

HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS

BILL #:	CS/CS/HB 7029	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Education Committee; Education Appropriations Subcommittee; Choice & Innovation Subcommittee; Cortes, B. and Diaz, M. and others	82 Y's	33 N's
COMPANION BILLS:	CS/CS/SB 524, CS/SB 830, and CS/SB 1166	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

CS/CS/HB 7029 was amended and passed the House on February 18, 2016. The Senate further amended the bill and passed it on March 9, 2016. The House further amended the Senate amendment to the bill and passed it on March 10, 2016. The Senate further amended the House amendment to the Senate amendment and passed it on March 11, 2016. The House concurred with the Senate amendment and subsequently passed the bill on March 11, 2016. The bill includes HB 119, CS/HB 693, HB 991, HB 1359, and HB 1403, and portions of CS/HB 31, CS/CS/CS/HB 669, CS/CS/HB 873, HB 907, HB 1003, CS/HB 1155, HB 7039, and CS/HB 7043.

The bill expands education choice by:

- revising controlled open enrollment which will allow students to apply and transfer to public schools on a statewide basis beginning in 2017-2018;
- revising eligibility criteria for extracurricular activities;
- allowing parents to request a teacher transfer under certain circumstances; and
- allowing a 5-year-old to participate in Voluntary Prekindergarten if he or she did not participate as a 4-year-old.

The bill strengthens charter school accountability by:

- clarifying funding processes and defining "financial stability" for purposes of charter school capital outlay;
- requiring additional charter school financial information in the application; and
- implementing automatic termination of low performing charter schools.

The bill additionally revises provisions related to:

- pre-K-12 education including the Credit Acceleration Program, school board responsibilities, and rehiring of retired personnel;
- flexibility and accountability in public school construction;
- performance-based funding for the State University System and Florida College System; and
- the Preeminent State Research Universities Program

Additionally, the bill establishes the Florida Seal of Biliteracy Program, the Distinguished Florida College System Program, and codifies the Federally Connected Student Supplement.

Some portions of the bill may have a fiscal impact on the state. See *Fiscal Comments*.

The bill was approved by the Governor on April 14, 2016, ch. 2016-237, L.O.F., will become effective on July 1, 2016, except as otherwise provided.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

School Choice

Controlled Open Enrollment

Present Situation

Parents of public school students may seek school choice options such as controlled open enrollment, lab schools, virtual instruction programs, charter schools, charter technical career centers, magnet schools, alternative schools, special programs, auditory-oral education programs, advanced placement, dual enrollment, International Baccalaureate, Advanced International Certificate of Education, credit by examination or demonstration of competency, the School for the Deaf and the Blind, the Florida Virtual School, and the public school options for the Opportunity Scholarship Program and the McKay Scholarships for Students with Disabilities Program (McKay Scholarship Program).¹

Controlled open enrollment is a public education delivery system that gives school districts the option of making student school assignments using a parent's indicated preferential public school choice as a significant factor.²

Each district school board offering controlled open enrollment must adopt by rule a controlled open enrollment plan and post the plan on its website.³ The plan must:⁴

- adhere to federal desegregation requirements;
- include an application process that allows parents to declare school preferences, including placement of siblings within the same school;
- provide a lottery procedure to determine student assignment and establish an appeals process for hardship cases;
- afford parents of students in multiple session schools preferred access to controlled open enrollment;
- maintain socioeconomic, demographic, and racial balance; and
- address the availability of transportation.

Compliance with the class size requirements is calculated at the classroom level for traditional public schools and at the school level for charter schools, district innovation schools of technology, and district-operated schools of choice.⁵ The Department of Education (DOE) is required to reduce class size categorical funding for school districts and charter schools that are out of compliance with class size requirements.⁶

Effect of the Bill

Beginning with the 2017-2018 school year, a parent whose child is not subject to a current expulsion or suspension order may seek enrollment in and transport his or her child to any public school in the state, including a charter school, which has not reached capacity. The school district or charter school shall accept and report the student for purposes of funding through the FEFP. The school district or charter school may provide student transportation at their discretion.

¹ Section 1002.20(6), F.S.

² Section 1002.31(1), F.S. Implementation of the plan by a district school board is optional. Section 1002.31(2), F.S.

³ Section 1002.31(3), F.S.

⁴ Section 1002.31(3), F.S.

⁵ Section 1003.03(1), F.S.

⁶ Section 1003.03(4), F.S.

The bill requires the capacity determinations of each school district and charter school to be current and identified on their respective school website. In determining capacity, a district school board must incorporate specifications, plans, elements, and commitments contained in the district's educational facilities plan and required long-term work programs. Each charter school governing board must determine capacity based upon its charter contract.

Each school must provide preferential treatment in its controlled open enrollment process to:

- Dependent children of active duty military personnel who moved as a result of military orders
- Children relocated due to foster care placement in a different school zone
- Children relocated due to a court ordered change in custody as a result of separation or divorce, or the serious illness or death of a parent
- Students residing in the school district

Each charter school may provide preferential treatment in the controlled open enrollment process to the enrollment limitations consistent with law⁷ and its charter contract. The charter school must post the application process required to participate in controlled open enrollment on its website.

Students residing in the school district may not be displaced by a student from another district. A student who transfers may remain at the school until the student completes the highest grade level offered.

Each district school board must post on its website the application process required to participate in controlled open enrollment. In addition to current requirements, the process must also:

- maintain existing academic eligibility criterial for schools of choice;
- identify schools that have not reached capacity; and
- ensure that each school board adopts a policy of preferential treatment.

The bill provides that a school may not delay eligibility or prevent a student participating in controlled open enrollment from being immediately eligible to participate in extracurricular activities. A student who transfers to a school during the school year may seek to immediately join an existing team provided the team roster has not reached its maximum size and the student has the requisite skill and ability to participate. A student may not participate in a sport if the student participated in the same sport in another school during the school year unless the student is:

- a dependent of active duty military personnel whose move resulted from military orders
- relocated due to a foster care placement in a different school zone
- relocated due to a court-ordered change in custody; or
- authorized for good cause in district or charter school policy.

The bill revises the method for enforcing compliance with the class size maximums. By citing to the compliance calculation in s. 1003.03(4), F.S., instead of the entirety of s. 1003.03, F.S., the bill clarifies that for purposes of enforcing compliance, the calculation is based upon the statutory formula used to determine the reduction in class size categorical funding for noncompliance. The DOE will continue to determine the number of students assigned to any individual class.

Credit Acceleration Program

Present Situation

⁷ See Section 1002.33(10), F.S.

The Credit Acceleration Program (CAP) was created to allow a student to earn high school credit in specific courses if the student passed the statewide standardized assessment for such course without enrolling in and completing the course. The district is required to permit a student who is not enrolled in the course or who has not completed the course to take the assessment during its regular administration.⁸

Effect of the Bill

The bill clarifies acceleration options and allows passage of an Advanced Placement (AP) Examination or a College Level Examination Program (CLEP) test to qualify for high school course credits. The bill also clarifies that a district must allow any public or home education student not enrolled in the corresponding course to take an end-of-course assessment, an AP exam, or CLEP test during the regular administration of each.

Online Course Requirement

Present Situation

At least one of the 24 credits required for earning a standard high school diploma must be completed through online learning.⁹ An online course taken in grades 6, 7, or 8 fulfills the online course requirement and the online course may be a course that is offered by the Florida Virtual School, a virtual education provider approved by the State Board of Education (SBE), a high school, or through online dual enrollment.¹⁰ A student who enrolls in a full-time or part-time approved virtual instruction program¹¹ also meets the online course requirement.¹²

A school district must not require a student to take the online course outside of the school day or in addition to the courses taken by the student in a given semester.¹³

Effect of the Bill

The bill establishes performance-based alternative means for students in public schools, including charter schools, to satisfy the online course requirement for high school graduation by either:

- completing a course in which a student earns a nationally recognized industry certification, identified on the Career and Professional Education (CAPE) Industry Certification Funding List, in information technology, or passing the information technology certification examination without enrolling in, or completing, the course or courses corresponding to such certification; or
- passing an online content assessment, without enrolling in or completing the course or courses corresponding to that assessment, whereby the student demonstrates his or her skills and competency in locating information and applying technology for instructional purposes.

Charter Schools

Authorization

Present Situation

⁸ Section 1003.4295(3), F.S.

⁹ Section 1003.4282(4), F.S.

¹⁰ *Id.*

¹¹ Section 1002.45, F.S.

¹² Section 1003.4282(4), F.S.

¹³ *Id.*

Charter schools are nonsectarian, public schools that operate under a performance contract with a sponsor, which is typically a school district.¹⁴ Charter schools are exempt from many laws and regulations applicable to traditional public schools to encourage the use of innovative learning methods.¹⁵ The terms and conditions for the operation of the school are set forth in a performance contract or “charter.”¹⁶

Florida law tasks sponsors with authorizing and overseeing charter schools. The law establishes several processes designed to enable the sponsor to perform these roles, including:

- Authority to review and approve or deny charter school applications¹⁷
- Authority to enforce the terms and conditions of the charter agreement¹⁸
- Annual reporting of student achievement and financial information by each charter school to the sponsor¹⁹
- Monitoring of annual financial audits²⁰ and monthly financial statements submitted by charter schools²¹
- Interventions for remedying unsatisfactory academic performance and financial instability²²
- Authority to close charter schools for academic or financial failure; poor management; violations of law; or child health, safety, and welfare violations²³

“The Florida Principles and Standards for Quality Charter School Authorizing” are a set of guidelines for sponsor authorizing and oversight of charter schools. The “Principles and Standards” are a collaborative effort by the DOE, the National Association of Charter School Authorizers (NACSA), sponsors, and charter school stakeholders. Sponsor adherence to the “Principles and Standards” is voluntary. The “Principles and Standards” emphasize the critical role that sponsors play in evaluating the viability of charter school proposals and holding approved charter schools to high standards of quality.²⁴

An entity seeking to establish a new charter school must submit a charter school application to the sponsor.²⁵ The sponsor must review and approve or deny the application.²⁶ Sponsors and applicants must use a standard charter school application and application evaluation instrument. The standard application is designed to enable the sponsor to evaluate the applicant’s educational plan, organizational plan, financial viability, and business plan.²⁷

¹⁴ Section 1002.33(5)(a), (6)(h), (7) and (9)(a), F.S. The law authorizes school districts to sponsor charter schools; state universities to sponsor charter lab schools; and school districts, Florida College System (FCS) institutions, or a consortium of school districts or FCS institutions to sponsor a charter technical career center. Sections 1002.32(2), 1002.33(5)(a)1. and 2., and 1002.34(3)(b), F.S.

¹⁵ Section 1002.33(2)(b)3. and (16), F.S.

¹⁶ Section 1002.33(6)(h) and (7), F.S.

¹⁷ Section 1002.33(6), F.S.

¹⁸ Section 1002.33(6)(h) and (7), F.S.

¹⁹ Section 1002.33(9)(k), F.S.

²⁰ Sections 218.39(1)(e) and (f), 1002.33(9)(j)1. and 2., F.S.

²¹ Section 1002.33(9)(g), F.S.

²² Sections 1002.33(9)(n) and 1002.345, F.S.

²³ Section 1002.33(8), F.S.

²⁴ Florida Department of Education, *Florida Principles & Standards for Quality Charter School Authorizing*, at 2-5 (2014), <http://www.fl DOE.org/core/fileparse.php/5423/urlt/Florida-Principles-and-Standards-Final-Proof.pdf>. [Hereinafter *Principles and Standards*].

²⁵ Section 1002.33(6)(a), F.S.; rule 6A-6.0786, F.A.C. (model charter school application and application evaluation instrument).

²⁶ Section 1002.33(6), F.S. If the application is approved, the applicant and sponsor then negotiate the terms of the charter. If the application is denied, or the sponsor fails to act, the applicant may file an appeal with the State Board of Education, which may uphold or overturn the sponsor’s denial. Section 1002.33(6)(c) and (h), F.S.; see also s. 120.68, F.S. The state board’s decision is a final action subject to judicial review in the district court of appeal. *Id.*

²⁷ See Florida DOE, *Model Florida Charter School Application* (February 2016),

http://www.fl DOE.org/core/fileparse.php/7700/urlt/IEPC_M1.pdf [hereinafter *Model Application*].

The law does not expressly require a sponsor to evaluate an applicant's, governing board member's, or management company's past performance operating charter schools.²⁸ However, the standard application requires the applicant to:

- list the background and qualifications of each proposed member of the charter school's governing board and his or her background and qualifications; and
- indicate if the governing board will contract with a management company, summarize the company's history operating charter schools, and list other charter schools managed by the company and student achievement and financial performance data of such schools.²⁹

Additionally, the "*Principles and Standards*" encourage sponsors to evaluate the past history of existing operators and management companies operating charter schools and conduct applicant interviews and other due diligence to examine the applicant's experience and ability to operate charter schools.³⁰

Among other oversight processes, charter schools must submit monthly financial statements for review by the sponsor. If a financial statement reveals a deteriorating financial condition,³¹ the sponsor and charter school governing board must develop a corrective action plan.³² The sponsor may choose to terminate or not renew the charter school's charter if financial deficiencies noted in the corrective action plan are not corrected within one year or if the school exhibits one or more financial emergency conditions³³ for two consecutive years.³⁴ The date by which a newly established charter school must begin submitting financial statements typically follows the first payment of state education funds to the charter school, which occurs in July before the start of the school year.³⁵

Beginning in 2013, sponsors were required to submit an annual report to the DOE with the following information:

- The number of draft applications received on or before May 1 and each applicant's contact information
- The number of final applications received on or before August 1 and each applicant's contact information
- The date each application was approved, denied, or withdrawn
- The date each final contract was executed

The DOE must post a compiled annual report on its website by November 1 of each year.³⁶ In the 2013 report, the DOE concluded that ". . . district practices regarding charter schools vary widely," and there were two notable findings:

- Three districts accounted for nearly half of the state's total number of applicants.

²⁸ See s. 1002.33(6)(a), F.S.

²⁹ Compare s. 1002.33(6)(a), (7), (8), (9), F.S. with *Model Application*, *supra* note 15, at 11 and 14.

³⁰ *Principles and Standards*, *supra* note 11, at 2-5 and 9-10.

³¹ A deteriorating financial condition is a circumstance that significantly impairs the ability of a charter school to generate enough revenue to meet its expenditures without causing the occurrence of a financial emergency condition. Deteriorating financial conditions include, without limitation, circumstances in which actual enrollment is 70 percent less than the enrollment projection for which its annual budget is based, enrollment is insufficient to generate enough revenue to meet expenditures, actual expenses exceed budgeted expenses for a period of three months or more and there are insufficient reserves to compensate, or an unbudgeted financial event occurs and there are insufficient reserves to compensate. Section 1002.345(1)(a)3., F.S.; rule 6A-1.0081(2)(a), F.A.C.

³² Sections 1002.33(9)(g)3. and 1002.345(1)(b)-(f), F.S.; rule 6A-1.0081, F.A.C. A high-performing charter school may submit quarterly rather than monthly financial statements. Section 1002.331(2)(c), F.S.

³³ A financial emergency exists when any one of the following conditions occurs due to lack of funds: (1) Failure to pay short-term loans or make bond debt service or other long-term debt payments when due; (2) Failure to pay uncontested claims from creditors within 90 days after the claim is presented; (3) Failure to timely transfer taxes withheld from employees or employer or employee contributions for federal social security, pension, or retirement plans; and (4) Failure for one pay period to pay wages, salaries, or retirement benefits. Section 218.503(1)(a)-(d), F.S.

³⁴ Section 1002.345(5), F.S.

³⁵ Rule 6A-1.0081, F.A.C. The sponsor and charter school governing board must mutually agree to the date by which the financial statements are to be submitted. *Id.*

³⁶ Section 1002.33(5)(b)1.k., F.S.

- Approval rates among districts differed markedly.³⁷

Upon approval of a charter application, the initial startup must commence with the beginning of the public school calendar for the district in which the charter is granted unless the sponsor allows a waiver for good cause.³⁸

Effect of the Bill

The bill requires each charter school applicant to disclose in its application the name of each applicant, governing board member, and proposed education services provider; the name and sponsor of any charter school operated by such parties that closed and the reason for closure; and the academic and financial history of such charter schools. The sponsor must consider the past history of these entities in deciding to approve or deny the application. This change makes clear that sponsors have authority to evaluate the applicant's history operating charter schools and aligns the law with the standard application currently in use and guidelines provided by the "*Principles and Standards.*"

Additionally, the bill requires a charter school's governing board to begin submitting financial statements to the sponsor upon approval of the charter contract. This enables the sponsor to monitor a newly created charter school's finances earlier, thereby strengthening the sponsor's ability to assess the school's financial readiness to begin serving students. Accordingly, the sponsor has greater ability to identify deteriorating financial conditions and take corrective action to remedy financial deficiencies.

The bill provides, upon approval of an application, that a charter school may defer opening for up to two years. The charter school must provide written notice of its intent to defer opening to the sponsor and parents of enrolled students at least 30 calendar days before the first day of school.

The bill also prohibits a charter school from denying enrollment or withdrawing a student based on the student's academic performance.

Charter Termination or Nonrenewal

Present Situation

A sponsor may choose to terminate or not renew a charter for any of the following reasons:

- Failure to participate in the state's education accountability system or meet the requirements for student performance stated in the charter
- Failure to meet generally accepted standards of financial management
- A violation of law
- Other good cause shown³⁹

The sponsor may immediately terminate a charter school's charter if conditions at the school threaten the health, safety, or welfare of students.⁴⁰ Due process in the form of notice and, if requested, a formal hearing and opportunity to appeal must be provided to the charter school prior to a charter termination or nonrenewal. For immediate termination of a charter school, a hearing, if requested, may occur after termination.⁴¹

Sponsors must terminate the charter of a charter school that earns two consecutive school grades of "F," unless the charter school qualifies for one of three exceptions. In general, the exceptions apply to

³⁷ Florida DOE, *Annual Authorizer Report – 2013* at 1, <http://www.fl doe.org/schools/school-choice/charter-schools/authorizers/annual-authorizer-reports.shtml>.

³⁸ Section 1002.33(6)(b)5., F.S.

³⁹ Section 1002.33(8)(a), F.S.

⁴⁰ Section 1002.33(8)(d), F.S.

⁴¹ Section 1002.33(6)(c) and (8)(b)-(d), F.S.

charter schools that specifically target hard-to-serve students and to traditional public schools that are reconstituted as charter schools pursuant to Florida's system of school improvement and education accountability.

When a charter is not renewed or is terminated, unencumbered public funds from the charter school revert to the district school board, except that capital outlay and federal charter school grant funds revert to the DOE for redistribution among eligible charter schools. Additionally, all district school board property and improvements, furnishings, and equipment purchased with public funds automatically revert to the district school board subject to satisfaction of any liens or encumbrances. The charter school's governing board is responsible for all debts incurred by the charter school. Students enrolled in the charter school may apply to, and must be enrolled in, another public school in the school district. The law does not specifically apply these provisions to charter schools that close voluntarily.⁴²

Effect of the Bill

The bill clarifies that "double 'F'" termination occurs automatically when a charter school earns a second consecutive grade of "F," after school grade appeals are final, unless an exception applies. The sponsor must notify the charter school's governing board, the charter school principal, and the DOE in writing. Hearings and appeals are available to discretionary and immediate charter terminations, but are not available to "double 'F'" terminations. The bill specifies that procedures regarding reversion of public funds and property purchased with public funds apply to "double 'F'" terminations as well as voluntary closures.

Additionally, the bill requires the governing board of a charter school that decides to cease operations voluntarily to make such determination at a public meeting and to notify the parents and sponsor of the public meeting prior to its official notice. Following the meeting, the governing board must notify the sponsor, parents of enrolled students, and the DOE in writing within 24 hours of its decision. The notice must state the charter school's intent to continue operations or the reasons for the closure and acknowledge that the governing board agrees to follow the procedures for dissolution and reversion of public funds specified in law.

Governing Board Meetings

Present Situation

Florida law requires each charter school's governing board to hold at least two open public meetings per school year in the school district where the charter school is located. The charter school principal and a parent liaison appointed by the board must be physically present at these meetings.⁴³

Effect of the Bill

⁴² Section 1002.33(8)(e), F.S.

⁴³ Section 1002.33(7)(d), F.S. The parent liaison must reside in the school district where the charter school is located and may be a governing board member, charter school employee, or contracted individual. The governing board must appoint a separate liaison for each charter school it operates in the district. The law prohibits a sponsor from requiring governing board members to reside in the school district if the governing board complies with these requirements. *Id.*

The bill relocates the aforementioned governing board meeting provisions to a more appropriate section of the charter school statute. Additionally, the bill specifically authorizes a governing board member to attend biannual public meetings by communications media technology used in compliance with Administration Commission rules.⁴⁴

Distribution of Student Funding

Present Situation

Charter school students are funded through the Florida Education Finance Program (FEFP), including categorical funding such as the research-based reading instruction allocation (reading allocation).⁴⁵ In general, the reading allocation must be used for such purposes as providing intensive reading instruction to struggling students or to support reading teachers through professional development or utilization of reading coaches. Each school district must annually submit a plan to the DOE specifying how it will use the reading allocation.⁴⁶ Each charter school applicant must include in its application a reading curriculum that provides for differentiated reading instruction for students reading at or above grade level and for those reading below grade level. The curriculum must be aligned to state reading standards and grounded in scientific research. If the application is approved, the reading curriculum is incorporated into the charter school's charter.⁴⁷ Despite the requirement that charter schools adopt a reading curriculum as a condition of approval, some sponsors have required charter schools to use the school district's reading plan as a condition of receiving the reading allocation. The school district plan is often dramatically different than the reading curriculum approved by the sponsor in the application and charter.⁴⁸

Currently, a district school board must make timely and efficient payments and reimbursements to charter schools. A school board may distribute funds to a charter school for up to 3 months based on the projected full-time equivalent student membership of the charter school. Thereafter, the results of the full-time equivalent student membership surveys are used to adjust the amount of funds distributed to the charter school. Sponsors must distribute funds to a charter school no later than 10 working days after the district school board receives a distribution of state or federal funds. If payment is not made to the charter school within 10 working days, the sponsor must also pay interest at a rate of 1 percent per month calculated daily on the unpaid balance for each day the payment is late.⁴⁹ One sponsor has previously indicated that it would delay disbursement of locally generated funds to charter schools until the funds were received by the school district.⁵⁰

Effect of the Bill

The bill prohibits sponsors from requiring charter schools to adopt the school district's reading curriculum as a condition of receiving the research-based reading allocation.

The bill clarifies that school board payments must be made monthly or bi-monthly, beginning with the start of a school board's fiscal year. Each payment must be one-twelfth or one-twenty-fourth, as applicable. In the first two years of a charter school's operation, a school board must distribute funds for the months of July – October based on the projected full-time equivalent student membership if a minimum of 75 percent of the projected enrollment is entered into the sponsor's student information

⁴⁴ Florida law requires the Administration Commission to adopt uniform rules for conducting public meetings by means of communications media technology. Sections 120.54(5)(b)2. and 1002.33(7)(d), F.S.; ch. 28-109, F.A.C.

⁴⁵ Sections 1002.33(17)(a)-(b) and 1011.62, F.S. To reflect any changes in enrollment, the charter school's funding is recalculated during the school year, based upon the October and February full-time equivalent (FTE) enrollment surveys. See s. 1002.33(17)(b), F.S.

⁴⁶ Section 1011.62(9), F.S.

⁴⁷ Section 1002.33(6)(a)4. and (7)(a)2.a., F.S.

⁴⁸ Florida DOE, *Legislative Bill Analysis on School Choice Priorities*, (Nov. 6, 2014).

⁴⁹ Section 1002.33(17)(e), F.S.

⁵⁰ Florida DOE, *Legislative Bill Analysis on School Choice Priorities*, (Nov. 6, 2014).

system by the first day of the current month. If less than 75 percent of the projected enrollment is entered into the sponsor's system, the sponsor shall base payments on the actual number entered into the sponsor's student information system.⁵¹ This will generate a more accurate distribution of funds prior to the October student count and prevent over-funding due to under-enrollment. The bill also prohibits a sponsor from delaying payment of any portion of a charter school's funding based upon the timing of receipt of local funds by the school board.

Facilities

Present Situation

Currently, startup and conversion charter schools are not required to comply with the State Requirement for Educational Facilities pursuant to s. 1013.37, F.S. The local governing authority cannot adopt or impose any local building requirements or site-development restrictions that are addressed by and more stringent than those found in the State Requirements for Educational Facilities of the Florida Building Code. The local governing authority must treat charter schools equitably in comparison to similar requirements, restrictions, and processes imposed upon public schools that are not charter schools.⁵²

Effect of the Bill

The bill permits an aggrieved school the immediate right to bring an action in circuit court to enforce its rights against any authority who fails to treat the charter school equitably. An aggrieved school that receives injunctive relief may collect attorney fees and court costs.

Capital Outlay Funding

Present Situation

To be eligible for charter school capital outlay funding, a charter school must:

- have been in operation for at least three years; be governed by a governing board established in Florida for three or more years which operates both charter schools and conversion charter schools within the state; be part of an expanded feeder chain⁵³ with an existing charter school in the district that is currently receiving charter school capital outlay funds; be accredited by the Commission on Schools of the Southern Association of Colleges and Schools; or serve students in facilities that are provided by a business partner for a charter school-in-the-workplace;
- demonstrate financial stability for future operation as a charter school;
- have satisfactory student achievement based upon the state accountability standards applicable to charter schools;
- have received final approval from its sponsor for operation during that fiscal year; and
- serve students in facilities that are not provided by the charter school sponsor.⁵⁴

Charter school capital outlay funding is allocated based upon the following priorities:

⁵¹ Note: this language is currently found in the model charter school contract at <http://www.fl DOE.org/schools/school-choice/charter-schools/charter-school-reference-page-20-21> (last visited November 24, 2015).

⁵² Section 1002.33(18)(a), F.S.

⁵³ A charter school may be considered a part of an expanded feeder chain under s. 1013.62, F.S., if it either sends or receives a majority of its students directly to or from a charter school that is currently receiving capital outlay funding pursuant to s. 1013.62, F.S. Rule 6A-2.0020 (1), F.A.C.

⁵⁴ Section 1013.62(1)(a), F.S. A conversion charter school, i.e., a charter school created by the conversion of an existing public school to charter status, is not eligible for capital outlay funding if it operates in facilities provided by its sponsor at no charge or for a nominal fee or if it is directly or indirectly operated by the school district. Section 1013.62(1)(d), F.S.

- First priority is given to charter schools that received capital outlay funding in FY 2005-2006. Such a school receives the same per-student amount that it received in FY 2005-2006 up to the lesser of:
 - the actual number of students enrolled in the current year; or
 - the number of students enrolled in FY 2005-2006.
- After calculating the first priority, remaining funds are allocated with the same per-student amount to:
 - those schools not included in the first priority allocation; and
 - those schools in the first priority allocation with growth in excess of FY 2005-2006 student enrollments.

Any funds remaining after the first and second priority calculations are allocated among all eligible charter schools.⁵⁵

Unless otherwise provided in the General Appropriations Act, the funding allocation for each eligible charter school is determined by multiplying the school's projected student enrollment by one-fifteenth of the cost-per-student station established in law.⁵⁶ If there are insufficient funds, the Commissioner of Education shall prorate the available funds among eligible charter schools. However, a charter school's allocation may not exceed one-fifteenth of the cost per student station.⁵⁷

Funds are distributed on the basis of the capital outlay full-time equivalent membership by grade level, which is calculated by averaging the results of the second and third enrollment surveys. DOE distributes capital outlay funds monthly, beginning the first quarter of the fiscal year, based on one-twelfth of the annual amount anticipated for the fiscal year, and the commissioner adjusts subsequent distributions as necessary to reflect each charter school's actual student enrollment reported in the second and third surveys.⁵⁸

Effect of the Bill

The bill clarifies "financial stability" by specifying that a charter school may not have financial emergency conditions noted in its most recent annual audit in order to receive capital outlay funding and allows a charter school to be eligible for capital outlay funds if it has been in operation for two years rather than three years.

The bill revises the calculation of the state appropriation for capital outlay funds by dividing the total weighted FTE for all eligible charter schools to determine the base charter school per weighted FTE allocation amount. All eligible charter schools will receive a standard base amount of funds per FTE. Charter schools that meet the following specific criteria will receive weighted FTE as follows:

- Charter schools will receive an additional 25 percent of the standard base amount if the school has either:
 - A 75 percent or more free and reduced lunch enrollment, or
 - A 25 percent or more ESE enrollment.
- Charter schools with both 75 percent or more free and reduced lunch enrollment and 25 percent or more ESE enrollment will receive an additional 50 percent of the standard base amount.

DOE shall include free and reduced-price lunch data when calculating the weighted capital outlay FTE and shall recalculate the allocation periodically based on the receipt of revised information on a schedule established by the commissioner. The bill also removes the limit that a charter school's capital outlay allocation may not exceed one-fifteenth of the statutory cost per student station.

⁵⁵ Section 1013.62(1)(b), F.S.

⁵⁶ Section 1013.64(6)(b), F.S.

⁵⁷ Section 1013.62(1)(c), F.S.

⁵⁸ Section 1013.62(1)(f), F.S.

Professional Development

Present Situation

Each school district must, and a state supported public school or private school may, develop and maintain a system by which members of the instructional staff may demonstrate mastery of professional preparation and education competence as required by law. The program must be based on classroom application of the Florida Educator Accomplished Practices and instructional performance, and, for public schools, must be aligned with the district's evaluation system approved in accordance with current statutory requirements for personnel evaluation procedures and criteria.⁵⁹

Effect of the Bill

The bill clarifies that charter schools are state supported public schools and are authorized to develop and maintain a system by which members of the instructional staff may demonstrate mastery of professional preparation and education competence. The respective programs must be aligned with the applicable district or school's evaluation system established under s. 1012.34, F.S.

High-Performing Charter Schools

Present Situation

Charter schools and operators of systems of charter schools with a track record of academic excellence and financial stability may earn "high-performing" status.⁶⁰ A high-performing charter school is a charter school that during each of the three previous years:

- received at least two school grades of "A" and no school grade below "B;"
- has received an unqualified opinion⁶¹ on each annual financial audit; and
- has not received an annual financial audit that reveals a financial emergency condition.⁶²

Initial eligibility for "high-performing" status is verified by the Commissioner upon request by a charter school. Thereafter, the commissioner must annually verify continued eligibility.⁶³ As of November 2015, 167 charter schools in 32 school districts and one state university were designated as "high-performing."⁶⁴

Legislation enacted in 2013 required the commissioner to annually determine a charter school's or charter school system's continued eligibility for "high-performing" status. A high-performing charter school or charter school system may maintain its "high-performing" status, unless the commissioner determines that the charter school or system no longer meets the eligibility criteria enumerated in law, one of which requires that the school not receive a grade below a "B". Current language also provides for removal of a charter school's "high-performing" status if it receives a school grade of "C" in any two years during the term of the 15-year charter. Because a high-performing school loses its status once its grade falls below a "B", the provisions regarding consequences for receiving a "C" are obsolete.

Effect of the Bill

The bill repeals an obsolete provision regarding consequences for "C" grades of a high-performing charter school.

⁵⁹ Section 1012.56(8)(b)1., F.S.

⁶⁰ Section 1002.331(1), F.S.; see s. 218.503(1), F.S. (financial emergency conditions).

⁶¹ An unqualified audit opinion means that the charter school's financial statements are materially correct. Telephone interview with Florida Auditor General staff (Mar. 24, 2011).

⁶² Section 1002.331(1), F.S.; see s. 218.503(1), F.S. (financial emergency conditions).

⁶³ Sections 1002.331(5) and 1002.332(2)(a), F.S.

⁶⁴ Email, Florida Department of Education, Office of Independent Education and Parental Choice (Nov. 16, 2015).

Student and Parent Rights

Fiscal Transparency

Present Situation

Each public school must provide parents of students a school financial report as part of its annual public school accountability report.⁶⁵ The purpose of the school financial report is to better inform parents and the public concerning how funds are spent to operate the school during the prior fiscal year.⁶⁶

Each school's financial report must follow a uniform, districtwide format that is easy to read and understand.⁶⁷ The report must indicate revenues and their sources.⁶⁸ In addition, the report must include expenditures per unweighted full-time equivalent student at the district and state levels for teachers, substitute teachers, other instructional personnel, contracted instructional services, school administration and support personnel, certain materials and supplies, food services, support services, operation and maintenance of the school plant, and district-level expenditures that support the school's operations.⁶⁹

Effect of the Bill

The bill requires that the school's financial report be provided to parents and include the average amount of money expended per student in the school.

Teacher Transfer Request

Present Situation

Current law requires that if a student is assigned to a teacher who is teaching out-of-field, as determined by district school board policy, the parent of that student must be notified in writing of such teacher assignment.⁷⁰ The district school board must adopt a plan to assist any teacher teaching out-of-field through professional development and participation in certification programs.

Effect of the Bill

The bill requires school districts to report out-of-field teachers on its website at least 30 days before the beginning of each semester and specifically allows a parent whose student is assigned to an out-of-field teacher to request a transfer to another in-field teacher within the school and grade in which the student is currently enrolled. The district must approve or deny the request and transfer the student to an in-field teacher if available at the school no later than two weeks after the request is received. If the request is denied, the school must notify the parent with the specific reasons for denial. An explanation of the transfer process must be available in the student handbook or similar publication.

The bill further allows a parent of any student, whether assigned to an in-field or out-of-field teacher, to request a transfer to another classroom teacher. The district must follow the same procedures and timelines outlined above, including posting the transfer process in the student handbook or similar publication.

⁶⁵ See ss. 1002.20(16) and 1010.215(5), F.S.

⁶⁶ *Id.*

⁶⁷ Section 1010.215(5), F.S.

⁶⁸ See s. 1010.215(5)(a), F.S.

⁶⁹ See s. 1010.215(5)(b) and (c), F.S.

⁷⁰ Section 1012.42(2), F.S.

Neither transfer request procedure above gives a parent the right to choose a specific classroom teacher.

Voluntary Prekindergarten Program

Enrollment

Present Situation

The Voluntary Prekindergarten (VPK) Education Program prepares early learners for success in kindergarten and beyond. Every four-year old child in Florida is entitled to a free, high-quality pre-kindergarten learning opportunity delivered according to professionally accepted standards.⁷¹ Children must live in Florida and be four years old on or before September 1 of the current school year to be eligible.⁷²

Effect of the Bill

The bill allows parents the option of initially enrolling their child in a VPK program in the school year in which the child becomes eligible or deferring enrollment until the following school year (at the age of five).

Readiness Rate

Present Situation

Current law requires the Office of Early Learning (OEL) to adopt procedures to annually calculate each private prekindergarten provider's and public school's kindergarten readiness rate. The rate must be expressed as the percentage of the provider's or school's students who are assessed as ready for kindergarten and must include student learning gains when available and the percentage of students who meet all state readiness measures.⁷³

Effect of the Bill

The bill directs OEL not to adopt a kindergarten readiness rate for the 2014-2015 and 2015-2016 school years; therefore providers will maintain the readiness rate earned during the 2013-2014 school year. Providers who were on probation in 2013-2014 shall remain on probation until the provider or school meets the minimum rate adopted by the office. These provisions expire July 1, 2017.

K-12 Educational Programs/Provisions

Pledge of Allegiance

Present Situation

In each public elementary, middle and high school in the state, the Pledge of Allegiance must be recited at the beginning of the day. The pledge must be rendered by each student standing with his or her right

⁷¹ Art. IX, s. 1(b), Fla. Const.

⁷² Section 1002.53, F.S.

⁷³ Section 1002.69(5), F.S.

hand over his or her heart. When the pledge is given, civilians must show full respect to the flag by standing at attention. Men must remove their headdress, unless worn for a religious purpose.⁷⁴

Each student must be informed of the right not to participate in the reciting of the pledge by a notice posted in a conspicuous place. The student is excused from reciting the pledge when the student obtains a written statement from their parent.⁷⁵

In *Frazier ex rel. Frazier v. Winn*, a high school student, without a signed, written excuse from his parent, refused to stand and recite the pledge.⁷⁶ The court upheld the requirement that students must obtain a signed, written statement from their parent before being excused from the pledge.⁷⁷ The court “conclude[d] that the State’s interest in recognizing and protecting the rights of parents on some educational issues is sufficient to justify the restriction of some students’ freedom of speech.”⁷⁸

However, the court found that the requirement that all civilians, including excused students, stand and place their hand on his or her heart during the pledge, violated the constitution.⁷⁹ An excused student has the right to remain quietly seated during the pledge.⁸⁰

Effect of the Bill

The bill repeals the requirement to conspicuously post notice of the right not to participate and instead provides that students shall be informed of this right by a written notice published in the student handbook, the code of student conduct or a similar school publication.

The bill addresses the constitutional issues identified in *Frazier*⁸¹ by removing the requirement that all civilians, including excused students, stand and place their hand over their heart during the pledge. Instead, only unexcused students must stand and recite the pledge.

Suicide Prevention

Present Situation

Each school district is required to develop a professional development system in consultation with teachers, teacher-educators of Florida College System institutions and state universities, business and community representatives, and local education foundations, consortia, and professional organizations.⁸²

The Statewide Office for Suicide Prevention is housed within the Department of Children and Families (DCF).⁸³ Among other things, the office must coordinate education and training curricula in suicide prevention efforts for law enforcement personnel, first responders to emergency calls, health care providers, school employees, and other persons who may have contact with persons at risk of suicide.⁸⁴ The office is required to operate within available resources but is allowed to seek and accept

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Frazier ex rel. Frazier v. Winn*, 535 F.3d 1279, 1285-86 (11th Cir. 2008).

⁷⁷ *Id.* at 1285.

⁷⁸ *Id.*

⁷⁹ *Id.* at 1282 (holding that the “standing at attention” provision should not be enforced).

⁸⁰ *Id.*

⁸¹ *Frazier ex rel. Frazier v. Winn*, 535 F.3d 1279, 1285-86 (11th Cir. 2008).

⁸² Section 1012.98(4)(b), F.S.

⁸³ Ch. 2011-51, L.O.F. Section 14.2019, F.S.

⁸⁴ Section 14.2019, F.S.

grants or funds from federal, state, or local sources to support the operation and defray the authorized expenses of the office and the Suicide Prevention Coordinating Council.⁸⁵

Effect of the Bill

The bill requires the DOE, beginning with the 2016-2017 school year and in consultation with the Statewide Office for Suicide Prevention, to develop a list of approved youth suicide awareness and prevention training materials that may be used for instructional personnel in elementary school, middle school, and high school.

Under the bill, a school may incorporate suicide awareness and prevention training as part of its inservice program. If a school chooses to incorporate the training, all of the school's instructional personnel must be required to participate and the school must report its participation to the DCF. The training may not add to the total hours of inservice training required by the DOE. A school that incorporates at least two hours of the training must be considered a "Suicide Prevention Certified School." The bill requires the DCF to maintain an updated record of all Suicide Prevention Certified Schools.

Approved materials must include training on how to identify appropriate mental health services and how to refer youth and their families to those services. Approved materials may include materials currently being used by a school district if the materials meet any criteria established by the DOE and may include programs that instructional personnel can complete through a self-review of approved youth suicide awareness and prevention materials.

The bill provides that there is no cause of action for any loss or damage caused by an act or omission resulting from implementation of the training except in cases of willful or wanton misconduct. The bill also clarifies that the training provisions do not create any new duty of care or basis of liability.

Florida Seal of Biliteracy Program

Present Situation

A seal of biliteracy is an award given by a state DOE or a local school district to recognize a student who has attained proficiency in English and one or more other world languages by the time of high school graduation. The seal is typically affixed to the student's high school diploma and included on his or her transcript,⁸⁶ and it serves to certify the student's attainment of biliteracy to employers and postsecondary institutions.⁸⁷

In 2015, the American Council on the Teaching of Foreign Languages (ACTFL), the National Association for Bilingual Education, the National Council of State Supervisors for Languages, and the Teachers of English to Speakers of Other Languages International Association collaboratively published the Guidelines for Implementing the Seal of Biliteracy.⁸⁸ The guidelines provide a source of information to help states implement seal of biliteracy programs in a consistent manner across the country.⁸⁹ Fourteen states and Washington D.C. have adopted a seal of biliteracy.⁹⁰

⁸⁵ *Id.*

⁸⁶ American Council on the Teaching of Foreign Languages, *Seal of Biliteracy Guidelines Released*, <http://www.actfl.org/news/press-releases/seal-biliteracy-guidelines-released> (last visited January 13, 2016).

⁸⁷ The American Council on the Teaching of Foreign Languages, et al., *Guidelines for Implementing the Seal of Biliteracy* (March 2015), available at http://www.actfl.org/sites/default/files/pdfs/SealofBiliteracyGuidelines_0.pdf.

⁸⁸ *Id.*

⁸⁹ American Council on the Teaching of Foreign Languages, Seal of Biliteracy Guidelines Released, <http://www.actfl.org/news/press-releases/seal-biliteracy-guidelines-released> (last visited January 13, 2016) [hereinafter referred to as *Guidelines*].

⁹⁰ Seal of Biliteracy, *State Laws Regarding the Seal of Biliteracy*, <http://sealofbiliteracy.org/> (last visited January 13, 2016).

The guidelines include recommended student eligibility requirements states can adopt in implementing a seal of biliteracy program, including the level of language proficiency required in both English and the other world language as well as the evidence necessary to establish language proficiency in each.⁹¹

The guidelines recommend that participating states require students to demonstrate proficiency in English and another language by achieving specified scores on state-selected assessments.⁹² The guidelines also provide recommended procedures for awarding the seal to eligible students.⁹³

The guidelines recommend states use the ACTFL's Proficiency Guidelines⁹⁴ to establish qualifying scores on any identified tests: "The **minimum** target level should be Intermediate Mid based on the ACTFL Proficiency Guidelines."⁹⁵

In addition, the Seal of Biliteracy guidelines encourage states to consider a two-tier seal to provide a higher option in the "Advanced" range.⁹⁶ Utah has adopted such a two-tier system, awarding a "Platinum" seal to students who score at the "Advanced Mid" level and higher and a "Gold" seal to students who score at the "Intermediate Mid" or "Intermediate High" levels.⁹⁷

Effect of the Bill

The bill establishes the Florida Seal of Biliteracy to recognize a high school graduate who has attained a high level of competency in listening, speaking, reading, and writing in one or more foreign languages in addition to English. Consistent with the guidelines, the bill differentiates two levels of competency, allowing students to earn a Seal of Biliteracy at either the "Gold" or the "Silver" level.

The bill provides definitions and establishes competency levels for the Gold and the Silver Seal of Biliteracy. The bill requires the SBE to adopt rules to implement the program.

In addition, the bill requires the Commissioner to assist school districts in implementing the program by preparing and providing insignias for the Silver and the Gold Seal of Biliteracy and providing any other information necessary for successful implementation.

Each school district must:

- maintain appropriate records to identify a student who has met the requirements to receive the Gold or the Silver Seal of Biliteracy;
- provide the Commissioner with the number of students who have met the requirements to receive the Gold or the Silver Seal of Biliteracy; and
- affix the appropriate insignia to the student's diploma and indicate on the student's transcript that the student has earned the Gold or the Silver Seal of Biliteracy.

The bill prohibits the DOE and school districts from charging a fee for the seal.

ACT Aspire

Present Situation

⁹¹ *Seal of Biliteracy Guidelines* at 3-5.

⁹² *Guidelines* at 4.

⁹³ *Guidelines* at 5.

⁹⁴ American Council on the Teaching of Foreign Languages, *ACTFL Proficiency Guidelines* (2012), available at http://www.actfl.org/sites/default/files/pdfs/public/ACTFLProficiencyGuidelines2012_FINAL.pdf.

⁹⁵ *Guidelines* at 3 (emphasis in original).

⁹⁶ *Guidelines* at 3.

⁹⁷ See Education Week, *Utah Unveils New Wrinkle for Seal of Biliteracy Honor*, http://blogs.edweek.org/edweek/learning-the-language/2016/01/utah_to_establish_new_wrinkle_.html (last visited Jan. 14, 2016). See also Utah State Board of Education, minutes of meeting at 34-35 (Dec. 3-4, 2015).

In 2004, the Legislature created the Florida Partnership for Minority and Underrepresented Student Achievement with the mission to “prepare, inspire, and connect students to postsecondary success and opportunity, with a particular focus on minority students and students who are underrepresented in postsecondary education.”⁹⁸ The law requires each public high school, including schools and alternative sites and centers of the Department of Juvenile Justice, to provide for the administration of the Preliminary SAT/National Merit Scholarship Qualifying Test (PSAT/NMSQT),⁹⁹ or the Preliminary ACT (PLAN)¹⁰⁰ to all students enrolled in grade 10. Student performance on these tests is intended to help high schools assess if students are “prepared to enroll and be successful in AP courses or other advanced high school courses.” School districts must choose to administer either the PSAT/NMSQT or the PLAN districtwide. Funding for such tests is contingent on annual funding in the General Appropriations Act.¹⁰¹ On April 1, 2014, ACT, Inc., launched a new student readiness assessment system, called ACT Aspire, to replace the PLAN.

Effect of the Bill

The bill updates the statutory reference to the PLAN to reflect the current ACT test, ACT Aspire, which has replaced the PLAN.

K-12 Student Funding

CAPE Dual Enrollment Industry Certification Funding

Present Situation

Performance funding for a CAPE industry certification earned through dual enrollment is provided to the Florida College System institution or district career center providing the instruction only if the industry certification is eligible for funding on the Postsecondary Industry Certification Funding List approved by the SBE.¹⁰²

Effect of the Bill

The bill authorizes performance funding for a CAPE industry certification earned through a dual enrollment course, which is not eligible for funding on the Postsecondary Industry Certification Funding List or is earned as a result of an agreement with a nonpublic postsecondary institution, to be funded in the same manner as a non-dual enrollment course industry certification. The school district may provide for an agreement between the high school and the technical center, or the school district and the postsecondary institution may enter into an agreement for equitable distribution of the bonus funds.

CAPE Teacher Bonus Funding

Present Situation

⁹⁸ Section 1, ch. 2004-63, L.O.F., codified at s. 1007.35, F.S.

⁹⁹ The PSAT/National Merit Scholarship Qualifying Test (NMSQT) and PSAT 10 also measures what students learn in school and what the students need to succeed in college. College Board, *PSAT/NMSQT and PSAT 10: Inside the Test*, <https://professionals.collegeboard.com/testing/sat> (last visited Jan. 24, 2016); see also College Board International, *PSAT/NMSQT*, <http://international.collegeboard.org/programs/psat-nmsqt-psss> (last visited Jan. 24, 2016).

¹⁰⁰ PLAN includes four multiple-choice tests in English, Math, Reading, and Science. ACT, *PLAN*, <https://www.act.org/planstudent/tests/index.html> (last visited Jan. 24, 2016). Typically, students take PLAN in grade 10. ACT, *PLAN*, <https://www.act.org/planstudent/tests/epas.html> (last visited Jan. 24, 2016).

¹⁰¹ See s. 1007.35(5), F.S.

¹⁰² Section 1011.80, F.S.

Bonus funding is authorized for school districts and for teachers if a student earns a CAPE industry certification.¹⁰³ Depending on the certification earned, a school district receives bonus funding of 0.1, 0.2, 0.3, 0.5, or 1.0 FTE. Teacher bonus funding is awarded for CAPE industry certifications as follows:

- A bonus in the amount of \$25 is awarded for each student taught by a teacher who provided instruction in a course that led to the attainment of a CAPE industry certification on the CAPE Industry Certification Funding List with a weight of 0.1.¹⁰⁴
- A bonus in the amount of \$50 is awarded for each student taught by a teacher who provided instruction in a course that led to the attainment of a CAPE industry certification on the CAPE Industry Certification Funding List with a weight of 0.2, 0.3, 0.5, and 1.0.¹⁰⁵

CAPE industry certification bonuses may not exceed \$2,000 to a teacher in any given school year.¹⁰⁶

Effect of the Bill

The bill establishes two new tiers of bonuses available to CAPE industry certification teachers under s. 1011.62 (1)(o), F.S. A teacher who provided instruction to a student in a course that led to the attainment of a CAPE industry certification on the CAPE Industry Certification Funding List with a weight of 0.3 will earn a \$75 bonus, which is \$25 more than currently authorized. A teacher who provided instruction to a student in a course that led to the attainment of a CAPE industry certification on the CAPE Industry Certification Funding List with a weight of 0.5 or 1.0 will earn a \$100 bonus, which is \$50 more than currently authorized.

The bill increases the maximum annual bonus for teachers providing instruction in courses leading to these CAPE industry certifications from \$2,000 to \$3,000.

ESE Guaranteed Allocation

Present Situation

In order to provide exceptional education and related services, an Exceptional Student Education (ESE) Guaranteed Allocation was established by the Legislature to provide funding through the FEFP in addition to the basic program funding.¹⁰⁷ This allocation is a lump sum that is derived from the number of FTE students and the cost factors associated with the matrix of services (matrix) to document the services provided to each student identified as exceptional.¹⁰⁸ The amount allocated for each school district is not recalculated during the year.¹⁰⁹

Effect of the Bill

The bill authorizes the DOE to recalculate the ESE Guaranteed Allocation for each school district. The ESE Guaranteed Allocation will be calculated initially in the General Appropriations Act (GAA), and recalculated based on each school district's actual ESE and total full-time equivalent (FTE) enrollment as determined by the October FTE survey. This recalculation will provide school districts with their appropriate share of the ESE Guaranteed Allocation based on actual enrollment rather than projected enrollment.

¹⁰³ Section 1011.62 (1)(o), F.S.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ Florida DOE, *Matrix of Services Handbook* (2015), available at <http://www.fl doe.org/core/fileparse.php/7690/urll/2015MatrixServices.pdf>.

¹⁰⁸ Section 1011.62 (1)(e)1.a., F.S.

¹⁰⁹ Section 1011.62(1)(e)2., F.S.

Matrix of Services Calculation

Present Situation

DOE developed the Matrix of Services Handbook to provide districts, schools, and teachers with information about the matrix of services required for selected students with exceptionalities.¹¹⁰ The matrix is the document used to determine the cost factor for selected exceptional education students. The matrix is designed with five levels in each of the following five domain areas:¹¹¹

- Curriculum and Learning Environment
- Social or Emotional Behavior
- Independent Functioning
- Health Care
- Communication

A student is evaluated within each of these five domains to determine the appropriate level of service required. Level 1 represents the lowest level of service and Level 5 represents the highest level of service.¹¹² The frequency and intensity of the service and the qualifications of personnel required to provide the service are critical factors that impact the determination of the appropriate level of service for the student.¹¹³

Special consideration points are additional points for selected populations of students. The applicable special consideration points are added together with the scores from each domain of the matrix to determine the level of support services.¹¹⁴ For example, three special consideration points are added to the matrix for students identified as visually impaired or dual-sensory impaired. The additional special consideration points can result in a student being classified for a higher level of service.

Effect of the Bill

Beginning in the 2017-2018 school year, a school district must annually add four special consideration points to the total score of all domains on the matrix to students who are deaf and enrolled in an auditory-oral education program¹¹⁵ specifically for such students. Most eligible students will move from Level 3 to Level 4 and, therefore, generate \$4,000 in additional funding through the FEFP.

Federally Connected Student Supplement

Present Situation

The federally connected student supplement was established in the 2015-2016 Implementing Bill, ch. 2015-222, L.O.F., to provide funding to school districts to support the education of students connected with federally-owned military installations, National Aeronautics and Space Administration (NASA) property, and Indian lands. To be eligible for this supplement, the district must also be eligible for federal impact aid funds, pursuant to Title VIII of the Elementary and Secondary Education Act of 1965.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.* The total number of points, determined by adding together the scores for each domain and applicable special considerations points, results in a rating of Support Level 1 through Support Level 5.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ Section 1002.391(1)(a), F.S. An auditory-oral education program is a program that develops and relies solely on listening skills and uses an implant or assistive hearing device for the purpose of relying on speech and spoken language skills as the method of communication.

The supplement is based on two components: a student allocation and an exempt-property allocation. The student allocation is based on the number of students in the district reported for federal impact aid, including students with disabilities, who:

- reside with a parent who is on active duty in the uniformed services or is an accredited foreign government official and military officer;
- reside on eligible federally-owned Indian lands; or
- reside with a civilian parent who lives or works on eligible federal property connected with a military installation or NASA.

The number of these students must be multiplied by a factor of 0.5.

The exempt-property allocation is based on the district's real property value of exempt federal property of federal impact aid lands reserved as military installations, NASA properties, or federally-owned Indian lands, multiplied by the millage authorized and levied under s. 1011.71 (2), F.S.¹¹⁶

The student allocation and the exempt-property allocation are added together for each eligible district to produce the federally connected student supplement.¹¹⁷

Effect of the Bill

The bill codifies the federally connected student supplement categorical within the FEFP. School districts which receive federal impact aid under Title VIII of the Elementary and Secondary Education Act of 1965, will continue to be eligible for additional FEFP funding under this categorical.

Minimum Term Funding

Present Situation

Each school district is required to annually operate all schools for a term of 180 actual teaching days or the equivalent on an hourly basis as specified in SBE rules.¹¹⁸ The SBE has provided that the hourly equivalent to the 180-day school year is for:

- Grades 4 through 12: not less than 900 net instructional hours
- Kindergarten through grade 3 or in an authorized prekindergarten exceptional program: not less than 720 net instructional hours¹¹⁹

For the purposes of the FEFP, a full time equivalent student (FTE) in each program of the district is defined in terms of full-time students and part time students, as follows:

- A full-time student is one student on the membership roll of one school program or a combination of school programs for the school year or the equivalent of instruction in a standard school, comprising no less than the 900 net hours for a student in grade 4-12, or not less than 720 net hours for a student in kindergarten through grade 3 or in an authorized prekindergarten exceptional program¹²⁰
- A part-time student is a student on the active membership roll of a school program or combination of school programs who is less than a full time student.¹²¹ Part time students are funded based on their proportional share of hours of instruction¹²²

¹¹⁶ Section 7, ch. 2015-222, L.O.F.

¹¹⁷ Specific Appropriation 90, s. 2, ch. 2015-232, L.O.F.

¹¹⁸ Section 1011.60(2), F.S.

¹¹⁹ Rule 6A-1.045111(1), F.A.C.

¹²⁰ Section 1011.61(1)(a)1., F.S.

¹²¹ Section 1011.61(1)(b), F.S.

¹²² E-mail, Department of Education, Governmental Relations, January 23, 2016.

Current law also defines a “full-time” student as one on the membership roll of one program or combination of school programs for the school year or the equivalent of instruction in a double-session school or a school using an experimental calendar approved by the commissioner, comprising not less than 810 net hours for a student in grades 4 through 8 and not less than 720 net hours for a student in kindergarten through grade 3 or in an authorized prekindergarten exceptional program.¹²³

For the purposes of the FEFP, students in double-sessions schools or schools using an experimental calendar that meet the hourly equivalent are considered full-time students¹²⁴ and generate a full 1.0 FTE.¹²⁵ However, current law does not define “double-session school” nor the circumstances under which a school could operate double sessions. In Florida, “double-session schools” have historically existed in instances where districts held two sessions per day at one school location due to school construction delay or storm damage.¹²⁶ For the 2010-2011 and 2011-2012 school years, the Auditor General recommended adjustments for six charter schools that reported a 180-day calendar and 900 hours of instruction for full-time funding without sufficient evidence to support that instruction had been delivered for 900 hours. Subsequently, the charter schools claimed they were operating as double-session schools.¹²⁷

Upon written application, the SBE is authorized to alter the 180 day minimum term requirement during a national, state, or local emergency if the SBE determines that it is not feasible to make up lost days or hours.¹²⁸ At the discretion of the Commissioner, and if the SBE determines that the reduction of school days or hours is caused by the existence of a bona fide emergency, the apportionment may be reduced for such district or districts in proportion to the decrease in the length of term in any such school or schools.¹²⁹

The DOE is required to determine and implement an equitable method of equivalent funding for schools operating under emergency conditions, which have been approved by the DOE to operate for less than the minimum school day.¹³⁰

Effect of the Bill

The bill:

- provides that schools (including double-session schools and schools utilizing an experimental calendar) that operate for less than the minimum term will generate full-time equivalent (FTE) commensurate with the number of instructional hours received;
- repeals alternative minimum term provisions for double-session schools and schools utilizing an experimental calendar;
- repeals the requirement for the DOE to approve an experimental school calendar; and
- clarifies minimum term requirements by which DOE may approve the operation of schools under emergency conditions.

Additionally, the bill eliminates statutory language requiring the DOE to determine and implement an equitable method of equivalent funding for experimental schools which have been approved by the DOE to operate for less than the minimum school day.¹³¹

Extracurricular Activities

¹²³ Section 1011.61 (1)(a)2., F.S.

¹²⁴ Section 1011.61(1)(a)2., F.S.

¹²⁵ Staff of the Florida DOE, *Legislative Bill Analysis for SB 834* (2016).

¹²⁶ *Id.*

¹²⁷ Email, Florida Department of Education, Governmental Relations, (Nov. 2, 2015)

¹²⁸ Section 1011.60(2), F.S. The State Board of Education is authorized to prescribe procedures for altering this requirement. *Id.*

¹²⁹ Section 1011.60(2), F.S. A strike, as defined in s. 447.203(6), by employees of the school district may not be considered an emergency. *Id.*

¹³⁰ Section 1011.61(1), F.S. (Flush left provisions).

¹³¹ Section 1011.61(1), F.S. (Flush left provisions)

Florida High School Athletic Association

Present Situation

The Florida High School Athletic Association (FHSAA) is statutorily designated as the governing nonprofit organization for interscholastic athletics in Florida public schools in grades 6 through 12. The FHSAA is not a state agency, but is assigned quasi-governmental functions. If the FHSAA fails to meet its obligations and responsibilities, the Commissioner of Education (commissioner) is directed to designate a nonprofit organization to manage interscholastic athletics with the approval of the State Board of Education.¹³²

Any high school, middle school, or combination school,¹³³ including charter schools, virtual schools, private schools and home education cooperatives,¹³⁴ may become a member of the FHSAA and participate in FHSAA activities. Membership is not mandatory for any school.¹³⁵ The FHSAA may not deny or discourage interscholastic competition between member and nonmember Florida schools, including members of another athletic governing organization.¹³⁶ However, FHSAA member schools may not join other athletic governing associations or participate in FHSAA sanctioned activities on a per sport basis.¹³⁷

Effect of the Bill

The bill authorizes a private school to join the FHSAA on a per-sport basis; and requires the FHSAA to allow a public school to apply for consideration to join another athletic association.

Student Eligibility

Present Situation

Florida law defines interscholastic extracurricular activities as any school-authorized athletic or education-related student activity that occurs during or outside of the regular instructional school day.¹³⁸ Extracurricular activities include such activities as interscholastic and intramural athletics, drama, marching band, chorus, and academic and social clubs.

Florida law requires all students participating in extracurricular activities to meet basic academic and conduct requirements. Outside these statutory requirements, nonathletic activities are largely governed by district school board or private school policies. Governance of interscholastic athletics is shared by the FHSAA and its member public and private schools. The law provides specific direction to the FHSAA on such eligibility matters as residency, transfer, recruiting, and medical evaluations. The FHSAA has discretion to adopt any other regulations on eligibility, provided they do not conflict with

¹³² Section 1006.20(1), F.S.

¹³³ A combination school is any school that serves both students in high school and the middle school grades; elementary, middle or high school grades combined; or elementary and middle grades combined, e.g., K-12, K-8, 6-12, or 7-12. Bylaw 3.2.2.3, FHSAA.

¹³⁴ A “home education cooperative” is a parent-directed group of individual home education students that provides opportunities for interscholastic athletic competition to those students and may include students in grades 6 through 12. Bylaw 3.2.2.4, FHSAA.

¹³⁵ Bylaws 3.2.2 (types of member schools) and 3.7, FHSAA (procedures for admittance).

¹³⁶ Section 1006.20(1), F.S. FHSAA has adopted bylaws that require non-FHSAA member Florida schools that compete with FHSAA member schools to verify, among other things, that the school holds liability insurance coverage and that their student athletes meet the same eligibility requirements as member school student athletes, undergo medical evaluations, have medical insurance coverage, and submit liability waivers. Bylaw 8.3.1, FHSAA.

¹³⁷ Bylaw 3.3.1, FHSAA. Member schools must adopt the FHSAA bylaws annually as the rules governing its interscholastic athletic programs. *Id.*

¹³⁸ See s. 1006.15(2), F.S.

statutory requirements.¹³⁹ FHSAA bylaws authorize member schools and school districts to adopt more stringent eligibility requirements for interscholastic athletics than the FHSAA's requirements.¹⁴⁰

The general academic and conduct requirements specified in law require that, to be eligible for participation in any extracurricular activity, a high school student¹⁴¹ must:

- maintain either a 2.0 grade point average (GPA) or above on a 4.0 scale in the semester preceding participation;¹⁴²
- execute and fulfill the requirements of an academic performance contract if the student's GPA falls below 2.0;¹⁴³
- have a cumulative GPA of 2.0 or above in his or her junior or senior year; and
- maintain satisfactory conduct in accordance with the school's code of student conduct.¹⁴⁴

The law authorizes a school district to set additional eligibility requirements, but the requirements must not make participation less accessible to home education students than to other students.

Florida law authorizes students who are enrolled in a charter school, the Florida Virtual School (FLVS), or a home education program to participate in extracurricular activities at a traditional public school, if requirements are met.¹⁴⁵ Additionally, FHSAA has adopted a bylaw allowing a student enrolled in a magnet school, alternative school, or other public school of choice to participate in interscholastic athletics at a traditional public school.¹⁴⁶ Such eligibility is provided because these choice options offer limited or no extracurricular activities. Generally speaking, such students must:

- demonstrate educational progress or meet GPA requirements;
- meet the same residency requirements as other students in the school;
- meet the same standards of acceptance, behavior, and performance required of other participating students; and
- register their intent to participate in extracurricular activities before the beginning date of the activity with the public school where the student wishes to participate.¹⁴⁷

The conditions placed upon participation vary. For example FLVS and home education students may participate in any extracurricular activity offered by the traditional public school. Charter school students may participate in any activity offered by the traditional public school that is not offered by the charter school. Fewer options are available to magnet school and alternative school students. They may only play a sport at a traditional public school if their school does not offer any sport programs at all.¹⁴⁸

The law also authorizes a student attending a private middle school or high school to participate in interscholastic or intrascholastic sports at a public school that is zoned for the physical address at which the student resides if the private school where the student is enrolled is not a member of the FHSAA, has an enrollment of less than 125 students, and does not offer any interscholastic or intrascholastic athletic programs.¹⁴⁹

¹³⁹ Section 1006.20(1) and (2)(a)-(c), F.S.

¹⁴⁰ Bylaw 9.1.1.1, FHSAA.

¹⁴¹ For purposes of athletics in public K-12 schools, high school includes grade six through 12. Section 1006.20(1), F.S.

¹⁴² A home education student must submit form EL9, which requires the parent to list courses taken by the student and calculate a GPA. FHSAA, *Form EL9- Home Education Student Academic Progress Report* (June 2010), available at http://www.fhsaa.org/sites/default/files/el09_home_rep.pdf.

¹⁴³ An academic performance contract is an agreement between the student, the district school board, the appropriate governing association, and the student's parents, which at a minimum requires the student to attend summer school or its graded equivalent, between grades nine and 10 or grades 10 and 11, as necessary. Section 1006.15(3)(a), F.S.

¹⁴⁴ Section 1006.15(3)(a), F.S. The eligibility of a student who is convicted of, or found to have committed, a felony or delinquent act that would have been a felony if committed by an adult is governed by district school board policy. *Id.*

¹⁴⁵ Section 1006.15(3)(c), (d), and (e), F.S. (home education, charter schools, and FLVS).

¹⁴⁶ Bylaws 9.2.2.4 and 9.2.2.4.1, FHSAA (alternative schools and magnet schools).

¹⁴⁷ Section 1006.15(3)(c), (d), and (e), F.S.

¹⁴⁸ Section 1006.15(3)(c), (d), and (e), F.S.; bylaw 9.2.2.4, FHSAA.

¹⁴⁹ Section 1006.15(8), F.S.

The FHSAA and district school board must adopt guidelines that establish:

- registration deadlines and procedures for each sport; and
- student participation requirements that include, but are not limited to, the same standards of eligibility, acceptance, behavior, educational progress, and performance which apply to students attending FHSAA member public and private schools.¹⁵⁰

A student may participate in interscholastic athletics at the school in which he or she first enrolls each school year or at the school in which the student becomes a candidate for an athletic team by engaging in a practice prior to enrolling in the school.¹⁵¹

A student may also be eligible to participate in interscholastic athletics in the school to which the student has transferred during the school year if the transfer is made by a deadline established by the FHSAA,¹⁵² which may not be prior to the date authorized for the beginning of practice for the sport.¹⁵³

Although the law requires FHSAA to allow transfer eligibility in its bylaws, it authorizes each district school board and private school to adopt policies regarding such transfers.¹⁵⁴ Consequently, some school districts have adopted policies that require transfer students to wait one calendar year before being eligible to compete in athletics, allow transfer eligibility only if the student makes a full and complete move with all members of his or her household, or require transfer students to compete at the junior varsity level for a period of one year.¹⁵⁵ Some courts have held that school district transfer policies that are more stringent than FHSAA's transfer policies conflict with state law.¹⁵⁶

Effect of the Bill

The bill revises student eligibility requirements by:

- prohibiting a school district from delaying eligibility or otherwise preventing a student participating in controlled open enrollment or a school choice program from being immediately eligible to participate in extracurricular activities;
- authorizing students enrolled in a non-FHSAA member private school to participate in interscholastic or intrascholastic sports at their zoned public high school or middle school regardless of whether the private school offers an athletic program;
- defining "eligible to participate" to include a student participating in tryouts, off-season conditioning, summer workouts, preseason conditioning, in-season practice, or contests. A student is not required to be placed on any specific team for extracurricular activities; and
- relaxing the evidentiary standard for establishing a student's ineligibility from clear and convincing evidence to a preponderance of the evidence.

The bill creates s. 1006.195, F.S., which provides district school boards and charter schools the authority and responsibility to establish student eligibility standards regarding participation in interscholastic and intrascholastic extracurricular activities, notwithstanding existing eligibility standards established in s. 1006.15 and the duty of the FHSAA to "adopt bylaws that, unless specifically provided

¹⁵⁰ *Id.*

¹⁵¹ Section 1006.20(2)(a), F.S.

¹⁵² The FHSAA is the designated governing nonprofit organization of athletics in Florida public schools. Section 1006.20(1), F.S.

¹⁵³ Section 2, ch. 2012-188, L.O.F.; 1006.20(2)(a), F.S.

¹⁵⁴ Section 1006.20(2)(a), F.S.

¹⁵⁵ See, e.g., Policy 4.43, Clay County School Board; Policy 8.801, Bay County School Board; and Policy 2431.01, Hillsborough County School Board. These types of residency and transfer policies are similar to the FHSAA residency and transfer bylaws that resulted in the creation of the Student Athlete Recruiting Task Force and recent legislative changes requiring the FHSAA to change its bylaws regarding recruiting.

¹⁵⁶ See *School Board of Hillsborough County v. Kayla Jo Fernandez*, 151 So.3d 1251 (Fla. 2d DCA 2014)(Affirming circuit court order granting transfer student injunctive relief regarding school board determination of ineligibility).

by statute, establish eligibility requirements for all students who participate in high school athletic competition in its member schools.”¹⁵⁷ However, the FHSAA retains jurisdiction over the following:

- membership in the FHSAA;
- recruiting prohibitions and violations;
- student medical evaluations;
- investigations;
- sanctions for coaches;
- school eligibility and forfeiture of contests;
- student concussions or head injuries;
- the sports medical advisory committee; and
- general operational provisions of the FHSAA.

Each district school board must establish eligibility standards and student disciplinary actions in its code of student conduct. The code must at least provide that:

- a student not suspended or expelled is eligible to participate in interscholastic athletics;
- a student’s eligibility to participate in interscholastic or intrascholastic activity may not be affected by recruiting allegations until a final determination has been reached;
- a student may not participate in any interscholastic or intrascholastic activity if the student participated in that same sport at another school during the same school year unless the student:
 - is a dependent child of active duty military personnel whose move resulted from military orders;
 - has been relocated due to a foster care placement in a different school zone;
 - has moved due to a court-ordered change in custody due to separation or divorce or the serious illness or death of a custodial parent; or
 - is authorized for good cause in district or charter school policy.

The bill provides that home education students, charter school students, full-time Florida Virtual School students, and private school students who participate in extracurricular activities for a public school are subject to the school district’s code of student conduct for purposes of eligibility.

Additionally, the bill provides that each charter school and private school that offers extracurricular activities “is responsible for the authority and responsibility otherwise provided to district school boards.”

Recruiting

Present Situation

Florida law requires the FHSAA to adopt bylaws prohibiting the recruitment of student athletes. Currently, the bylaws prohibit member schools from recruiting student athletes for athletic purposes. “Athletic recruiting” is “any effort by a school employee, athletic department staff member, or representative of a school’s athletic interests to pressure, urge or entice a student to attend that school for the purpose of participating in interscholastic athletics.” The bylaws set forth specific behaviors that constitute recruiting, as well as identify persons who are considered to represent a school’s athletic interests.¹⁵⁸

¹⁵⁷ Section 1006.20(2)(a), F.S.

¹⁵⁸ Section 1006.20(2)(b), F.S.; Policy 36, FHSAA.

A student may be declared ineligible based upon violation of recruiting rules only if the student or parent has:

- falsified any enrollment or eligibility document; or
- accepted an impermissible benefit, i.e., any benefit or any promise of benefit not generally available to the school's students or family members or is based in any way on athletic interest, potential, or performance.¹⁵⁹

The law places certain limitations on recruiting penalties. The bylaws may not prospectively limit the competition of student athletes for rule violations of their adult representatives, their school or its coaches. A student athlete may not be unfairly punished for eligibility or recruiting violations perpetrated by a teammate, coach, or administrator. Contests may not be forfeited for inadvertent eligibility violations unless the coach or a school administrator should have known of the violation. Contests may not be forfeited for other eligibility violations or recruiting violations in excess of the number of contests that the coaches and adult representatives responsible for the violations are prospectively suspended.¹⁶⁰

Effect of the Bill

The bill establishes escalating penalties for the recruitment of student athletes. Specifically, the bill enhances current recruitment penalties found in the FHSAA bylaws by adding stringent penalties for the recruitment of a student athlete by a school district employee or contractor. The bill requires the following penalties:

- For a first offense, a \$5,000 forfeiture of pay
- For a second offense, suspension without pay for 12 months from coaching, directing, or advertising an extracurricular activity and a \$5,000 forfeiture of pay
- For a third offense:
 - a \$5,000 forfeiture of pay for the employee or contractor who committed the violation; and
 - for an individual who holds an educator certificate:
 - the FHSAA must refer the violation for review to determine if probable cause exists;
 - the Commissioner of Education must file a formal complaint against the individual if there is a finding of probable cause; and
 - if the complaint is upheld, the individual's educator certificate must be revoked by the Education Practices Commission for 3 years, in addition to FHSAA penalties. Such individuals are also ineligible for certain permissions related to substitute teachers, career education teachers, and out-of-field teachers.

A school, team, or activity must forfeit all competitions, including honors from competitions, in which a student who participated in any fashion was recruited in a manner prohibited by state law or FHSAA bylaws. However, such forfeits may not exceed "the number of contests that the coaches and adult representatives are prospectively suspended."¹⁶¹ A student's eligibility to participate in any interscholastic or intrascholastic extracurricular activity may not be affected by any alleged recruiting violation until final disposition of the allegation in accordance with the FHSAA's appeals process for athletic recruiting violations.

¹⁵⁹ Section 1006.20(2)(b), F.S. If it is determined that a school has recruited a student in violation of FHSAA bylaws, the FHSAA may require the school to participate in a higher classification for the sport in which the recruited student competes for a minimum of one classification cycle, in addition to any other appropriate fine and sanction imposed on the school, its coaches, or adult representative.

Id.

¹⁶⁰ Section 1006.20(2)(i), F.S.

¹⁶¹ Section 1006.20(2)(i), F.S.

K-12 District School Boards

Powers and Duties

Present Situation

Florida law specifies the powers and duties of district school boards, including the establishment, organization, and operation of schools and the enforcement of laws and rules.¹⁶²

Effect of the Bill

The bill requires district school boards to visit schools, give suggestions for improvement, and advise citizens to promote interest in education and improve the school.

Membership Associations

Present Situation

A not for profit corporation may receive public funds from the state or a local government in certain situations. Public funds are defined as “moneys under the jurisdiction or control of the state, a county, or a municipality, including any district, authority, commission, board, or agency thereof and the judicial branch, and includes all manner of pension and retirement funds and all other funds held, as trust funds or otherwise, for any public purpose.”¹⁶³ The state or a local government may provide public funds to a not for profit corporation through a grant or through payment of membership dues authorized for governmental employees and entities who are members of certain types of not for profit corporations.¹⁶⁴

Effect of the Bill

The bill defines the term “membership association” as a corporation not for profit, including a department or division of such corporation, the majority of whose board members are constitutional officers¹⁶⁵ who, pursuant to the statutory definition of District School Boards, operate, control, and supervise public entities that receive annual state appropriations through a statutorily defined formulaic allocation that is funded and prescribed annually in the General Appropriations Act or the substantive bill implementing the annual appropriations act. The bill specifies that the term does not include a labor organization or an entity funded through the Justice Administrative Commission.¹⁶⁶

The bill requires that dues paid to a membership association with public funds must be assessed for each elected public officer. The funds may be paid to a membership association. If a public officer elects not to join a membership association, the dues assessed to that public officer may not be paid to the membership association.

¹⁶² Section 1001.42, F.S.

¹⁶³ Section 215.85(3)(b), F.S.

¹⁶⁴ See, e.g., s. 2-103(a), Pinellas County Code (authorizing the board of county commissioners to expend monies from the county general fund for membership fees and dues for county employees and officials for professional associations); s. 120-65(a)(2), South Florida Water Management District Administrative Policies (authorizing the district to pay for an employee’s membership in a professional organization not required by his or her job).

¹⁶⁵ Section 112.3142(1), F.S. (provides that “constitutional officers” include the Governor, the Lieutenant Governor, the Attorney General, the Chief Financial Officer, the Commissioner of Agriculture, state attorneys, public defenders, sheriffs, tax collectors, property appraisers, supervisors of elections, clerks of the circuit court, county commissioners, district school board members, and superintendents of schools).

¹⁶⁶ Current law defines a labor organization as “any organization of employees or local or subdivision thereof, having within its membership residents of the state, whether incorporated or not, organized for the purpose of dealing with employers concerning hours of employment, rate of pay, working conditions, or grievances of any kind relating to employment and recognized as a unit of bargaining by one or more employers doing business in this state.” The definition also includes an “employee organization,” as defined in s. 447.203(11), F.S., at such time as it seeks to register pursuant to s. 447.305, F.S. Section 447.02(1), F.S.

Reemployment of Retired Instructional Personnel

Present Situation

In 2011, the Legislature passed the Student Success Act, which amended, among other things, requirements related to instructional personnel performance evaluations, compensation, and the award of contracts.¹⁶⁷

Prior to July 1, 2011, instructional personnel with as little as three years of service could be granted a professional service contract, which provided for automatic renewal of the contract unless the superintendent charged the employee with unsatisfactory performance.¹⁶⁸ After passage of the act and related legislation, school districts no longer had authority to award professional service contracts and tenure to any instructional personnel hired on or after July 1, 2011.¹⁶⁹ Only instructional personnel who held a current professional service contract could continue employment on a professional service contractual basis so long as they remained employed by the district.

The act created s. 1012.335, F.S., which provides that, as of July 1, 2011, instructional personnel under an annual contract and personnel hired thereafter may be employed only on a probationary or annual contractual basis. Initially upon hire, instructional personnel must complete a one-year probationary period, during which they may be dismissed without cause or may resign without a breach of contract. A school district may award an annual contract to instructional personnel only after successful completion of a probationary contract.¹⁷⁰ The section defines an annual contract as an employment contract for a period of no longer than one school year that a district school board may choose to award or not award without cause.¹⁷¹

Subsection 1012.33(8), F.S., provides that retired instructional personnel may interrupt retirement and be reemployed in any public school. Further, the subsection provides that “a member reemployed by the same district from which he or she retired may be employed on a probationary contractual basis as provided in subsection (1).” However, the cross-referenced subsection contains probationary contract provisions relating only to supervisors and school principals, and is silent as to how employment contracts are awarded after the probationary period. It is unclear what type of contract must be provided to reemployed retirees who are initially provided a probationary contract.¹⁷²

Effect of the Bill

Effective upon becoming a law, the bill clarifies and reiterates that retired instructional personnel may be reemployed only on a probationary or annual contractual basis and expressly provides that retirees are not eligible for a professional service contract.

School District Construction Flexibility

Present Situation

¹⁶⁷ Chapter 2011-1, L.O.F.; codified in pertinent part at ss. 1012.33, 1012.335, and 1012.34, F.S.

¹⁶⁸ See s. 1012.33(3)(e), F.S. (2010).

¹⁶⁹ See s. 13, ch. 2011-1, L.O.F. See also s. 19, ch. 2011-37, L.O.F. (deleting language which granted school districts authority to award professional service contracts to any instructional personnel effective July 1, 2011).

¹⁷⁰ See s. 1012.335(2)(a) and (b), F.S.

¹⁷¹ Section 1012.335(1)(a), F.S.

¹⁷² The award of professional service contracts to reemployed FRS members has been the subject of litigation in at least one school district. See *Orange County School Board v. Rachman and Shuman*, 87 So.3d 48 (Fla. 5th DCA 2012) (upholding court order directing the district to award a professional service contract to a reemployed retiree who, after retiring and returning to employment with the district, satisfied all of the statutory requirements for the contract before July 1, 2011). The law has not authorized the award of a professional service contract to any reemployed retiree who did not meet the statutory requirements for the contract prior to July 1, 2011.

The uniform statewide building code for the planning and construction of public educational and ancillary plants, i.e., the State Requirements for Educational Facilities (SREF), is adopted by the Florida Building Commission as part of the Florida Building Code.¹⁷³ The DOE must biennially review and recommend to the Florida Building Commission updates and revisions to the provisions of the SREF of the Florida Building Code.¹⁷⁴ The law and SBE rules require district school boards and Florida College System (FCS) institution boards of trustees to adhere to the SREF when planning and constructing educational facilities and ancillary plants.¹⁷⁵ Generally speaking, SREF standards are premised on providing enhanced safety of occupants and increasing the life span of the extensive, publicly funded infrastructure of Florida's public school districts.¹⁷⁶

Currently, the SREF is codified in s. 453 of the Florida Building Code, 5th Edition. Among other things, the SREF specifies standards for interior walls, walks, roads, drives and parking areas, covered walks and site lighting.

Effect of the Bill

The bill authorizes a district school board to adopt a resolution to implement an exception to one or more of the following SREF requirements:

- Interior nonload-bearing walls by approving the use of fire-rated wood stud walls in new construction or remodeling for interior nonload-bearing wall assemblies that will not be exposed to water or located in wet areas
- Walkways, roadways, driveways, and parking areas by approving the use of designated, stabilized, and well-drained gravel or grassed student parking areas
- Standards for relocatables used as classroom space by approving construction specifications for installation of relocatable buildings that do not have covered walkways leading to the permanent buildings onsite
- Site lighting by approving construction specifications regarding site lighting that:
 - do not provide for lighting of gravel or grassed auxiliary or student parking areas;
 - provide lighting for walkways, roadways, driveways, paved parking lots, exterior stairs, ramps, and walkways from the exterior of the building to a public walkway through installation of a timer that is set to provide lighting only during periods when the site is occupied; and
 - allow lighting for building entrances and exits to be installed with a timer that is set to provide lighting only during periods in which the building is occupied. The minimum illumination level at single-door exits may be reduced to no less than one footcandle.

The resolution must pass by a supermajority vote at a public meeting that begins no earlier than 5 p.m. Before voting on the resolution, a district school board must conduct a cost-benefit analysis prepared according to a professionally accepted methodology that describes how each exception selected by the district school board:

- achieves cost savings;
- improves the efficient use of school district resources; and
- impacts the life-cycle costs and life span for each educational facility to be constructed.

The cost-benefit analysis must also demonstrate that implementation of the exception will not compromise student safety or the quality of student instruction. The district school board must conduct at least one public workshop to discuss and receive public comment on the proposed resolution and cost-benefit analysis, which must begin no earlier than 5 p.m. and may occur at the same meeting at which the resolution will be voted upon.

¹⁷³ Section 1013.37(1), F.S.

¹⁷⁴ Section 1013.37(4), F.S.

¹⁷⁵ Section 1013.37(1), F.S.; rule 6A-2.0010, F.A.C.

¹⁷⁶ See, e.g., s. 1013.12 F.S., (casualty, safety, sanitation, and fire safety standards and inspection of property) and s. 1013.451, F.S. (life-cycle cost comparison).

Special Facilities Construction Account

Present Situation

The Special Facilities Construction Account (SFCA) is part of the Public Education Capital Outlay (PECO) Trust Fund and provides construction funds to school districts that have urgent construction needs but lack sufficient resources, and have no reasonable expectation of raising the needed funds over the next three years from authorized sources of capital outlay revenue.¹⁷⁷ A district may not receive funds for more than one approved project in any 3-year period.¹⁷⁸ The DOE must encourage a construction program that reduces the average size of schools in the district.¹⁷⁹

Typically, the projects that receive funds through the SFCA are located in rural areas that have an insufficient tax base to fund large construction projects.¹⁸⁰ The state's smaller school districts, which serve fewer than 20,000 students, generally raise considerably less through local discretionary property taxes than larger school districts.¹⁸¹ To improve the effectiveness of programs funded by the SFCA, a recent report by the Office of Program Policy and Government Accountability (OPPAGA) recommended the relevant statutes be modified to:

- clarify the types of projects that are eligible for funding;
- clarify the DOE's role in making funding decisions;
- require that the DOE conduct educational plant surveys;
- require the DOE to approve the final construction plans for funded projects;
- change the membership of the project selection committee; and
- require districts to levy the maximum discretionary millage prior to their application.¹⁸²

Effect of the Bill

The bill modifies current law regarding the SFCA to incorporate technical changes suggested by the DOE and options recommended by OPPAGA to improve the effectiveness of the construction projects funded by the SFCA.¹⁸³

The bill preserves the prohibition on a school district from receiving SFCA funding for more than one approved project within a 3-year period. However, the bill extends this prohibition to any time during which any portion of the district's participation requirement remains outstanding. As a result, this modification may help to allocate SFCA funds for targeted construction projects to meet critical need.

District Effort and Participation Requirement

Present Situation

To receive funds from the SFCA, districts must, at the time of request for funds and for a continuing period of 3 years, levy the maximum millage against their nonexempt assessed property value or raise an equivalent amount of revenue from the school capital outlay surtax.¹⁸⁴ Additionally, districts must

¹⁷⁷ Section 1013.64(2)(a), F.S.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ Office of Program Policy Analysis and Government Accountability, *Special Facility Construction Projects Appear Needed, but Have Excess Capacity* (Report No. 11-02), available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1102rpt.pdf>, at 1.

¹⁸¹ *Id.*

¹⁸² *Id.* at 12.

¹⁸³ Florida DOE, 2016 Agency Legislative Bill Analysis for SB 1064 (Dec. 4, 2015), at 3.

¹⁸⁴ Section 1013.64(2)(a)8., F.S.

apply unencumbered Capital Outlay and Debt Service funds, PECO new construction funds, and discretionary capital improvement millage funds to the project.¹⁸⁵ The district must also forego all other fixed capital outlay funding for a period of 3 years.¹⁸⁶ This leaves participating districts with limited ability to pay for other fixed capital outlay needs.

Effect of the Bill

The bill clarifies that a school district's participation requirement is equivalent to all unencumbered and future revenue acquired during a 3-year period, beginning with the year of the initial appropriation and the next two years from Capital Outlay and Debt Service funding, PECO new construction funding, and discretionary capital improvement millage funding. In addition, the bill:

- requires that beginning in the 2019-2020 fiscal year, a school district seeking SFCA funding for a construction project must have levied the maximum discretionary capital improvement millage against its nonexempt assessed property value, as authorized in law,¹⁸⁷ or an equivalent amount of revenue from the school capital outlay sales surtax, as authorized in law,¹⁸⁸ for a minimum of three years prior to the request and for a continuing period necessary to meet the district's participation requirement;
- removes the requirement that a school district's participation requirement be satisfied within a 3-year period; and
- reduces from 1.5 mills to 1.0 mill, the value of the discretionary capital improvement millage that a school district with a new or active project must budget annually until the district's participation requirement is met.

A district school board must set the discretionary capital improvement millage levy rate at a public meeting. The school capital outlay surtax is subject to approval by voter referendum.¹⁸⁹

Construction Plans

Present Situation

District school boards must certify that final phase III construction plans are complete and in compliance with the building and life safety codes before August 1.¹⁹⁰ This deadline does not provide the DOE sufficient time to review the construction plans before such plans are considered by the Special Facility Construction Committee (SFCC). Small districts do not have the expertise to determine if an architect used the most cost-effective school design or overbuilt the school. As a result, such districts may not identify features that do not add value or may incur controllable cost overruns.¹⁹¹

Effect of the Bill

The bill establishes June 1 as the annual deadline for district school boards to certify their final phase III construction plans as complete and in compliance with the building and life safety codes. The modified deadline will provide the DOE with sufficient time to:

- review the construction plans before convening the committee meeting in August of each year; and
- advise the committee whether the construction plans are economical and compliant with the required codes.¹⁹²

¹⁸⁵ Section 1013.64(2)(a)11., F.S.

¹⁸⁶ *Id.*

¹⁸⁷ Section 1011.71(2), F.S.

¹⁸⁸ Section 212.055(6), F.S.

¹⁸⁹ *Id.*

¹⁹⁰ Section 1013.64(2)(a)12., F.S.

¹⁹¹ Florida DOE, 2016 Agency Legislative Bill Analysis for SB 1064 (Dec. 4, 2015), at 3.

¹⁹² Florida DOE, 2016 Agency Legislative Bill Analysis for SB 1064 (Dec. 4, 2015), at 5.

Special Facility Construction Committee

Present Situation

The SFCC is responsible for a preapplication review of a school district's funding requests for special facility construction projects. The SFCC is composed of:

- Two DOE representatives
- A representative from the Governor's office
- A representative selected annually by the district school boards
- A representative selected annually by the superintendents¹⁹³

The law does not specify which representative serves as the committee chair but in practice a DOE representative serves in this role.¹⁹⁴ Additionally, the law authorizes a project review subcommittee, convened by the SFCC, to review preapplications.¹⁹⁵ The subcommittee is composed of:

- Two DOE representatives
- Two staff from school districts that are not eligible to participate in the Special Facility Construction program¹⁹⁶

The SFCC and the subcommittee evaluate the ability of the projects to relieve critical needs and rank the requests in priority order.¹⁹⁷ The statewide priority list for special facilities construction must be submitted to the Legislature in the Commissioner's annual capital outlay legislative budget request at least 45 days before the legislative session.¹⁹⁸

Effect of the Bill

The bill codifies current practice by specifying that a representative of the DOE must chair the SFCC. This modification will allow the DOE to designate one of its two representatives to the SFCC to serve as the committee chair. The bill does not alter the composition of either the SFCC or the project review subcommittee.

Application Review

Present Situation

Within 60 days after receiving the preapplication review request, the SFCC or subcommittee must meet in the school district to review the project proposal and existing facilities.¹⁹⁹ The law, however, does not specify a deadline for the school district to submit the preapplication for review by the committee or subcommittee.²⁰⁰ In practice, to meet the deadline for the commissioner to submit the capital outlay legislative budget request, the DOE convenes the committee meeting in August of each year.²⁰¹

Effect of the Bill

The bill specifies that a school district may request a preapplication review of the district's construction project proposal at any time. However, if the district school board seeks inclusion in the DOE's next

¹⁹³ Section 1013.64(2)(b), F.S.

¹⁹⁴ Florida DOE, 2016 Agency Legislative Bill Analysis for SB 1064 (Dec. 4, 2015), at 3.

¹⁹⁵ Section 1013.64(2)(a)1., F.S.

¹⁹⁶ *Id.*

¹⁹⁷ Section 1013.64(2)(a)1. and (c), F.S.

¹⁹⁸ Section 1013.64(2)(c), F.S.

¹⁹⁹ *Id.*

²⁰⁰ Florida DOE, 2016 Agency Legislative Bill Analysis for SB 1064 (Dec. 4, 2015), at 3.

²⁰¹ *Id.*

annual capital outlay legislative budget request, the district must make the preapplication review request before February 1 of the fiscal year before the legislative budget request.

Additionally, the bill changes the deadline for the committee or subcommittee to complete the preapplication review from 60 days to 90 days after receiving the preapplication review request.

Determining Critical Need

Present Situation

To determine whether a school district's proposed construction project is a critical need, the SFCC or subcommittee must consider:

- The capacity of all existing facilities within the district as determined by the Florida Inventory of School Houses
- The district's pattern of student growth
- The district's existing and projected capital outlay full-time equivalent student enrollment as determined by the DOE

Laws governing educational facilities plans²⁰² require such plans to be based on demographic, revenue, and education estimating conferences.²⁰³

Effect of the Bill

The bill modifies the way the SFCC and project review subcommittee determines whether a proposed construction project is a critical need. The bill requires the use of capital outlay enrollment projections that are based on demographic, revenue, and education estimating conferences rather than the enrollment projections determined by the DOE. This modification aligns the change in projecting student enrollment to existing laws governing educational facilities plans.²⁰⁴

Educational Plant Surveys

Present Situation

To be considered for funding through the SFCA, the construction project must be recommended in the most recent survey or surveys by the school district under the rules of the SBE.²⁰⁵ School districts may:

- contract with a private consultant to conduct the educational plant surveys;
- request the DOE to conduct facility reviews; or
- conduct the surveys in-house.²⁰⁶

Since 1998, school districts have hired private consultants to conduct surveys for 19 of the 24 projects that received funding through the SFCA, "in part, because the districts believed this provided an independent, third-party assessment of their facilities' needs."²⁰⁷ Often these consultants also worked for firms that designed or constructed the facilities.²⁰⁸ Between 2010 and 2015, 13 school districts requested funding, which included five districts that contracted with private consultants to conduct the educational plant surveys.²⁰⁹

²⁰² Sections 1013.31 and 1013.35(2)(a)1., F.S.

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ Section 1013.64(2)(a)2., F.S.

²⁰⁶ Florida DOE, 2016 Agency Legislative Bill Analysis for SB 1064 (Dec. 4, 2015), at 4.

²⁰⁷ Office of Program Policy Analysis and Government Accountability, *Special Facility Construction Projects Appear Needed, but Have Excess Capacity* (Report No. 11-02), at 8, available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1102rpt.pdf>.

²⁰⁸ *Id.*

²⁰⁹ Florida DOE, 2016 Agency Legislative Bill Analysis for SB 1064 (Dec. 4, 2015), at 4.

Effect of the Bill

The bill requires proposed special facility construction projects to be included in the most recent survey or survey amendment that is collaboratively prepared by a school district seeking SFCA funding and the DOE. This modification will allow the DOE to better assess the need for special facility construction projects and provide assurance to other school districts and the general public that the SFCA funds are spent on critically needed capital projects.²¹⁰

The bill also precludes a district, in preparation of a survey, from using a consultant who is employed by or receiving compensation from a third party that designs or constructs a project recommended by the survey.

Project Cost Overruns

Present Situation

SFCA project costs are limited by the statutorily established maximum cost per student station.²¹¹ However, the law is silent regarding cost increases and changes in project scope.²¹² The DOE identified three projects since 1998 in which the final cost exceeded the amount that the committee originally approved.²¹³

Effect of the Bill

The bill authorizes SFCA funds to be used to pay for cost overruns necessitated by a disaster as defined in law²¹⁴ or an unforeseeable circumstance beyond the district's control as determined by the SFCC.

School District Construction Costs

Present Situation

Current law limits the cost of school district capital outlay projects to the following student station costs to:

- \$17,952 for an elementary school
- \$19,386 for a middle school
- \$25,181 for a high school²¹⁵

These costs were established in 2006, and the statute provides for an annual adjustment each year by the Office of Economic and Demographic (EDR) research based on the Consumer Price Index.²¹⁶ The site cost and offsite improvement costs are not included in the cost per student station. School districts

²¹⁰ *Id.*

²¹¹ Section 1013.62(6)(b)1., F.S. *See also* Florida DOE, 2016 Agency Legislative Bill Analysis for SB 1064 (Dec. 4, 2015), at 4. Cost per student station includes contract costs, legal and administrative costs, fees of architects and engineers, furniture and equipment, and site improvement costs. Cost per student station does not include the cost of purchasing or leasing the site for the construction or the cost of related offsite improvements. Section 1013.64(6), F.S.

²¹² Florida DOE, 2016 Agency Legislative Bill Analysis for SB 1064 (Dec. 4, 2015), at 4.

²¹³ Office of Program Policy Analysis and Government Accountability, *Special Facility Construction Projects Appear Needed, but Have Excess Capacity* (Report No. 11-02), available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1102rpt.pdf>, at 11.

²¹⁴ Section 1013.64, F.S.

²¹⁵ Section 1013.64(6)(b), F.S.

²¹⁶ Based on the December 22, 2015, PECO Revenue Estimating Conference, the cost per student station is \$21,407 for an elementary school, \$23,117 for a middle school, and \$30,027 for a high school. Adjusted cost per student station may be found at <http://edr.state.fl.us/Content/conferences/peco/archives/141209peco.pdf>.

are not required to adhere to these cost maximums when using sales surtax proceeds authorized in s. 212.055, F.S., proceeds from revenue bonds authorized in s. 17, Art. XII of the State Constitution, or ad valorem property tax proceeds authorized by a referendum of the general electorate.²¹⁷ School districts that exceed the cost maximums are required to report the reasons for the excess costs to the DOE. The DOE is required to provide this information to the Legislature each year by December 31.²¹⁸

Effect of the Bill

The bill prohibits school districts from spending more than the statutory cost per student station on new construction from all available revenue sources beginning in Fiscal Year 2017-2018. Districts must maintain accurate documentation related to the costs of all new construction projects subject to the statutory per student station costs, and the Auditor General must review the documentation maintained by districts to verify compliance with statutory per student station costs during its scheduled operational audits of the school district.

The bill outlines sanctions for districts that exceed the statutory maximum student station costs as verified by the Auditor General, unless the overage is minimal or due to extraordinary circumstances outside of the district's control. A district that exceeds the per student station cost will be:

- ineligible for allocations from the PECO Trust Fund for the next three years in which the district would have received allocations had the violation not occurred; and
- subject to the supervision of a District Capital Outlay Oversight Committee, authorized to approve all capital outlay expenditures of the school district, including new construction, renovations, and remodeling, for three fiscal years following the violation.

Each District Capital Outlay Oversight Committee shall be comprised of the following:

- One appointee of the Commissioner who has significant financial management, school facilities construction, or related experience
- One appointee of the State Attorney's Office with jurisdiction over the district
- One appointee of the Auditor General who is a licensed Certified Public Accountant

The bill requires the EDR, in consultation with DOE, to conduct a study of the cost per student station amounts using the most recent available information on construction costs. DOE shall report the final results of the analysis to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 31, 2017.

The bill also requires OPPAGA to conduct a study of SREF to identify current requirements that can be eliminated or modified in order to decrease construction costs while still maintaining student safety. OPPAGA must provide recommendations for SREF improvements to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 31, 2017.

State University System

Performance-Based Funding

Present Situation

During the 2012 Legislative Session, the Legislature adopted a performance funding model for the State University System (SUS) based on system and institutional attainment of performance

²¹⁷ Section 1011.73, F.S.

²¹⁸ Section 1013.64(6)(d)2., F.S.

expectations.²¹⁹ The Legislature appropriated SUS performance funding in the amount of \$15 million²²⁰ in 2012 and \$50 million²²¹ in 2013.

In 2014, the GAA specified that performance funding (including \$100 million in new funding and \$100 million in funding redistributed from the base) be allocated based on the performance funding model adopted by the Board of Governors (BOG) on January 16, 2014.²²² The BOG model is based on four guiding principles:²²³

- Use metrics that align with Strategic Plan goals
- Reward excellence or improvement
- Have a few clear, simple metrics
- Acknowledge the unique mission of the different institutions

In 2015, the performance funding parameters established in the 2014 GAA were codified in law with an expiration date of July 1, 2016.²²⁴ The Legislature appropriated \$400 million in performance funding to the State University System to be allocated based on institutional attainment of performance metrics adopted by the BOG as updated on November 6, 2015.²²⁵ The funds available for allocation to the universities based on the performance funding model consisted of the state's investment of \$150 million in performance funding plus an institutional investment of \$250 million to be redistributed from the base funding of the SUS.²²⁶

The Board of Governors Performance Funding Model contains ten performance metrics that evaluate the state universities on the following:²²⁷

- Percent of bachelor's degree graduates employed and/or continuing their education 1 year after graduation
- Median average full-time wages of undergraduates employed in Florida 1 year after graduation
- Average cost per undergraduate degree to the institution
- Six year graduation rate (full-time and part-time First-Time-In-College)
- Academic progress rate (2nd year retention with GPA above 2.0)
- Bachelor's degrees awarded in areas of strategic emphasis (includes STEM)
- University access rate (percent of undergraduates with a Pell Grant)
- Graduate degrees awarded in areas of strategic emphasis (includes STEM)
- Institution-specific metrics, including:
 - Board of Governors choice
 - Board of Trustees choice

Institutions receive scores on each metric based on the achievement of both excellence and improvement. The higher of the two scores for each metric is applied to the overall score for each institution. Any institution that fails to meet the BOG's minimum performance funding threshold (a total score of less than 26 points) will not be eligible for the state's investment, will have a portion of its institutional investment withheld, and is required to submit an improvement plan that specifies the activities and strategies for improving its performance.²²⁸ A state university is limited to submitting an improvement plan for only one fiscal year.

²¹⁹ Section 1011.905, F.S.

²²⁰ Specific Appropriation 129, ch. 2012-118, L.O.F.

²²¹ Specific Appropriation 142, ch. 2013-40, L.O.F.

²²² Specific Appropriation 143, ch. 2014-51, L.O.F.

²²³ Florida Board of Governors, *Performance Based Funding: hearing before the House Higher Education & Workforce Subcommittee* (October 6, 2015).

²²⁴ Section 1001.92, F.S.

²²⁵ Specific Appropriation 138, ch. 2015-232, L.O.F.

²²⁶ *Id.*

²²⁷ Florida Board of Governors, *Performance Based Funding: hearing before the House Higher Education & Workforce Subcommittee* (October 6, 2015).

²²⁸ Specific Appropriation 138, ch. 2015-232, L.O.F.

Effect of the Bill

The bill makes the State University System Performance-Based Incentive (Incentive) permanent by eliminating the July 1, 2016, statutory expiration date and requiring the BOG to adopt a regulation. The bill modifies the Incentive by:

- requiring the performance-based metrics to include wage thresholds that reflect the added value of a baccalaureate degree;
- requiring the BOG to establish minimum performance funding eligibility thresholds for both the state's investment and the institutional investment;
- specifying that institutions who meet the minimum institutional investment threshold but not the state investment threshold will have their base restored but will be ineligible for performance funding;
- specifying that the institutional investment be restored for each institution eligible for the state's investment under the performance-based funding model; and
- requiring that any institution that fails to meet the BOG's performance threshold for the institutional investment shall have its entire institutional investment withheld (previous practice was to withhold a portion of the institutional investment).

Currently, the Incentive allows an institution, in an effort to restore its institutional investment, to file an improvement plan with the BOG once during the fiscal year. This is consistent with the expiration of the Incentive each fiscal year. However, because the Incentive is made permanent by the bill, any university that falls below the minimum performance threshold in more than one fiscal year, will not be able to submit an improvement plan for restoration of its institutional (base funding) investment in subsequent years.

Emerging Preeminence

Present Situation

In 2013, the Legislature created the Preeminent State Research Universities Program, a collaborative partnership between the BOG and the Legislature to raise the academic and research excellence and national preeminence of the highest performing state research universities in Florida.²²⁹ The partnership was based on the March 24, 2010, SUS Governance Agreement²³⁰ that affirmed the commitment of the BOG and the Legislature to continue collaboration on accountability measures, the use of data, and recommendations derived from such data.

Effective July 1, 2013, the following academic and research excellence standards were established for the preeminent state research universities program:²³¹

- An average weighted grade point average of 4.0 or higher on a 4.0 scale and an average SAT score of 1800 or higher for fall semester incoming freshman, as reported annually
- A top 50 ranking on at least two well-known and highly respected national public university rankings, reflecting national preeminence, using most recent rankings
- A freshman retention rate of 90 percent or higher for full-time first-time-in-college students, as reported annually to the Integrated Postsecondary Education Data System (IPEDS)
- A 6-year graduation rate of 70 percent or higher for full-time first-time-in-college students, as reported annually to the IPEDS
- Six or more faculty members at the state university who are members of a national academy, as reported annually by Top American Research Universities (TARU) annual report

²²⁹ Section 1001.7065, F. S.

²³⁰ Florida Legislature, *State University System Governance Agreement* (March 24, 2010). See also ch. 2010-78, L.O.F.; staff of the Florida House of Representatives, *Legislative Bill Analysis for 7237* (2010).

²³¹ Section 1001.7065, F.S.

- Total annual research expenditures, including federal research expenditures, of \$200 million or more, as reported annually by the National Science Foundation (NSF)
- Total annual research expenditures in diversified nonmedical sciences of \$150 million or more, as reported annually by the NSF
- A top 100 university national ranking for research expenditures in five or more science, technology, engineering, or mathematics fields of study, as reported annually by the NSF
- One hundred or more total patents awarded by the United States Patent and Trademark Office for the most recent 3-year period
- Four hundred or more doctoral degrees awarded annually, as reported in the BOG Annual Accountability Report
- Two hundred or more post-doctoral appointees annually, as reported in the TARU annual report
- An endowment of \$500 million or more, as reported annually by the BOG Annual Accountability Report

The BOG shall designate each state university that meets at least 11 of the 12 academic and research excellence standards above as a “preeminent state research university.”²³² Currently, the University of Florida and the Florida State University are designated as preeminent state research universities.

Effect of the Bill

The bill modifies the academic and research excellence standards of the preeminent state research universities program in the following ways:

- aligns the required average SAT score for incoming freshman with recent changes to the SAT examination scoring rubric;
- specifies that the U.S. News and World Report rankings is one of the rankings that should be considered for the top-50 ranking requirement;
- includes the official membership directories maintained by each national academy (in addition to the TARU annual report) as a source for verification of recognition of faculty members in a national academy; and
- includes professional degrees awarded in medical and healthcare disciplines in the calculation of the number of doctoral degrees awarded annually.

Currently, each state university that annually meets at least 11 of the 12 academic and research excellence standards above is designated as a “preeminent state research university.” The bill requires the BOG to also designate each state university that annually meets at least six of the 12 academic and research excellence standards as an “emerging preeminent state research university.”

The bill requires a state university that is designated as an “emerging preeminent state research university” to submit to the BOG a 5-year benchmark plan with target rankings on key performance metrics for national excellence. Once approved by the BOG and upon the university meeting the benchmark goals annually, the BOG shall award the university its proportional share of any funds provided annually in the GAA to support the program.

Unless otherwise specified in the GAA, funding increases appropriated to support the program must be distributed equally to each designated “preeminent state research university.” Each university designated as an “emerging preeminent state research university” shall receive an amount equal to one-half of the total increased amount awarded to each designated “preeminent state research university.”

University Boards of Trustees

Present Situation

²³² Section 1001.7065, F.S.

Each of the 12 public universities in the state of Florida are administered by a university board of trustees comprised of 13 members as follows: six citizen members appointed by the Governor and confirmed by the Senate; five citizen members appointed by the BOG and confirmed by the Senate; the chair of the university's faculty senate and the student body president of the university.²³³ The appointed members serve staggered 5-year terms. Members of the boards of trustees do not receive compensation but can be reimbursed for travel expenses.²³⁴

Effect of the Bill

The bill provides parameters for the selection of and terms of service for the chairs of state university boards of trustees. It requires each chair to serve for 2 years and authorizes one additional consecutive 2-year term. The bill requires the chair to preside at all meetings of the board and authorizes the chair to call special meetings. It requires the chair to notify the Governor or the BOG whenever a board member has three consecutive unexcused absences from regular board meetings, which may be grounds for removal from the board.

The bill also outlines requirements related to boards of trustees meeting attendance and the posting of meeting minutes for each meeting within 2 weeks.

Florida College System

Performance-Based Funding

Present Situation

In the 2014 GAA, the Legislature required the Commissioner to, no later than December 31, 2014, recommend to the Governor, the President of the Senate and the Speaker of the House of Representatives a performance funding formula that may be used to allocate funds to FCS institutions.²³⁵ The recommendations had to include up to 10 performance measures, appropriate performance benchmarks for each measure, and a detailed methodology for allocating performance funds to the colleges. More specifically, the measures were required to include, at a minimum, job placement rates, cost per degree, and graduation/retention rates. In addition, the performance benchmarks and allocation methodology were required to consider both effective performance and rates of improvement.²³⁶

The Commissioner's original performance funding recommendation included nine measures:²³⁷ job placement/continuing education, completion rates, retention rates, entry level wages, time to degree, cost per degree, credit milestone attainment, Pell Grant completion rates, and one institution specific measure determined by the Board of Trustees.²³⁸ However, the 2015 Legislature appropriated \$40 million (\$20 million in new funding and \$20 million redistributed from the base) and required the SBE to

²³³ Section 1001.71(1), F.S.

²³⁴ Section 1001.71(2), F.S.

²³⁵ Specific Appropriation 126, ch. 2014-51, L.O.F.

²³⁶ *Id.*

²³⁷ State Board of Education, Board Meeting Action Item, *Approval of Performance Funding for the Florida College System* (July 23, 2015), available at: <http://www.fl DOE.org/contact-us/search.shtml?q=performance+funding>.

²³⁸ State of the Florida, *Legislative Bill Analysis for CS/CS/SB 948* (2015).

allocate the funds based on a modified version of the Commissioner's recommended model, with measures limited to job placement, program completion and graduation rates, retention rates, and completer entry level wages.²³⁹

When the model was initially designed in 2014, all measures were worth 10 points; however, due to a realization that some data sources were less accessible than others, a decision was made by the SBE to weigh some measures less than others. As a result, the measures relating to completion rates and retention rates have a maximum value of 10 points, the measure relating to job placement has a maximum value of 7.5 points, and the measure relating to entry level earnings has a maximum value of only 3 points (for a total of 30.5 possible points).²⁴⁰ Points are earned either by meeting an excellence benchmark, which compares colleges against each other on a particular measure, or by meeting an improvement benchmark, based on the college's prior performance. A college's performance is calculated by using the higher score of the excellence and improvement benchmark scores on each measure and then doubling them.²⁴¹

The SBE was required to establish minimum performance thresholds in a manner to ensure that not all colleges are eligible for new funding. All institutions eligible for new funding will have their base funding restored. Any institution that fails to meet the SBE's minimum performance threshold will have a portion of its base funding withheld and must submit an improvement plan that specifies activities and strategies for improving the institution's performance. If upon monitoring the institution's progress in implementing its improvement plan the SBE determines that satisfactory progress has been made, the institution may have its base funding restored. Any institution that does not meet satisfactory progress as, determined by the SBE, may not have its full based funding restored.²⁴²

On July 23, 2015, the SBE adopted the 2015-2016 FCS Performance Funding Model which separated colleges into three categories based on their scores achieved on each measure. The seven colleges with the highest point total are placed into the Gold category. All of these colleges have their base funding restored and are eligible to receive a proportionate share of performance funds. In addition, Gold Colleges receive a proportionate share of the performance dollars that would have been allocated to the colleges in the Bronze category. Colleges whose total scores are above one standard deviation below the mean are placed into the Silver category. Silver Colleges have their base funding restored and receive a proportionate amount of performance funding. Colleges whose total scores fall more than one standard deviation below the mean are placed into the Bronze category. Bronze Colleges are not eligible to receive new funding, have a percentage of their based funding withheld, and must submit an improvement plan to the SBE. Upon showing progress in implementing the plan, Bronze Colleges may have their base funding restored.²⁴³

Effect of the Bill

The bill requires the SBE to adopt rules implementing the FCS Performance-Based Incentive. The bill:

- modifies the performance-based metrics to specifically include measures of retention; program completion and graduation rates; postgraduation employment, salaries, and continuing education for workforce education and baccalaureate degree programs, with wage thresholds that reflect the added value of the certificate or degree; and outcome measures appropriate for associate degree recipients;
- requires the SBE to establish minimum performance funding eligibility thresholds for both the state's investment and the institutional investment;

²³⁹ Specific Appropriation 122, ch. 2015-232, L.O.F.

²⁴⁰ Florida DOE, *Florida College System Performance Funding: hearing before the House Higher Education & Workforce Subcommittee* (October 6, 2015).

²⁴¹ *Id.*

²⁴² Specific Appropriation 122, ch. 2015-232, L.O.F.

²⁴³ State Board of Education, Board Meeting Action Item, *Approval of Performance Funding for the Florida College System* (July 23, 2015), available at: <http://www.fl doe.org/contact-us/search.shtml?q=performance+funding>.

- specifies that institutions who meet the minimum institutional investment threshold but not the state investment threshold will have their base restored but will be ineligible for performance funding;
- specifies that each institution's share of performance funding shall be calculated based on its relative performance on the established metrics in conjunction with the institution's size and scope;
- specifies that the institutional investment be restored for each institution eligible for the state's investment under the performance-based funding model;
- requires the SBE, by October 1 of each year, to submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the previous fiscal year's performance funding allocation which must reflect the rankings and award distributions; and
- requires that any institution that fails to meet the SBE's performance threshold for the institutional investment shall have a portion of its institutional investment withheld. These institutions must:
 - submit an improvement plan to the SBE specifying the activities and strategies for improving performance (beginning in Fiscal Year 2017-2018, the ability for an institution to submit an improvement plan is limited to one year); and
 - submit monitoring reports to the SBE by December 31 and May 31 of each year the plan is in place.

Distinguished Florida College System Program

The bill creates the Distinguished Florida College System Program to recognize high-performing FCS institutions. Colleges that meet five of the seven specified excellence standards shall be designated by the SBE as a "Distinguished College." The excellence standards are as follows:

- A 150 percent-of-normal-time completion rate of 50 percent or higher, as calculated by the Division of Florida Colleges
- A 150 percent-of-normal-time completion rate for Pell Grant recipients of 40 percent or higher, as calculated by the Division of Florida Colleges
- A retention rate of 70 percent or higher, as calculated by the Division of Florida Colleges
- A continuing education, or transfer, rate of 72 percent or higher for students graduating with an associate of arts degree as reported by the Florida Education and Training Placement Information Program (FETPIP)
- A licensure passage rate on the National Council Licensure Examination for Registered Nurses (NCLEX-RN) of 90 percent or higher for first-time exam takers, as reported by the Board of Nursing
- A job placement or continuing education rate of 88 percent or higher for workforce programs, as reported by FETPIP
- A time-to-degree for students graduating with an associate of arts degree of 2.25 years or less for first-time-in-college students with accelerated college credits, as reported by the Southern Regional Education Board (SREB)

Distinguished Colleges are eligible for funding as provided in the GAA.

Adult with Disabilities Workforce Education Pilot Program

Present Situation

The Adults with Disabilities Workforce Education Pilot Program, created in 2012, is a transition to work pilot program for adults with disabilities who are at least 22 years of age and still working toward high school graduation. Students work with an eligible employer while continuing coursework at a private

school and remain eligible to participate until age 40. The program provides scholarships for the instruction at private schools for up to 30 students in Hardee, DeSoto, Manatee and Sarasota Counties.²⁴⁴ The pilot program has an expiration date of June 30, 2016.

Effect of the Bill

Effective June 29, 2016, the bill removes the expiration date and thus makes permanent the Adults with Disabilities Workforce Education Program for eligible students in Hardee, DeSoto, Manatee and Sarasota Counties.

Florida National Merit Scholar Incentive Program

Present Situation

The Florida National Merit Scholar Incentive Program rewards any Florida high school graduate who receives recognition as a National Merit Scholar or National Achievement Scholar and who initially enrolls in the 2014-2015 academic year, or later, in a baccalaureate degree program at an eligible Florida public or independent postsecondary educational institution.²⁴⁵

Effect of the Bill

The bill renames the Florida National Merit Scholar Incentive Program as the Benacquisto Scholarship Program. The bill also requires all eligible state universities, and encourages all other eligible Florida public or independent postsecondary educational institutions to become college sponsors of the National Merit Scholarship Program.

Division of Vocational Rehabilitation

Present Situation

Vocational Rehabilitation (VR) is a federal-state program that assists individuals with disabilities prepare for, gain, or retain employment in meaningful careers.²⁴⁶ The United States Department of Education's Rehabilitation Services Administration (RSA) oversees and administers the program and provides funds to state agencies for these services.²⁴⁷ In Florida, the Division of Vocational Rehabilitation within the DOE is designated as the administrative unit responsible for ensuring compliance with federal and state laws.²⁴⁸

The RSA oversees grant programs that help individuals with disabilities obtain employment and live more independently through the provision of such supports as counseling, medical and psychological services, job training and other individualized services. The RSA's major Title I formula grant program provides funds to state vocational rehabilitation agencies to provide employment-related services for individuals with disabilities.²⁴⁹

Florida law defines a person with a disability as one that "has a physical or mental impairment that constitutes or results in substantial impediment to employment."²⁵⁰ Such a person is eligible for VR

²⁴⁴ Chapter 2012-134, L.O.F. and s. 1004.935, F.S.

²⁴⁵ Section 1009.893, F.S.

²⁴⁶ Division of Vocational Rehabilitation, Florida DOE, *Frequently Asked Questions*, <http://www.rehabworks.org/faq.shtml> (last visited January 20, 2016).

²⁴⁷ Section 413.202, F.S.

²⁴⁸ Office of Program Policy Analysis and Government Accountability, Presentation to the Florida Senate Appropriations Subcommittee on Education (Oct. 7, 2015), available at <http://www.oppaga.state.fl.us/Presentations.aspx>.

²⁴⁹ U.S. DOE, *Welcome to RSA*, <http://www2.ed.gov/about/offices/list/osers/rsa/index.html> (last visited January 19, 2016).

²⁵⁰ Section 413.20(7), F.S.

services if they require assistance in preparing for, engaging in, or retaining gainful employment.²⁵¹ If an individual is deemed eligible for services by the division, then the division must:

- complete an assessment for determining the eligibility and vocational rehabilitation needs; and
- ensure that an individualized plan for employment (IPE)²⁵² is prepared, which must be jointly developed and signed by a VR counselor or coordinator and the eligible individual, or in an appropriate case, a parent, family member, guardian, advocate, or authorized representative of the individual.²⁵³ Each IPE must be reviewed annually and revised, as needed.²⁵⁴

Based on the individual's needs, services may include things such as vocational evaluation and planning, career counseling and guidance, job-site assessment and accommodations, job placement and coaching, and on-the-job training.²⁵⁵

The Rehabilitation Act of 1973 requires the RSA to develop evaluation standards and performance indicators, as well as establish minimum levels of performance for each.²⁵⁶ These measures include, but are not limited to:

- Change in employment outcomes
- Closed cases with employment
- Closed cases with competitive employment
- Individuals with significant disabilities who are employed
- Comparison of earnings to all employed individuals
- Use of income to self-support²⁵⁷

Each state VR agency is required to report on these data to the RSA annually. Those states that fail to meet the minimum levels of performance are required to develop a Program Improvement Plan (PIP) outlining specific actions to improve program performance.²⁵⁸

The 2015-2016 GAA, which will expire on July 1, 2016, includes quarterly reporting requirements on the following measures:

- Average wait list time
- Number of active cases (persons currently receiving services)
- Number and percentage of customers receiving postsecondary education
- Number and percentage of customers receiving Career and Professional Education (CAPE) industry certifications
- Number and percentage of customers gainfully employed
- Average earnings of customers at placement
- Number of students receiving preemployment transition services²⁵⁹

Effect of the Bill

²⁵¹ Section 413.30(1), F.S.

²⁵² Section 413.20(3), F.S.

²⁵³ Section 413.30(5)(a), F.S.; rule 6A-25.007, F.A.C.

²⁵⁴ Section 413.30(5)(c), F.S.

²⁵⁵ Division of Vocational Rehabilitation, Florida DOE, *Frequently Asked Questions*, <http://www.rehabworks.org/faq.shtml> (last visited January 20, 2016).

²⁵⁶ U.S. DOE, *Evaluation Standards and Performance Indicators for the Vocational Rehabilitation Services Program*, <http://www2.ed.gov/rschstat/eval/rehab/standards.html> (last visited Jan. 20, 2016).

²⁵⁷ Office of Program Policy Analysis and Government Accountability, Presentation to the Florida Senate Appropriations Subcommittee on Education (Oct. 7, 2015), available at <http://www.oppaga.state.fl.us/Presentations.aspx>.

²⁵⁸ U.S. DOE, *Evaluation Standards and Performance Indicators for the Vocational Rehabilitation Services Program*, <http://www2.ed.gov/rschstat/eval/rehab/standards.html> (last visited Jan. 20, 2016).

²⁵⁹ Specific Appropriation 35, s. 2, ch. 2015-232, L.O.F.

The bill requires the Division of Vocational Rehabilitation (division) to develop and implement, by October 1, 2016, a performance improvement plan (PIP) based on the measurable quarterly progress indicators outlined in the 2015-2016 GAA. The PIP must address plans to achieve the following goals:

- decreasing the average wait list time for serving clients;
- increasing the percentage of participants who:
 - are in unsubsidized employment during the second and fourth quarters after exit from the program;
 - obtain a recognized postsecondary credential or a secondary school diploma (or its equivalent) within 1 year of exiting the program; and
 - enroll in education or training programs that lead to a recognized postsecondary credential or employment while in the program;
- increasing the number of individuals earning CAPE industry certifications and CAPE postsecondary industry certifications and receiving pre-employment transition services;
- increasing the median earnings of those in unsubsidized employment during the second quarter after exiting the program;
- increasing the percentage of youth receiving pre-employment transition services without applying for additional VR services and who obtained an educational credential within 1 year of exiting the program; and
- increasing the division's effectiveness in serving employers.

The bill also requires the division to submit, by December 1 of each year, a performance report to the Governor, the President of the Senate and the Speaker of the House of Representatives that includes:

- Caseload data, including the number of individuals who apply for and receive services, by service type
- Service use data, by service type, including the number of units provided
- Financial data, including expenditures for administration and the provision of services
- Outcome data, including the number of cases closed with and without employment

The performance report must include information for the five most recent fiscal years, reported statewide and by service area.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Controlled Open Enrollment

The authorization in the bill for students to enroll in any district in the state could result in a redistribution of funding among the 67 school districts in the FEFP. The bill could result in increased state funding needs in the FEFP depending on the choices of parents to enroll in neighboring districts. If students enroll in another district where the millage produces more than 90 percent of a district's total FEFP entitlement, the FEFP formula will require more state funding to cover the cost of the student as there would be a corresponding increase in local millage rate as the 90 percent gap decreases. The bill could also result in significant losses of funding in districts where large numbers of parents and students enroll in another district creating a financial hardship in the home district as the funding will be reduced after budget planning has taken place.

Voluntary Prekindergarten Program

Approximately 80 percent of four year olds currently participate in VPK. Assuming the remaining 20 percent would take advantage in the next year, based on the FY 2015-2016 VPK FTE, there is an estimated 31,000 additional FTE at an estimated cost of \$75 million. The additional funding for this unknown group of participants was NOT included in the 2016-2017 GAA.

Charter School Capital Outlay

The Legislature appropriated \$75,000,000 for charter school capital outlay for the 2016-2017 school year.

CAPE Funding

The CAPE Bonus funding is within the FEFP and will be prorated among the districts within the base funding.

Florida College System and State University System Performance Based Incentive

State University System performance funding, Florida College System performance funding, and Preeminence and Emerging Preeminence funding are subject to appropriations in the GAA.

The Legislature began appropriating general revenue for Performance Funding in Fiscal Year 2012-2013. The state has invested a total of \$285,000,000 in performance funding for colleges and universities.

The Legislature began appropriating general revenue for preeminent universities (FSU and UF) in Fiscal Year 2013-2014. The state has invested a total of \$70,000,000 in preeminence funding. The legislature has provided \$10,000,000 in Fiscal Year 2016-2017 for emerging preeminent universities.

Distinguished Florida College System Program

The Legislature included \$1,000,000 each in the 2016-2017 GAA for Santa Fe College and Valencia College, the only two colleges that meet the Distinguished Colleges qualifications.