

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/CS/HB 835 Gifted and Academically Talented Student Education  
**SPONSOR(S):** PreK-12 Appropriations Committee; PreK-12 Policy Committee; and Legg  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1870

	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1)	PreK-12 Policy Committee	13 Y, 0 N, As CS	Duncan	Ahearn
2)	PreK-12 Appropriations Committee	8 Y, 0 N, As CS	Clark	Heflin
3)	Full Appropriations Council on Education & Economic Development	15 Y, 0 N	Clark	Martin
4)				
5)				

**SUMMARY ANALYSIS**

A “gifted” student is defined as “one who has superior intellectual development and is capable of high performance.” Gifted students are classified as exceptional students because they need special services in order to make appropriate educational progress. District school boards are statutorily required to provide exceptional students in grades K-12 with appropriate diagnosis, evaluation, special instruction, facilities, and services.

CS/CS/HB 835 revises the law relating to gifted education for students in grades K-12, as follows:

- Parents will receive annual written notice from their school districts of the eligibility criteria required for gifted student classification and of the procedures for requesting gifted evaluations.
- School districts will be required to annually report to the Department of Education (DOE) by grade and school level: the number of students classified as gifted; the types of gifted services provided; the hours of gifted services provided to each student and whether those services are provided by a gifted endorsed teacher; and performance data for students receiving gifted services.
- The DOE will be required to develop, and school districts will be required to implement, statewide policies for whole-grade and subject matter acceleration. School districts will also be required to annually report to the DOE the number of students who were accelerated one or more whole grades and who participated in subject matter acceleration programs.
- State-approved teacher preparation programs will be required to incorporate instruction on how to identify gifted students and how to differentiate the general education curriculum for gifted students.
- School districts will be required to annually report how much they spend from the Exceptional Student Education Guaranteed Allocation for gifted services.
- The Gifted and Academically Talented Task Force will be established to provide the executive and legislative branches with recommendations for: improvements to existing gifted eligibility criteria; model procedures for screening students; model programs for gifted and academically talented education; and procedures for evaluating the effectiveness of such programs and the performance of students in those programs.

The effective date of CS/CS/HB 835 for the establishment and operations of the Gifted and Academically Talented Task Force is upon becoming a law while all other provisions of this bill become effective July 1, 2010.

See **FISCAL COMMENTS** section of this analysis.

## 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:

##### **Background**

##### *Gifted Screening and Evaluation*

A "gifted" student is defined as "one who has superior intellectual development and is capable of high performance."<sup>1</sup> Gifted students are classified as exceptional students<sup>2</sup> because they need special services in order to make appropriate educational progress.

In general, school districts follow a four-step process to determine gifted students:

1. Identify students to be screened for eligibility;
2. Screen identified students and recommend those who meet criteria for further assessment;
3. Evaluate recommended students by a school or outside psychologist; and
4. Review psychologists' evaluations and related materials to make final determinations of student eligibility to receive gifted services.<sup>3</sup>

The methods school districts use to select students who will be evaluated for gifted eligibility varies. Most school districts consider a student's academic performance and assessment results, teacher referrals, and student records. Forty-four school districts also consider parent recommendations. Thirteen school districts screen all students in a particular grade.<sup>4</sup> Checklists of gifted student characteristics are also frequently used and many school districts also use formal or informal observation. Twelve school districts report using a test of intellectual ability when screening students to determine whether they will receive an individual evaluation.<sup>5</sup>

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<sup>1</sup> Rule 6A-6.03019, F.A.C.

<sup>2</sup> s. 1003.01(3), F.S.

<sup>3</sup> <http://www.oppaga.state.fl.us/reports/educ/r08-01s.html>, Office of Program Policy Analysis and Government Accountability, Florida Gifted Grew Faster Than the Overall School Enrollment, Report No. 08-01, January 2008.

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

<sup>5</sup> *Id.*

Two methods are used for determining gifted eligibility status. A student must either:

- Demonstrate a need for a special program, superior intellectual development as measured by an intelligence quotient (IQ) of at least two standard deviations above the mean,<sup>6</sup> and possess gifted characteristics according to a standard scale or checklist; or
- Be a member of an underrepresented group, i.e., limited English proficient (LEP) or of low socioeconomic status and meet district-determined criteria set forth in an approved school district plan for increasing participation in gifted education by underrepresented groups.<sup>7</sup>

The alternative method for determining gifted status, known as Plan B, need not meet the IQ requirement to obtain gifted status if they otherwise meet the criteria set forth in the school district's plan.<sup>8</sup> As of January 2008, 53 of 67 Florida school districts have an approved alternative identification plan for determining gifted eligibility.<sup>9</sup> Beginning with the 2008-2009 school year, school districts will submit their current Plan B with their revised Policies and Procedures for the Provision of Specially Designed Instruction and Related Services to Exceptional Students document for approval. This will ensure that DOE's records are current and reflect accurately those districts that are currently implementing Plan B.<sup>10</sup>

### *Gifted Educational Plan and Services*

Educational plans (EPs) are developed for students identified solely as gifted. The procedures for the development of the EPs are included in each school district's Policies and Procedures for the Provision of Specially Designed Instruction and Related Services to Exceptional Students.<sup>11</sup> Each district school board is statutorily required to submit its proposed procedures for providing special instruction and services to the Department of Education (DOE) every three years.<sup>12</sup>

Within 30 days of determining that a student is gifted, an evaluation and written services plan must be developed. The educational plan (EP) must include the student's performance level and goals and a description of the student's educational needs and the services that will be provided to meet those needs. The EP is developed by a multidisciplinary team that includes school and district staff and other experts, if necessary. Parents must participate in the development of the plan providing critical information regarding the strengths of the child and discussing the child's specific needs. A gifted student must have an EP at the beginning of each school year and it must be reviewed at least every three years for primary and middle school students and every four years for high school students. A parent or the school may request a review of the EP at any time.<sup>13</sup>

District school boards are statutorily required to provide exceptional students in grades K-12 with appropriate diagnosis, evaluation, special instruction, facilities, and services. Instruction, facilities, and services may be provided within a district school system, in cooperation with other district school systems, or through contractual arrangements with approved private schools or community facilities that meet certain standards. While current law requires districts to provide special instruction and services to gifted students, it does not specify type of courses and services required.<sup>14</sup>

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<sup>6</sup> Two standard deviations above the mean or higher generally equates to a determination that the student has an IQ of 130 or higher. See <http://www.oppaga.state.fl.us/reports/educ/r08-01s.html>, Office of Program Policy Analysis and Government Accountability, *Florida Gifted Grew Faster Than the Overall School Enrollment*, Report No. 08-01, January 2008.

<sup>7</sup> Rule 6A-6.03019, F.A.C.

<sup>8</sup> *Id.*

<sup>9</sup> <http://www.oppaga.state.fl.us/reports/educ/r08-01s.html>, Office of Program Policy Analysis and Government Accountability, *Florida Gifted Grew Faster Than the Overall School Enrollment*, Report No. 08-01, January 2008.

<sup>10</sup> Six-Month Follow-up – OPPAGA Report of January 2008, Florida Department of Education, July 15, 2008.

<sup>11</sup> Rule 6A-6.030191, F.A.C.

<sup>12</sup> s. 1003.57(1)(d), F.S.

<sup>13</sup> Rule 6A-6.030191(6)(c), F.A.C. See also Florida Department of Education, Bureau of Exceptional Education and Student Services, *Technical Assistance Paper: Development of Educational Plans for Students Who Are Gifted*, No. 2006-3 (November 2005) available at <http://www.fldoe.org/ESE/pdf/y2006-3.pdf>.

<sup>14</sup> s. 1003.57(1), F.S.

School district gifted education services generally fall into one of two categories: enrichment or acceleration. Enrichment activities provide students with more complex and in-depth study of subjects than is available through the regular education curriculum. Acceleration allows a student to work at a faster pace or engage in higher level work and may include grade skipping or subject matter acceleration, as well as Advanced Placement programs, college courses offered in high school and early graduation for high school students.<sup>15</sup> Currently, there are no statewide DOE-developed whole-grade and subject matter acceleration policies. Development and implementation of such policies is left to the discretion of the school districts.<sup>16</sup>

Statutorily there are a variety of acceleration mechanisms available for high school students attending public schools. These mechanisms include: dual enrollment, early admission to a postsecondary institution, advanced placement, credit by examination, the International Baccalaureate Program, and the Advanced International Certificate of Education Program.<sup>17</sup> These programs are often utilized to serve both gifted and academically talented high school students.

### *Teacher Preparation and Gifted Students*

Current law requires the State Board of Education (SBE) to adopt rules establishing a uniform core curriculum for state-approved teacher preparation programs. Among other things, such teacher preparation programs must include instruction in teaching limited English proficient (LEP) students and teaching reading literacy and computational skills at all grade levels.<sup>18</sup> Currently, state-approved teacher preparation programs do not require instruction related to gifted identification and programming.<sup>19</sup>

Only practicing teachers who seek a gifted education endorsement are required to receive instruction pertaining to gifted students. Persons seeking the gifted endorsement must possess a baccalaureate or higher degree with certification and complete fifteen semester hours in gifted education coursework. Gifted education coursework must address gifted characteristics and strategies for providing instruction, creative learning opportunities, guidance, and counseling to gifted students. Such coursework must also address strategies for teaching gifted students with diverse backgrounds and learning styles.<sup>20</sup>

### *Gifted Funding*

Funding for exceptional students is calculated using a system of weighted cost factors. Cost factors are determined by using a matrix of services (MOS) that the exceptional student will receive. For exceptional students who do not receive MOS funding and gifted students in grades K-8 the funding of their education is provided through the Exceptional Student Education (ESE) Guaranteed Allocation. The ESE Guaranteed Allocation is a lump sum allocation that districts receive in addition to base student funding through the Florida Education Finance Program (FEFP).<sup>21</sup>

The Legislature increased gifted student funding by 26% from 2005-2006 to 2007-2008. This increase is attributed to a 6.7% rise in the statewide number of gifted students which caused the amount of ESE Guaranteed Allocation funding for gifted students to increase from \$243 million in 2005-2006 to \$276 million in 2006-2007.<sup>22</sup> In response to these increases, the 2007 Legislature amended the FEFP statute to provide that a school district's expenditure of ESE Guaranteed Allocation funds for gifted students in grades nine through 12 could not exceed the amount it expended in 2006-2007.<sup>23</sup>

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<sup>15</sup> [http://www.fl DOE.org/ESE/pdf/gift\\_accel.pdf](http://www.fl DOE.org/ESE/pdf/gift_accel.pdf), Florida Department of Education, Bureau of Exceptional Education and Student Services, *Information Brief: Acceleration of Gifted Students* (2003).

<sup>16</sup> <http://www.oppaga.state.fl.us/reports/educ/r08-01s.html>, Office of Program Policy Analysis and Government Accountability, *Florida Gifted Grew Faster Than the Overall School Enrollment*, Report No. 08-01, January 2008.

<sup>17</sup> s. 1007.27, F.S., s. 1007.271, F.S., and s. 1007.272, F.S.

<sup>18</sup> s. 1004.04(2), F.S.

<sup>19</sup> Rule 6A-5.066, F.A.C.

<sup>20</sup> Rule 6A-4.01791, F.A.C.

<sup>21</sup> s. 1011.62(1)(e), F.S.

<sup>22</sup> <http://www.oppaga.state.fl.us/reports/educ/r08-01s.html>, Office of Program Policy Analysis and Government Accountability, *Florida Gifted Grew Faster Than the Overall School Enrollment*, Report No. 08-01, January 2008.

<sup>23</sup> s. 1011.62(1)(e), F.S.

In 2008, the Legislature appropriated \$1,056,618,468 for the ESE Guaranteed Allocation for the 2008-2009 school year.<sup>24</sup> Approximately \$124,431,745 of the ESE Guaranteed Allocation is for gifted students. The total FEFP funds for gifted students, including the ESE Guaranteed Allocation, are approximately \$894,765,816.<sup>25</sup>

In order to participate in the FEFP, school districts are required to maintain accurate financial records.<sup>26</sup>

Each school district must annually report its expenditures of all state, local, and federal funds. However, school districts are not currently required to separately identify the amounts of ESE Guaranteed Allocation funding expended to provide education services to disabled students and gifted students.<sup>27</sup>

### **Effect of Proposed Changes**

#### *Parental Notice and District Reporting*

CS/CS/HB 835 requires district school boards to annually provide written notice to parents of students in grades K-12 of the eligibility criteria for gifted student classification and the procedures for requesting an evaluation of their children. District school boards can meet this requirement by, for example, including such notice in an annual communication to parents such as the Student Code of Conduct or through an e-mail communication.

CS/CS/HB 835 also requires district school boards to annually report to the Department of Education (DOE) by school and grade level:

- The number of students classified as gifted under the generally applicable criteria set forth in SBE rule and the number classified under a DOE-approved school district plan for increasing the participation of underrepresented groups.
- The types of gifted student education services that it provides and the number of students receiving each service. Additionally, districts are directed to specify: the number of hours per week each service is provided to each student; whether the service consists of direct instruction in a gifted-only class, differentiated instruction in a class with both gifted and non-gifted students, or noninstructional consultation services; and whether the service is provided by a SBE gifted endorsed teacher.
- Performance data for students receiving gifted education services.

Student data must be disaggregated by race, ethnicity, limited English proficient (LEP) status, and free or reduced-price lunch eligibility status. The DOE is required to develop data elements to facilitate district reporting and the State Board of Education (SBE) must adopt rules to implement these reporting requirements.

#### *Acceleration*

CS/CS/HB 835 requires the DOE to develop, and district school boards to implement, statewide policies that set forth procedures and eligibility criteria for whole-grade and subject matter acceleration for students in grades K-12.

CS/CS/HB 835 also requires district school boards to annually report to the DOE by school and grade:

- The number of, and performance data for, students who were accelerated one or more whole grades.

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<sup>24</sup> Specific Appropriation 81, Chapter 2008-152, L.O.F. as adjusted by Specific Appropriation 42, Chapter 2009-1, L.O.F.

<sup>25</sup> Florida Department of Education. Revenue Estimate Worksheet for Gifted Based on the Revised Third Calculation of the FEFP 2008-2009, March 5, 2009.

<sup>26</sup> s. 1011.60(1), F.S.

<sup>27</sup> s. 1010.20, F.S.

- The types of subject matter acceleration programs offered.
- The number of, and performance data for, students who participated in subject matter acceleration programs.

Student data must be disaggregated by race, ethnicity, LEP status, and free or reduced price lunch eligibility status. The DOE is required to develop data elements to facilitate district reporting and the SBE must adopt rules to implement the section.

### *Teacher Preparation and Gifted Students*

CS/CS/HB 835 requires each state approved teacher preparation program to incorporate gifted student instruction so that program graduates: will be able to recognize the characteristics of gifted students; have knowledge of gifted eligibility criteria and the procedures for referring a student for gifted evaluation; and have knowledge of how to differentiate the general education curriculum for gifted students.

### *Gifted Education Funding*

CS/CS/HB 835 requires each school district in its annual financial report to the DOE to separately identify the following amounts that it expends from the Exceptional Student Education Guaranteed Allocation: (a) the amount expended for students identified as exceptional who do not have a matrix of services; and (b) the amount expended for gifted students in grades K-12 according to grade level.

### *Gifted and Academically Talented Task Force*

CS/CS/HB 835 establishes the Gifted and Academically Talented Task Force (task force). The task force is to be composed of the following seven members:

- The chair of the SBE or his or her designee, who shall serve as chair.
- The Commissioner of Education or his or her designee, who shall serve as vice-chair.
- Four members who collectively have experience in gifted and academically talented student screening, identification, and education, one of whom shall be appointed by the Governor, one of whom shall be appointed by the President of the Senate, one of whom shall be appointed by the Speaker of the House of Representatives, and one of whom shall be appointed by the chair of the SBE.
- One member who represents an advocacy group for parents of gifted children who shall be appointed by the Governor.

The members must be appointed by October 1, 2009, and the task force must have its first meeting by November 1, 2009. The meetings of the task force may be held via teleconference or through other electronic means. The task force is assigned to the DOE for administrative purposes. Members of the task force are not entitled to compensation or reimbursement for per diem and travel and are subject to the Code of Ethics for Public Officers and Employees under part III of chapter 112, F.S. The task force is required to submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by February 1, 2010,<sup>28</sup> that provides recommendations, based upon peer-reviewed research and the members' collective expertise, with regard to:

- Revising the statute and rule governing eligibility criteria for gifted student classification generally and in underrepresented groups.
- Developing eligibility criteria for academically talented student classification that identifies students who are not classified as gifted, but who possess high achievement capability in one or more academic subject areas.

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<sup>28</sup> The report is due five months from when the appointments to the task force should be made and four months from the task force's first meeting.

- Developing annual screening procedures for the determination of students who should be further evaluated for identification as gifted or academically talented students. At a minimum, the procedures must identify:
  - The most appropriate grade or grades within each of the elementary, middle, or high school levels to administer such screenings for all students.
  - One or more recommended screening instruments.
- Identifying model gifted and academically talented student education programs. Such programs must include:
  - Classroom-based, school-based, and district-based implementation options.
  - Subject matter acceleration opportunities, differentiated curricula that address the exceptional learning needs of gifted and academically talented students, and enrichment activities that extend learning opportunities available in the classroom.
- Identifying procedures for annually evaluating the effectiveness of model gifted and academically talented student education programs.
- Identifying procedures for evaluating students participating in gifted or academically talented student education programs to determine student performance and whether the students are benefiting from, and continue to be eligible to participate in, the programs.

CS/CS/HB 835 specifies that the task force is abolished upon delivery of its final report and recommendations.

#### B. SECTION DIRECTORY:

**Section 1:** Creates s. 1003.572, F.S.; requiring district school boards to provide parental notice of gifted eligibility requirements and procedures for requesting evaluations for gifted classification; requiring district school board reporting of gifted classification, services, and performance data; requiring the DOE to develop data elements for district reporting; and requiring rulemaking.

**Section 2:** Creates s. 1003.573, F.S.; requiring the DOE to develop procedures and eligibility criteria for whole-grade and subject matter acceleration; requiring district school boards to implement procedures and eligibility criteria; requiring district school board reporting of student acceleration data; requiring the DOE to develop data elements for district reporting; and requiring rulemaking.

**Section 3:** Amends s. 1004.04, F.S.; requiring state-approved teacher preparation programs to incorporate specified gifted student instruction.

**Section 4:** Amends s. 1011.62, F.S.; requiring certain school district Exceptional Student Education Guarantee allocation expenditures to be reported separately.

**Section 5:** Creates the Gifted and Academically Talented Task Force within the DOE; designating members; allowing all task force meetings to be conducted by teleconference or other electronic means; requiring the task force to submit a report to the Governor and Legislature; providing reporting requirements; and providing for the future abolishment of the task force.

**Section 6:** Provides an effective date of upon becoming law for the provisions related to the establishment and operations of the Gifted and Academically Talented Task Force while all other provisions become effective July 1, 2010.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill does not appear to have a fiscal impact on state revenues.

#### 2. Expenditures:

See FISCAL COMMENTS section.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

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

#### 2. Expenditures:

See FISCAL COMMENTS section.

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

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

### D. FISCAL COMMENTS:

The cost to school districts to add three new data elements to capture data regarding direct instruction to gifted student classes only, differentiated instruction to gifted students in classes with non-gifted students and non-instructional services, and the number of hours per week for each service per student served and to determine whether the service was provided by a teacher with gifted endorsement will range from \$1,080,000 - \$1,512,000. The table below illustrates how the costs were derived.<sup>29</sup>

Number of School Districts: (67 school districts, 5 developmental research schools, and Florida Virtual School)	72
Number of Data Elements Needed	3
Cost per School District: (based on the size of the district)	\$5,000 - \$7,000
TOTAL	\$1,080,000 - \$1,512,000

CS/CS/HB 835 requires district school boards to annually provide written notice to parents of students in grades K-12 of the eligibility criteria for gifted student classification. District school boards can meet this requirement by, for example, including such notice in an annual communication to parents such as the Student Code of Conduct or through an e-mail communication.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

<sup>29</sup> Florida Department of Education. Analysis of HB 835, March 5, 2009.



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:

CS/CS/HB 835 requires the SBE to adopt rules to implement the provisions of: (a) s. 1003.572, F.S., which requires annual parental notice of gifted eligibility procedures and specified gifted data reporting by districts; and (b) s. 1003.573, F.S., which requires the DOE to develop statewide whole-grade and subject matter acceleration policies and requires district reporting regarding the implementation of those policies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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

On March 10, 2009, the PreK-12 Policy Committee met and adopted 1 amendment to HB 845 and passed the bill as a Committee Substitute (CS). The differences between the CS and the House Bill are as follows:

- The CS requires all task force meetings to be conducted by teleconference.
- The CS removes the task force members' entitlement to receive per diem and travel expenses.

CS/HB 835 was considered by the PreK-12 Appropriations committee on March 19, 2009. One amendment was adopted and the bill was reported favorably with a committee substitute. The amendment made the following clarifications to the Gifted and Academically Talented Student Task Force:

- Allows all meetings of the task force to be conducted via teleconference or through other electronic means.
- Specifies that members of the task force are not entitled to receive reimbursement for per diem or travel.