

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/CS/HB 1377

Supplemental Educational Services

**SPONSOR(S):** Full Appropriations Council on Education and Economic Development; Pre-K 12 Policy Committee; Dorworth

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 2538

	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1)	PreK-12 Policy Committee	11 Y, 0 N, As CS	Duncan	Ahearn
2)	PreK-12 Appropriations Committee	7 Y, 0 N	Clark	Heflin
3)	Full Appropriations Council on Education & Economic Development	15 Y, 0 N, As CS	Clark	Martin
4)				
5)				

**SUMMARY ANALYSIS**

Under the provisions of the federal No Child Left Behind Act, low-income families can enroll their child in supplemental educational services if their child attends a Title I school that has been designated by the state to be in need of improvement for more than one year. The term "supplemental educational services" (SES) refers to free extra academic help, such as tutoring or remedial help, that is provided to students in subjects such as reading, language arts, and math.

Current state law requires the Department of Education (DOE) to assign a grade of "A," "B," "C," "D," or "F" to each state-approved SES provider based on a combination of learning gains and student proficiency levels as measured by the statewide assessment test. The CS/CS/HB 1377 requires the DOE to assign a service designation to each state-approved SES provider, rather than a grade; i.e., excellent, satisfactory, or unsatisfactory for the prior school year. A service designation cannot be assigned to a state-approved SES provider if the student population served by the SES provider does not meet the minimum sample size necessary, based on accepted professional practice, for statistical reliability and prevention of the unlawful release of personally identifiable student information.

The Department of Education must specify, in rule, the threshold requirements for assigning the service designations. By July 1 of each year, the DOE must report the service designations to the SES providers, school districts, parents, and the public.

The CS/CS/HB 1377 also requires each supplemental educational services provider to, by May 1 of each year, provide the following information to the DOE in an electronic format:

- Student learning gains as demonstrated by mastery of applicable benchmarks or access points set forth in the Sunshine State Standards.
- Student attendance and completion data.
- Parent satisfaction survey results.
- School district satisfaction survey results received directly from the school district.
- Satisfaction survey results received directly from the school district from principals in whose schools supplemental educational services were provided on site.

The CS/CS/HB 1377 requires the State Board of Education to adopt rules, including an internal complaint procedure to resolve disputes regarding the SES state approval process, termination of state approval, and assignment of a service designation.

School districts are authorized to use Title I, Part A funds, as provided in the Elementary and Secondary Education Act to meet these requirements.

See FISCAL COMMENTS section of this analysis.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

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## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

##### *No Child Left Behind Act (NCLB)*

Federal law sets forth specific testing requirements for public school students. Testing that is performed pursuant to federal law is used to measure whether states and schools are making "adequate yearly progress" (AYP) toward state student proficiency goals under the federal Title I requirements. The definition of AYP is established by the state's educational agency within the parameters of NCLB's requirements. The determination of AYP must be based on academic assessments.<sup>1</sup> In Florida, the Department of Education (DOE) sets the standards for AYP of all public elementary and secondary schools, local educational agencies, and of the state itself.

A school that fails to make AYP for two consecutive years is designated as "in need of improvement" and must develop a school improvement plan and provide students with the option of transferring to another school that is not "in need of improvement." The following table outlines the consequences for Title I schools that fail to make AYP over a period of years:

<b>Year</b>	<b>Consequences</b>
Year 1 Not Making AYP	No consequences.
Year 2 Not Making AYP	Must offer all students choice with transportation.
Year 3 Not Making AYP	Must offer choice with transportation and state-approved supplemental educational services to eligible students.
Year 4 Not Making AYP	Must offer choice with transportation and state-approved supplemental educational services to eligible students and implement corrective action.
Year 5 Not Making AYP	Must offer choice with transportation and state-approved supplemental educational services to eligible students and plan for restructuring.

<sup>1</sup> 20 U.S.C. s. 6311(b)(2).

<sup>2</sup> <http://www.fldoe.org/faq/default.asp?ALL=Y&Dept=307&ID=831>, Florida Department of Education, Bureau of Student Assistance.

## Supplemental Education Services (SES)

Low-income families can enroll their child in supplemental educational services if their child attends a Title I school that has been designated by the state to be in need of improvement for more than one year. The term "supplemental educational services" refers to free extra academic help, such as tutoring or remedial help, that is provided to students in subjects such as reading, language arts, and math. This extra help can be provided before or after school, on weekends, or in the summer.<sup>3</sup>

Each state education agency is required to identify organizations that qualify to provide these services. Districts must make a list available to parents of state-approved SES providers in the area and must let parents choose the provider that will best meet the educational needs of the child. Providers of SES may include nonprofit entities, for-profit entities, local educational agencies, public schools, public charter schools, private schools, public or private institutions of higher education, and faith-based organizations.<sup>4</sup>

Within the last two years, the Government Accountability Office (GAO) conducted two reviews of the supplemental education services program and reported the following:

- Nationally, the SES participation increased substantially from 12 percent of eligible students receiving services in school year 2003-2004 to 19 percent in 2004-2005.
- District actions to increase participation have included greater efforts to notify parents. However, timely and effective notification of parents remains a challenge, as does attracting providers to serve certain areas and students, such as rural districts and students with disabilities.
- While states' monitoring of district and provider efforts to implement the program had been limited in past years, more states reported conducting on-site reviews and other monitoring activities during 2005-2006.
- Districts also increased their oversight role.
- Many states continue to struggle with how to evaluate whether providers are improving student achievement.
- While a few states have completed evaluations, none provides a conclusive assessment of SES providers' effect on student academic achievement.<sup>5</sup>

The report recommended that the U.S. Department of Education clarify guidance and provide information on promising practices, consider expanding flexibility and clarifying state authority, collect information on district SES expenditures, and provide evaluation assistance. Since the GAO's report was published, the U.S. Department of Education has taken several actions to improve SES implementation and monitoring, such as disseminating practices and guidance, and meeting with states, districts, and providers.<sup>6</sup>

The Department of Education's responsibilities in providing SES include, but are not limited to, the following:

- Identify schools that must offer SES.
- Request and review provider applications.

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<sup>3</sup> <http://www.ed.gov/nclb/choice/help/ses/description.html>, U.S. Department of Education, Description of Educational Services (Last visited March 13, 2009).

<sup>4</sup> *Id.*

<sup>5</sup> <http://www.gao.gov/products/GAO-07-738T>, U.S. Government Accountability Office, No Child Left Behind Education Actions May Help Improve Implementation and Evaluation of Supplemental Educational Services, Report GAO-07-738T, April 18, 2007.

<sup>6</sup> *Id.*

- Maintain list of approved providers.
- Monitor provider performance and report results.<sup>7</sup>

A list of approved providers is available online and includes information on the type of instruction available, the cost of services, grade levels served, and location of services.<sup>8</sup> The DOE also maintains an online list of schools in need of improvement whose students would be eligible for these services.<sup>9</sup>

A state-approved SES provider can be removed from the approved list for one or more of the following reasons:

- Failure to deliver services.
- Failure to contribute to increasing the academic proficiency of students for two consecutive years.
- When the DOE determines that the matter is of such a magnitude that it cannot be addressed by the school district through its enforcement mechanisms, the failure to comply with provider responsibilities and assurances, the failure to meet and maintain the eligibility application requirements, and the failure to comply with the requirements for providers.<sup>10</sup>

In 2008, the Legislature required the DOE to assign a grade of “A,” “B,” “C,” “D,” or “F” to each state-approved SES provider based on a combination of learning gains and student proficiency levels as measured by the statewide assessment and norm-referenced tests approved by the DOE for students in kindergarten through grade 3.<sup>11</sup>

This requirement has not been implemented for at least two reasons. First, the Florida Comprehensive Assessment Test (FCAT) scores are only available for students in grades 3-10<sup>12</sup> and in 2004-2005 and 2005-2006 approximately 70% of all students served in SES were in kindergarten-grade 3.<sup>13</sup> Second, SES providers spend a limited amount of time with students since, by law, SES providers are permitted to provide extra help to students before or after school, on weekends, or during the summer.<sup>14</sup> Therefore, assigning a grade based solely on learning gains and student proficiency levels that may or may not be exclusively attributable to the SES provider raised concerns.

### **Effect of Proposed Changes**

The CS/CS/HB 1377 requires the DOE to assign a service designation to state-approved SES providers, rather than a grade as provided in current law. The DOE must evaluate each state-approved SES provider and assign a service designation of excellent, satisfactory, or unsatisfactory for the prior school year. A service designation cannot be assigned if the student population served by the SES provider does not meet the minimum sample size necessary, based on accepted professional practice, for statistical reliability and prevention of the unlawful release of personally identifiable student information.

The State Board of Education (SBE) must specify, in rule, the threshold requirements for assigning the service designations. By July 1 of each year, the DOE must report the service designations to the SES providers, school districts, parents, and the public.

<sup>7</sup> <http://www.fldoe.org/flbpos/nclbchoice/ses/responsibilities.asp>, Florida Department of Education, Bureau of Student Assistance, Role & Responsibilities.

<sup>8</sup> <http://data.fldoe.org/ses/search/>, Florida Department of Education, Bureau of Student Assistance, List of Approved SES Providers 2008-2009 school year.

<sup>9</sup> [http://www.fldoe.org/flbpos/nclbchoice/ses/ses\\_title1.asp](http://www.fldoe.org/flbpos/nclbchoice/ses/ses_title1.asp), Florida Department of Education, Bureau of Student Assistance, Title I School Lists.

<sup>10</sup> Rule 6A-1.039, F.A.C.

<sup>11</sup> Chapter 2008-171, L.O.F. (Committee Substitute for SB 1414).

<sup>12</sup> s. 1008.22, F.S.

<sup>13</sup> Department of Education, Analysis of SB 1414 (2008 Legislative Session) similar to HB 1377.

<sup>14</sup> See *supra* note 3.

The CS/CS/HB 1377 also requires supplemental educational services providers to provide, by May 1 of each year, the following information to the DOE:

- Student learning gains as demonstrated by mastery of applicable benchmarks or access points set forth in the Sunshine State Standards.<sup>15</sup>
- Student attendance and completion data.
- Parent satisfaction survey results.
- School district satisfaction survey results received directly from the school district.
- Satisfaction survey results received directly from the school district from principals in whose schools supplemental services were provided on site.

School districts are authorized to use Title I, Part A funds, as provided in the Elementary and Secondary Education Act to meet these requirements.<sup>16</sup>

The rules adopted by the SBE to implement the provisions relating to SES service designations must include an internal complaint procedure to resolve disputes regarding the state approval process, termination of state approval, and assignment of a service designation. The internal complaint must provide for both an informal and formal review by a DOE hearing officer who must make a recommendation to the Commissioner of Education. The decision of the commissioner constitutes final agency action and the internal complaint procedure is exempt from the provisions of chapter 120, F.S.<sup>17</sup>

By September 1, 2009, the DOE must approve acceptable methods for measuring student learning gains, including standardized and diagnostic assessments, criterion-referenced and skill-based assessments, or other appropriate methods for use by supplemental educational services providers and local school districts in determining student learning gains. Supplemental educational services providers must use a method for measuring student learning gains that results in reliable and valid results as approved by the DOE. The providers are required to report to DOE data on individual student learning gains as demonstrated by mastery of applicable benchmarks or access points set forth in the Sunshine State Standards.

#### B. SECTION DIRECTORY:

**Section 1:** Amends s. 1008.331, F.S., relating to supplemental educational services in Title I schools; school district, provider, and department responsibilities.

**Section 2:** Provides an effective date of July 1, 2009.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

The CS/CS/HB 1377 does not appear to have a fiscal impact on state government revenues.

##### 2. Expenditures:

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<sup>15</sup> The Sunshine State Standards establish the core content of the curricula to be taught in Florida and specify the core content knowledge and skills that Kindergarten through grade 12 public school students are expected to acquire. See s. 1003.41(1), F.S.

<sup>16</sup> The purpose of Title I of the Elementary and Secondary Education Act (20 U.S.C. 6301 et. seq.) is to improve the academic achievement of disadvantaged children. Title I funds are used to provide additional academic support and learning opportunities to help low-achieving children master challenging curricula and meet state standards in core academic subjects. See <http://www.ed.gov/programs/titleiparta/index.html>, U.S. Department of Education, Student Achievement and School Accountability Programs.

<sup>17</sup> The Administrative Procedure Act contains the procedures by which agency actions are formulated and can be challenged and litigated.

The CS/CS/HB 1377 does not appear to have a fiscal impact on state government expenditures.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The CS/CS/HB 1377 does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

See FISCAL COMMENTS section.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

School districts are authorized to use Title I, Part A funds, as provided in the Elementary and Secondary Education Act to meet the requirements of this act.

DOE Comment:

The student learning gains and the student attendance and completion data collection is projected to add three data elements to what is collected now for each student who receives Title I Supplemental Educational Services. The cost to each district to add these elements are estimated to cost \$1,500 - \$2,100 for each of the three data elements. Therefore, the cost for 67 school districts and 4 developmental research (lab) schools lab schools is estimated to cost \$319,500 - \$447,300.<sup>18</sup>

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The CS/CS/HB 1377 does not appear to require a city or county to expend funds or take any action requiring the expenditure of funds. The CS/CS/HB 1377 does not appear to reduce the authority that municipalities or counties have to raise revenues in the aggregate. The CS/CS/HB 1377 does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The State Board of Education must specify, in rule, the threshold requirements for assigning the SES provider designations.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

DOE Comments:

DOE has not assigned grades to providers due to the limitations of the current statutory requirements. The amended statute provides for a more valid and reliable methodology for evaluating SES providers and removes the "high-stakes" nature of assigning grades to SES providers.

<sup>18</sup> Department of Education, Analysis of HB 1377, March 15, 2009.

The DOE has designed an accountability model for state-approved supplemental educational services (SES) providers based on compliance, monitoring, and data analysis. To ensure compliance with state and federal requirements, the DOE has developed a rigorous provider approval process consistent with requirements of the No Child Left Behind Act. The DOE approved 219 providers to serve students in Florida for the 2007-08 school year. Approximately, 70,000 students participated in SES programs during the 2006-07 school year.<sup>19</sup>

#### **IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

On March 18, 2009, the PreK-12 Policy Committee adopted 1 amendment to HB 1377 and reported the bill favorably as a Committee Substitute (CS). The difference between the CS and the House Bill are as follows:

The CS requires the State Board of Education to adopt rules, including an internal complaint procedure to resolve disputes regarding the SES state approval process, termination of state approval, and assignment of a service designation.

On March 30, 2009, the Full Appropriations Council on Education and Economic Development adopted 1 amendment to the CS/HB 1377 and reported the bill favorably as a CS. The amendment requires the DOE to approve acceptable methods for measuring student learning gains. Each supplemental educational services provider is required to measure and report to DOE in an electronic format, individual student learning gains data as demonstrated by mastery of applicable benchmarks or access points set forth in the Sunshine State Standards.

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<sup>19</sup> *Id.*