

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Education Pre-K - 12 Committee

BILL: SB 254

INTRODUCER: Senator Sobel

SUBJECT: Educational Plant Surveys

DATE: February 19, 2010 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Matthews	ED	Pre-meeting
2.	_____	_____	CA	_____
3.	_____	_____	GO	_____
4.	_____	_____	BC	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill provides an extension of up to 180 days to school districts for submission of educational plant surveys. Requests for extension must be made by a district school superintendent to the Department of Education no later than 90 days before the submission deadline, and are limited to four consecutive extensions per survey. This bill specifies requirements for request content. The Department is required to develop and provide the application for request for extension.

During an extension, this bill prohibits school districts from contracting for new construction projects, except for local bonded projects and those funded by voter-approved, one-half-cent sales surtax for public school capital outlay monies.

The State Board of Education is authorized to adopt rules.

This bill substantially amends section 1013.31, of the Florida Statutes.

II. Present Situation:

Educational Plant Surveys

Section 1013.31, F.S., requires school districts to provide for educational plant surveys at least once every five years. These surveys are required prior to the expenditure of Public Education Capital outlay (PECO), Lottery, or Capital Outlay and Debt Service funds.¹

¹ s. 1013.31(1), F.S.

Surveys must be conducted by the local school boards themselves, or an agency employed by the board. Areas to be addressed in the surveys include:

- An inventory of existing educational and ancillary plants;
- Recommendations for existing and new educational plants;
- The use of school plants based on an extended school day or year-round operation; and
- Other needs as determined by the Department of Education.²

After completion, surveys must be reviewed and approved by the board, with a copy submitted to the Department of Education.³

The school district's survey must be submitted as part of the overall district educational facilities plan.⁴ The district educational facilities plan, provided in s. 1013.35, F.S., represents a long-range plan for facility needs over five, 10, and 20 year periods, through a coordinated approach with local government. The plan generally provides estimates for new school needs based on projected student population, an inventory of existing schools, and alternative options to reduce the need for additional permanent student stations.⁵

OPPAGA Study

OPPAGA published a report on current authority for granting extensions for educational plant surveys.⁶ The report indicated that state law does not include express criteria for evaluating district requests to extend deadlines for school district educational plant surveys. However, s. 1001.42(13)(b), F.S., does grant general authority to the Department of Education (Department) to withhold salaries of district superintendents who fail to file required reports within the specified period.⁷ The Department has not used this option and typically grants the request for extension instead.

OPPAGA notes that the pool of school districts that fail to submit educational plant surveys timely is relatively small. In the last five-year period, the Department has either accepted a late submission or granted an extension for submission from five school districts. These were Broward, Duval, Highlands, Pinellas, and Polk counties. Of these, Broward County received the most extensions, which were two six-month extensions and a one-year extension.⁸

The Department indicates that late educational plant surveys may result in unnecessary construction, as follows:

² s. 1013.31(1)(a), F.S.

³ *Id.*

⁴ s. 1013.31(1)(b)1., F.S.

⁵ s. 1013.35(2)(a), F.S.

⁶ *The Criteria Used to Grant Extensions for Educational Plant Surveys Should Be Clarified*, Research Memorandum, OPPAGA (February 12, 2010).

⁷ Pursuant to s. 1001.42(13)(b), F.S., district school boards are required to withhold salary when notified by the Department that the superintendent has failed to file a required report on time.

⁸ *Id.* at 2.

...delays in submitting...surveys...may enable a school district to circumvent the state-level review and approval process prior to beginning a major construction project....For example, during its extension period, the Broward County School Board began constructing several new schools and upgrading existing schools based on outdated survey data that was seven years old. The department reports that in May 2009, it received and approved Broward's new...survey but could not halt several construction projects that the district began during the extension period, even though the department deemed these projects to be unnecessary based on the new survey data. Broward County currently has 32,000 excess student stations.⁹

Based on these findings, OPPAGA recommends a more formal criteria approval process, and a statutory prohibition on new project construction during an extension period. As examples of criteria to be considered, OPPAGA recommends, based on consultation with the Department of Education, limiting extensions to the following:

- Natural disasters;
- Re-evaluation required to support a local bond referendum;
- Major rezoning due to increased/decreased enrollment;
- Grade structure realignment;
- Growth management issues and level of service agreements; and
- A significant change in district leadership such as a new superintendent or school board members.¹⁰

III. Effect of Proposed Changes:

School districts would be able to request extensions for additional time to complete educational plant surveys.

The prohibition on new project construction during the duration of the extension may prevent unnecessary construction.

It is unclear whether an extension can be requested based upon the rejection of an earlier request.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

⁹ *Id.*

¹⁰ OPPAGA Research Memo, *supra* note 6, at 3.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

This bill, as written, may result in a potential unlawful delegation of legislative authority challenge. Specifically, language authorizing the Department of Education to grant or deny survey extensions may prove problematic as it does not also provide for standards or criteria to be applied by the Department to use in its determinations.

Article II, Section III of the state constitution provides:

The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.

Known as the nondelegation doctrine, the court has interpreted this provision fairly broadly and permitted legislative delegation within a statute to stand where the power granted amounts to a mere technical matter of implementation and not a fundamental policy decision.¹¹

The pivotal test that the court applies to these instances is whether a statute “contains sufficient standards or guidelines to enable the agency and the courts to determine...the agency is carrying out the legislative intent.”¹² In so doing, the court considers the subject matter involved and the degree of difficulty entailed in articulating exact standards in statute, and typically deems as valid situations specifically requiring agency expertise.¹³

As this bill does not appear to provide any standards or direction in establishing standards, even generally, it may be challenged as constitutionally suspect.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

¹¹ *Tory v. State*, 686 So.2d 689, 693 (Fla. 4th DCA 1996).

¹² *Id.*

¹³ *Apalachee Regional Planning Council v. Brown*, 546 So.2d 451, 453 (Fla. 1st DCA 1989).

C. Government Sector Impact:

The Department of Education would incur costs associated with rulemaking to create the application form and adopt criteria to be applied in evaluating requests for extension.

The state could incur extra costs if student stations are built using an outdated plant survey.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.