; and
- A county with a population of less than 250,000 residents.

To the extent feasible, selected school districts must represent geographically different regions of the state.

A school district that seeks to participate in the program must:

- Demonstrate that it implements sound financial management practices by producing documentation that the district has had no material weaknesses or instances of material noncompliance noted in its annual audits during the past three years.

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<sup>20</sup> *Id.*

<sup>21</sup> U.S. Green Building Council, Chapters *available at* <http://www.usgbc.org/Chapters/ChapterList.aspx?CMSPageID=&190&CategoryID=24&>.

<sup>22</sup> U.S. Green Building Council, Leadership in Energy and Environmental Design *available at* <http://www.usgbc.org/DisplayPage.aspx?CategoryID=19>.

<sup>23</sup> LEED for Schools for New Construction and Renovation *available at* <http://www.usgbc.org/ShowFile.aspx?DocumentID=1753>.

<sup>24</sup> Rule 28-29.002, F.A.C., specifies that all lands in Monroe County are designated as the Florida Keys Area of Critical State Concern, except: (1) that portion of Monroe County included within the designated exterior boundaries of the Everglades National Park and areas north of the Park; (2) all lands more than 250 feet seaward of the mean high water line owned by local, state, or federal governments; (3) federal properties; and (4) the area within the incorporated boundaries of the City of Key West.

- Engage a design team with expertise in “green” building construction; and
- Commit to building a minimum of one complete school that meets the LEED silver-level or higher certification standards.

These schools are to be designated as “green schools.” The bill authorizes the SBE to target districts that have a high percentage of environmentally inefficient schools or districts that propose innovative methods to improve environmental efficiency when evaluating applicants for participation in the program.

Each participating district must submit a report on the effects that “green schools” have on student health and performance, operational costs, energy consumption, and the environment. This report must be submitted to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Commissioner of Education by July 1 of the third full year that a “green school” has been in operation.

The bill appropriates \$3.5 million from the PECO to the DOE. These funds are to be disbursed to participating school districts to offset additional costs<sup>25</sup> associated with building a “green school.” The bill provides that funds remaining after each school district has been reimbursed for building its required “green school” may be used to reimburse participating school districts for additional new construction or renovation projects that meet the LEED “silver,” “gold,” or “platinum” building certification standards. If the costs incurred by participating districts in building required “green schools” exceed program funding, the DOE must prorate funding amounts disbursed to each district. Prorated funding amounts must be proportionate in relation to each district’s total additional costs.

The bill requires each participating school district to annually report its expenditures of pilot program funds to the DOE. Pilot program expenditure reports are subject to review and inspection by the Auditor General. Each participating school district must return improperly spent funds. In addition, school districts must return any funds disbursed to it for a construction project that fails to achieve a LEED “silver,” “gold,” or “platinum” rating within one year after its completion.

C. SECTION DIRECTORY:

**Section 1.:** Amends s. 1013.371, F.S.; specifies that educational and ancillary plants located in the City of Key West or in the portions of the Florida Keys designated as areas of critical state concern are exempt from chapter 380, F.S., land development regulations, and local comprehensive plans.

**Section 2.:** Creates s. 1013.441, F.S.; establishes the Green Schools Pilot Project; requires the DOE to establish an application process; requires the SBE to select three school districts and provides specifications for school district selection; specifies conditions for disbursement of funds; requires participating school districts to submit a report to the Governor, President of the Senate, Speaker of the House of Representatives, and the Commissioner of Education; and provides an appropriation.

**Section 3.:** Provides 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 revenues.

2. Expenditures:

This bill appropriates \$3.5 million from the PECO to fund the Green Schools Pilot Project.

<sup>25</sup> The bill defines “additional costs” to include expenditures that exceed the of building a complete school in compliance with ch. 1013, F.S., and LEED registration and certification fees.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill will enable three school districts to receive funding for costs associated with building a school to LEED silver-level or higher certification standards.

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a fiscal impact on the private sector.

D. FISCAL COMMENTS:

“Additional costs” are defined in the bill to include expenditures which are necessary to build a complete school to LEED silver-level or higher certification standards and which exceed the cost of building a complete school in compliance with chapter 1013, F.S. These costs may include LEED registration and certification fees. Participating school districts will incur additional initial construction costs because building “green schools” requires the “use of more expensive building materials, more efficient mechanical systems, and better design, modeling, and integration.”<sup>26</sup> The USGBC charges a one-time registration fee of \$450 for USGBC members and \$600 for non-members. Basic LEED certification for new construction projects is based on a review of building design plans and models. LEED certification fees for this service range in amount from \$1,250 to \$15,000 depending on the total square footage of the building and whether the applicant is a USGBC member.<sup>27</sup> The bill appropriates \$3.5 million from the PECO to the DOE to be disbursed to participating school districts to offset these additional costs.

Despite greater initial construction costs, building “green schools” may result in significant long term operational cost savings to participating school districts. “Green schools” employ energy efficient design features that exploit “daylighting” and natural ventilation patterns as well as more efficient heating and cooling systems. Research indicates that, once constructed, “green schools” result in significant operational cost savings resulting from reduced energy consumption and improved energy efficiency.<sup>28</sup>

### 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.

<sup>26</sup> Gregory Kats, Capital-E, Greening America’s Schools: Costs and Benefits (October 2006) *available at* <http://www.cap-e.com/publications/default.cfm>; See also Gregory Kats, Capital-E, The Costs and Financial Benefits of Green Buildings, A Report to California’s Sustainable Building Task Force (October 2003) *available at* <http://www.cap-e.com/ewebeditpro/items/O59F3259.pdf>.

<sup>27</sup> U.S. Green Building Council, Leadership in Energy and Environmental Design, Register Your Project *available at* <http://www.usgbc.org/DisplayPage.aspx?CMSPageID=65&>.

<sup>28</sup> Gregory Kats, Capital-E, Greening America’s Schools: Costs and Benefits (October 2006) *available at* <http://www.cap-e.com/publications/default.cfm>; See also Gregory Kats, Capital-E, The Costs and Financial Benefits of Green Buildings, A Report to California’s Sustainable Building Task Force (October 2003) *available at* <http://www.cap-e.com/ewebeditpro/items/O59F3259.pdf>.

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill does not appear to create, modify, or eliminate rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill amends s. 1013.371(1)(a), F.S., to specify that educational and ancillary plants located in the City of Key West or the portions of the Florida Keys designated as areas of critical state concern are exempt from chapter 380, F.S., land development regulations, and local comprehensive plans. Other sections of law not amended by the bill, however, require educational and ancillary plant compliance with such regulations and comprehensive plans; e.g., s. 1013.33, F.S., requires local governments and district school boards to enter interlocal agreements to coordinate school board actions related to educational facilities renovation and construction with comprehensive land use plans; and s. 1013.35, F.S., requires school board educational facility plans to be consistent with local comprehensive plans. It may be desirable to amend the bill so that other sections of law do not in conflict with the bill's exemption for the Florida Keys.

D. STATEMENT OF THE SPONSOR

#### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 27, 2007, the Committee on Education Innovation and Career Preparation adopted one amendment and reported the bill favorably as amended. The amendment:

- Requires three school districts to be selected for the pilot program; whereas, the bill provided that “a maximum” of three school districts could be selected.
- Permits participating school districts to build any type of school; whereas, the bill required the construction of one elementary, one middle, and one high school.
- Authorizes the SBE when evaluating applicants for participation in the program to target districts that have a high percentage of environmentally inefficient schools or districts that suggest innovative methods to improve environmental efficiency.
- Requires districts selected for the program to demonstrate sound financial practices and to engage design teams with experience in green building construction.
- Authorizes the DOE to disburse program funds that remain after each school district is reimbursed for building its required “green school” to one or more participating districts for additional new construction or renovation projects that meet LEED silver-level or higher building certification standards.
- Requires participating districts to annually report expenditures to the DOE for review. Districts must return funds improperly expended, as well as funds received for buildings that are not certified to silver-level or better standards within one year of completion.

On April 10, 2007, the Schools and Learning Council adopted two amendments and reported the bill favorably as a Council Substitute.

Amendment #1 is a substitute amendment to the amendment that traveled with the bill from the Committee on Education Innovation and Career Preparation. Amendment #1 is similar to the traveling amendment. It differs from the traveling amendment by:

- Adding a definition of the term “additional costs.”
- Specifying that a district selected for the program must demonstrate that it implements sound financial practices by *producing documentation that the district has had no material weaknesses or instances of material noncompliance noted in annual audits during the past three years.*
- Requiring the DOE to prorate funding amounts disbursed to each participating school district if the cumulative additional costs of building the three “green schools” required by the pilot program exceed program funding.
- Specifying that school district expenditure reports are subject to review and inspection *by the Auditor General* and that participating school districts must return any funds disbursed to it for pilot program purposes *that the Auditor General* finds to have been improperly spent.
- Providing that the pilot program will be funded from the PECO instead of from General Revenues.

Amendment #2 amends s. 1013.371(1)(a), F.S., to specify that educational and ancillary plants located in the City of Key West or in the portions of the Florida Keys designated as areas of critical state concern are exempt from chapter 380, F.S., land development regulations, and local comprehensive plans.