

# HOUSE OF REPRESENTATIVES FINAL BILL ANALYSIS

<b>BILL #:</b>	CS/HB 7055	<b>FINAL HOUSE FLOOR ACTION:</b>		
<b>SUBJECT/SHORT TITLE</b>	Education	74	Y's 39	N's
<b>SPONSOR(S):</b>	Appropriations Committee; Education Committee; Bileca and Diaz, M.	<b>GOVERNOR'S ACTION:</b>	Approved	
<b>COMPANION BILLS:</b>	CS/CS/HB 1, CS/HB 25, HB 795, HB 839, HB 887, CS/HB 1035, CS/SB 1172, CS/HB 1175, SB 1198, SB 1306, SB 1532, SB 1746, CS/SB 1756, SB 2508, HB 5101, CS/HB 7087			

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## SUMMARY ANALYSIS

CS/HB 7055 passed the House on February 8, 2018. The bill was referred to and amended in Senate committees and then amended in the Senate on March 5, 2018, and returned to the House. The House concurred in the Senate amendment and passed the bill as amended on March 5, 2018. The bill:

- Establishes the Hope Scholarship Program for students subjected to certain misconduct in public schools.
- Establishes Reading Scholarship Accounts for struggling readers in grades 3-5.
- Establishes the Sales Tax Credit Scholarship Program to provide scholarship programs additional revenue.
- Streamlines and strengthens monitoring and oversight provisions for private school scholarship programs.
- Expands allowable expenditures of scholarship funds in the Gardiner Scholarship Program.
- Requires the Florida Department of Education (DOE) to develop templates to help teachers develop curricula.
- Requires integration of social studies content into reading and writing prompts on state assessments.
- Requires released assessment items to be in an electronic format that facilitates sharing of assessment items.
- Provides Florida Virtual School (FLVS) students with access to district testing facilities for certain assessments.
- Revises school funding provisions related to supplemental academic instruction and reading instruction.
- Requires the DOE to consider the award of a reading endorsement to teachers in certain circumstances.
- Allows charter schools to provide educational leadership preparation programs.
- Allows charter schools to delay opening up to 3 years.
- Expands the initial charter period from 4 to 5 years, excluding 2 planning years.
- Revises provisions related to targeted enrollment for charter schools in business-owned facilities.
- Revises provisions related to charter termination and consolidation and resolving contract disputes.
- Provides charter schools with access to surplus property on the same basis as public schools.
- Allows a charter school applicant to open a charter school at a time determined by the applicant.
- Clarifies requirements for distributing discretionary capital outlay millage revenues to charter schools.
- Requires each school district to annually report the amount of charter administrative fees it withholds.
- Revises eligibility requirements for high performing charter schools and allows replication of up to two schools.
- Revises requirements for a high performing charter schools to increase enrollment.
- Provides school districts flexibility in complying with the State Requirements for Educational Facilities.
- Revises allowable uses of locally raised revenues for capital outlay projects.
- Requires school districts and teacher unions to enter into a memorandum of understanding on certain issues.
- Specifies requirements for school districts to provide background screening results for charter school employees.
- Expands the Principal Autonomy Pilot Program Initiative to a statewide program.
- Allows certain principals to manage multiple district schools.
- Revises requirements related to home school and private school dual enrollment costs.
- Revises requirements for certain students to participate in extracurricular activities in public schools.

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

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DATE: March 23, 2018

- Revises requirements for the distribution of Title I funds.
- Specifies when school district employees may still receive a Best and Brightest Teachers Scholarship Award.
- Requires employee organizations that represent instructional personnel to recertify in certain circumstances.
- Allows early learning coalitions to refuse to contract with VPK and early learning providers with a class I violation.
- Requires district school boards to adopt rules requiring schools to display the state motto.
- Specifies requirements for CPR instruction schools may provide.
- Provides certain exemptions from assessment and graduation requirements for students in the graduating class at Marjory Stoneman Douglass High School and maintains the school's 2016-17 "A" grade, eligibility for school recognition funds, and designation as a School of Excellence for the 2017-18 school year.

The bill includes appropriations of \$13,750,000 in recurring General Revenue funds, \$100,000 in nonrecurring General Revenue funds, and, contingent upon CS/HB 1279 becoming a law, \$100,000 in nonrecurring General Revenue funds.

The bill was approved by the Governor on March 11, 2018, ch. 2018-6, L.O.F., and will become effective on July 1, 2018, except as otherwise provided.

# I. SUBSTANTIVE INFORMATION

## A. EFFECT OF CHANGES:

### Private Educational Choice Scholarship Programs

#### Present Situation

Current law allows parents of public school students to seek private school choice options under the John M. McKay Scholarships for Students with Disabilities Program (McKay), the Florida Tax Credit Scholarship Program (FTC), and the Gardiner Scholarship Program (GSP).<sup>1</sup>

Under the McKay program, the parent of a public school student with a disability may request and receive a McKay Scholarship for the student to attend a private school.<sup>2</sup> Under the FTC, the parent of a student who qualifies for free or reduced-price school lunch or who is currently placed, or during the previous state fiscal year was placed, in foster care may seek a scholarship from an eligible nonprofit scholarship-funding organization.<sup>3</sup>

The GSP is available to students who are 3 or 4 years of age or are eligible to enroll in kindergarten through grade 12 in a public school, have an eligible disability,<sup>4</sup> and are the subject of an IEP or have a diagnosis of an eligible disability from a physician or psychologist. Under the GSP, a parent may exercise his or her “parental option to determine the appropriate placement or the services that best meet the needs of his or her child.”<sup>5</sup> GSP funds may be used to reimburse purchases of the following items or services:<sup>6</sup>

- Instructional materials.
- Curriculum.
- Specialized services including, but not limited to, applied behavior analysis services and services provided by speech-language pathologists, occupational therapists, physical therapists, and listening and spoken language specialists.
- Enrollment in, or tuition or fees associated with enrollment in, an eligible private school, an eligible postsecondary educational institution, a private tutoring program, a virtual program offered by a Department of Education (DOE)-approved private online provider, or a DOE-approved online course.
- Fees for standardized assessments.
- Contributions to the Stanley G. Tate Prepaid College Program.
- Contracted services provided by a public school or school district.<sup>7</sup>
- Tuition and fees for part-time tutoring services provided by a person who holds a valid Florida educator’s certificate or who has demonstrated a mastery of subject area knowledge.
- Fees for specialized summer education program.
- Fees for specialized after-school education programs.
- Transition services provided by job coaches.

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<sup>1</sup> Section 1002.20(6)(b), F.S.

<sup>2</sup> Section 1002.20(6)(b)1., F.S.; *see s.* 1002.39, F.S.

<sup>3</sup> Section 1002.20(6)(b)2., F.S.; *see s.* 1002.395, F.S.

<sup>4</sup> Eligible disabilities are autism; cerebral palsy; Down syndrome; an intellectual disability; Prader-Willi syndrome; Spina bifida; Williams syndrome; for a student ages 3-5, being a high-risk child; muscular dystrophy; Williams syndrome; rare diseases which affect patient populations of fewer than 200,000 individuals in the United States, as defined by the National Organization for Rare Disorders; anaphylaxis; deaf; visually impaired; traumatic brain injured; hospital or homebound; or identification as dual sensory impaired, as defined by rules of the State Board of Education and evidenced by reports from local school districts. The term “hospital or homebound” includes a student who has a medically diagnosed physical or psychiatric condition or illness, as defined by the state board in rule, and who is confined to the home or hospital for more than 6 months. Section 1002.385(2)(d), F.S.

<sup>5</sup> Section 1002.385(11), F.S.

<sup>6</sup> *See s.* 1002.385(5), F.S.

<sup>7</sup> A student who receives contracted public school services is not considered to be enrolled in a public school for eligibility purposes. Section 1002.385(5)(g), F.S.

- For home education students, fees for an annual evaluation of educational progress by a state-certified teacher.
- Tuition and fees for approved Voluntary Prekindergarten Education Program and school readiness providers.
- Fees for services provided at a member center of the Professional Association of Therapeutic Horsemanship International.
- Fees for services provided by a therapist certified by the Certification Board for Music Therapists or credentialed by the Art Therapy Credentials Board, Inc.

### *School Safety and Student Discipline*

Florida law requires each district school board to provide for the proper accounting for all students; for the attendance and control of students at school; and for proper attention to health, safety, and other matters relating to the welfare of students. School boards must adopt rules, policies, and procedures for addressing disciplinary issues and providing for a safe and orderly school environment.<sup>8</sup> Each school board must adopt a code of student conduct that is based upon its rules governing student conduct and discipline.<sup>9</sup> The code of student conduct must include, but is not limited to:

- consistent policies and specific grounds for disciplinary action;
- penalties and procedures for acts requiring discipline, including in-school suspension, out-of-school suspension, expulsion, and corporal punishment;
- an explanation of the rights and responsibilities of students with regard to attendance, respect for persons and property, knowledge and observation of rules of conduct, the right to learn, free speech and student publications, assembly, privacy, and participation in school programs and activities;
- a dress code policy and penalties and procedures for addressing dress code violations;
- notice that student possession of alcohol, drugs, weapons, or firearms; violence against school district personnel; disruptive behavior on a school bus; sexual harassment; and threats or false reports made against school property, personnel, or transportation are grounds for disciplinary action and may result in the imposition of criminal penalties;
- policies for the assignment of violent or disruptive students to alternative educational programs;<sup>10</sup>
- student eligibility standards and related student disciplinary actions regarding student participation in extracurricular activities which must provide that:
  - a student not suspended or expelled is eligible to participate in extracurricular activities;
  - a student's eligibility to participate may not be affected by recruiting allegations until a final determination has been reached;
  - a student may not participate in a sport 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.

At the beginning of each school year, the code of student conduct must be:

- distributed to all teachers, school personnel, students, and parents;
- made available in the school district's student handbook or similar publication; and
- discussed in student classes, school advisory council meetings, and parent and teacher association or organization meetings at the beginning of the school year.<sup>11</sup>

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<sup>8</sup> Section 1006.07(1)(a), F.S.

<sup>9</sup> Section 1006.07(2), F.S.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

The law provides an extensive description of the roles, duties, and authority of each personnel classification charged with maintaining a safe and orderly school environment and enforcing disciplinary violations.<sup>12</sup> Each district school superintendent must, among other things, recommend to the district school board plans for promoting the welfare of students, including attendance, discipline, health and safety, and other matters. Each superintendent must fully support the disciplinary authority of school principals, classroom teachers, and school bus drivers.<sup>13</sup>

In addition to the code of student conduct, each school board must adopt policies prohibiting bullying and harassment, hazing, and dating violence and abuse, and for emergency preparedness and response.<sup>14</sup> Current law prohibits bullying or harassment:

- of any public K-12 student or employee during a public K-12 education program or activity;
- during a school-related or school-sponsored activity;
- on a public K-12 school bus;
- using a computer system or network that is within the scope of the K-12 educational institution;<sup>15</sup> or
- using technology or electronic devices that are not owned or otherwise controlled by a school if the bullying substantially interferes with the victim's ability to participate in or benefit from the activities offered by a school.<sup>16</sup>

Each school district's bullying and harassment policy must:

- prohibit, define, and describe the behaviors that constitute bullying and harassment;
- establish procedures for reporting and investigating acts of bullying and harassment;
- establish procedures for making referrals to law enforcement;
- provide instruction to students, parents, teachers, and others on recognizing behavior that leads to bullying and harassment and taking preventative action;
- establish procedures for including incidents of bullying or harassment in the school's required report of data concerning school safety and discipline;<sup>17</sup> and
- establish procedures for referring victims and perpetrators to counseling.<sup>18</sup>

Each school principal must ensure that standardized forms prescribed by the rule of the State Board of Education (SBE) are used to report data concerning school safety and discipline to the department. The school principal must develop a plan to verify the accuracy of reported incidents.<sup>19</sup>

DOE uses The School Environmental Safety Incident Reporting (SESIR) System to compile data on incidents of crime, violence, and disruptive behaviors that occur on school grounds, on school transportation, and at off-campus, school-sponsored events. In the 2015-16 school year, over 47,000 Florida public school students reported incidents that include battery, bullying, harassment, hazing, physical attacks, and sexual assault, battery and harassment:<sup>20</sup>

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<sup>12</sup> See s. 1003.32, F.S., (classroom teachers and school principals), s. 1006.08, F.S. (superintendents), s. 1006.09, F.S. (school principals), and 1006.10, F.S. (school bus drivers).

<sup>13</sup> Section 1006.08(1), F.S.

<sup>14</sup> See ss. 1006.07(4) and (6), 1006.135, 1006.14, 1006.147, and 1006.148, F.S.

<sup>15</sup> "Within the scope of a public K-12 educational institution" means, regardless of ownership, any computer, computer system, or computer network that is physically located on school property or at a school-related or school-sponsored program or activity. Section 1006.147(3)(d), F.S.

<sup>16</sup> Section 1006.147(2), F.S.

<sup>17</sup> Section 1006.147(4)(f), (h), (k), and (l), F.S. The School Environmental Safety Incident Reporting (SESIR) System is used by the DOE to compile data on incidents of crime, violence, and disruptive behaviors that occur on school grounds, on school transportation, and at off-campus, school-sponsored events. Florida Department of Education, *Statewide Report on School Safety and Discipline Data*, <http://www.fldoe.org/safeschools/sesir.asp>. (last visited October 27, 2017).

<sup>18</sup> Section 1006.147(4)(j), F.S.

<sup>19</sup> Section 1006.09(6), F.S.

<sup>20</sup> Florida Department of Education, *Statewide Report on School Safety and Discipline Data*, <http://www.fldoe.org/safeschools/sesir.asp>. (last visited October 27, 2017).

BATTERY	2,516
BULLYING	2,867
FIGHTING	21,957
HARASSMENT	1,832
HAZING	6
PHYSICAL ATTACK	10,342
SEXUAL ASSAULT	25
SEXUAL BATTERY	28
SEXUAL HARASSMENT	1,805
SEX OFFENSES	1,581
THREAT/INTIMIDATION	4,314

However, there is evidence to suggest that the number of reported incidents through SESIR is much lower than actual incidents. The Department of Health, in collaboration with the DOE, administers the Youth Risk Behavior Survey (YRBS) that is a statewide, school-based confidential survey of Florida's public high school students. The purpose of the YRBS is to monitor priority health-risk behaviors that contribute substantially to the leading causes of death, disability, and social problems among youth, which contribute to patterns in adulthood. In 2015, 123,500 high school students reported being bullied on school property during the past 12 months.<sup>21</sup> In addition, 8.1 percent of high school students did not go to school because they felt unsafe at school or on their way to or from school.<sup>22</sup>

### *Motor Vehicle Taxes*

Florida sales and use tax, plus any applicable discretionary sales surtax, is due on all new or used motor vehicles sold, leased, delivered into, imported into, or used in Florida, unless a specific exemption applies. Florida sales and use tax is due on the sales price of the motor vehicle, including any separately itemized charge or fee for items, such as:

- any accessory sold with the vehicle;
- preparation, settlement, or closing fees;
- freight, handling, or delivery of the motor vehicle to the dealer;
- commission; and
- any other expense or cost of the dealer that the dealer requires the purchaser to pay.

Any separately itemized fee or charge mandated by a state law for titling, licensing, or registering the motor vehicle, or for recording a lien on the motor vehicle, is not subject to tax.<sup>23</sup>

Florida collects a 6 percent state sales tax rate on the purchase of all vehicles.<sup>24</sup>

### *Struggling Readers*

Recent data from the English Language Arts Florida Standards Assessment indicate that nearly half of Florida' students are reading below grade level.<sup>25</sup>

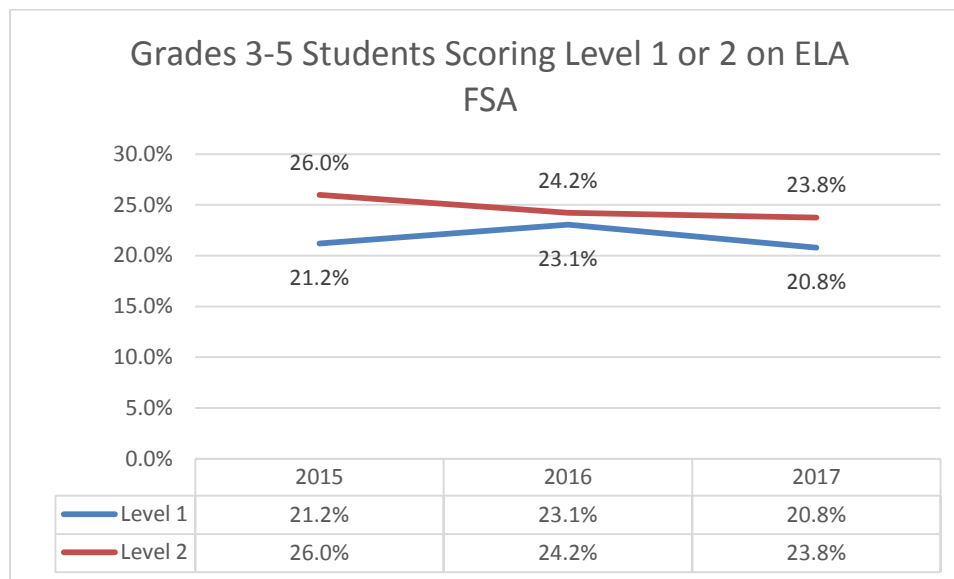
<sup>21</sup> Presentation by Department of Health to the PreK-12 Innovation Subcommittee, Oct. 25, 2017, available at <https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=2908&Session=2018&DocumentType=Meeting%20Packets&FileName=pki%2010-25-17.pdf>.

<sup>22</sup> Department of Health, Youth Risk Behavior Survey, available at, <http://www.floridahealth.gov/statistics-and-data/survey-data/florida-youth-survey/youth-risk-behavior-survey/documents/2015-yrbs-summary-tables.pdf>.

<sup>23</sup> Florida Department of Revenue, Sales and Use Tax on Motor Vehicles, available at [http://floridarevenue.com/Forms\\_library/current/gt800030.pdf](http://floridarevenue.com/Forms_library/current/gt800030.pdf).

<sup>24</sup> Florida: Sales Tax Handbook, available at <https://www.salestaxhandbook.com/florida/sales-tax-vehicles>

<sup>25</sup> Florida Department of Education, PK-12 Education Information Portal, <https://edstats.fldoe.org/SASPortal/main.do> (last visited Jan. 29, 2018).



The law requires schools to identify students with a substantial reading deficiency in kindergarten through grade 3 and to provide them with intensive reading interventions.<sup>26</sup> In addition, school districts have a variety of intervention options available to help students improve their academic performance, from instructional materials to intervention systems that allow teachers and schools to monitor the progress of students and determine appropriate supports. The law requires districts to develop and implement a multi-tiered system of supports (MTSS), which utilizes a problem-solving process to identify and support student needs based upon available data, including attendance, behavior and discipline, statewide assessment, and progress monitoring data.<sup>27</sup> The process must include parent involvement, student observation, review of data, vision and hearing screening to rule out sensory deficits, and evidence-based interventions implemented in the general education environment.<sup>28</sup>

However, even with available supports and interventions, many students are unable to meet grade level ELA standards.

### Effect of the Bill

#### *Hope Scholarship Program*

The bill establishes the Hope Scholarship Program (HSP), which provides the parent of a public school student subjected to an incident at school the opportunity to transfer the student to a public school within the school district, receive a scholarship to transport the student to a public school in another school district, or receive a scholarship for the student to attend a private school. For purposes of the program an incident includes battery, harassment, hazing, bullying, kidnapping, physical attack, robbery, sexual offense, harassment, assault, battery, threat, intimidation, or fighting at school. School means any educational program or activity conducted by a public K-12 educational institution, any school-related or school-sponsored program or activity, and riding on a school bus, as defined in s. 1006.25(1), F.S., including waiting at a school bus stop.

Beginning with the 2018-2019 school year, contingent upon funds, scholarships are awarded on a first-come, first-served basis.

<sup>26</sup> See s. 1008.25(5)(a), F.S.

<sup>27</sup> See Rules 6A-6.0331(1) and 6A-1.099811(2)(r), F.A.C.

<sup>28</sup> Rule 6A-6.0331(a), F.S.

A student is ineligible for the HSP if the student is:

- enrolled in a public school, including, but not limited to, the Florida School for the Deaf and the Blind, the College-Preparatory Boarding Academy, a developmental research school or a charter school;
- enrolled in a Department of Juvenile Justice commitment program;
- enrolled in a virtual school, correspondence school or distance learning program that receives state funding pursuant to the student's participation unless the participation is limited to two courses per school year; or
- receiving any other state sponsored K-12 educational scholarship.

Once an incident is reported to the school principal, the school principal must provide a copy of the incident report to the parent and investigate the incident to determine if the incident must be reported to the DOE. Within 24 hours after receipt of the report, the principal or designee must provide a copy of the report to the parent of the alleged offender and to the superintendent. Upon conclusion of the investigation or within 15 days after receipt of the report of the incident, whichever occurs first, the school district must notify the parent of the HSP and offer that parent an opportunity to enroll their student in another public school or to receive a Hope Scholarship to attend an eligible private school. If the student enrolls in a public school outside the district, the student is eligible for a transportation scholarship limited to \$750.

The DOE must contract with an independent entity to conduct an annual evaluation of the program. The entity must review the bullying prevention education program, climate, and code of student conduct at each public school at which 10 or more students transferred to another public school or private school using the scholarship to determine areas for improvement. The review must include an assessment of the investigation of incidents; analysis of school incident and discipline data; the effectiveness of communication with students, parents, and personnel; and challenges and obstacles to implementing recommendations. The entity must also identify best practices from the schools to which students transferred.

The entity will also review the performance of participating students enrolled in private schools at which at least 51 percent of total enrolled students are program participants. Parents of participating students will be surveyed to determine academic, safety, and school climate satisfaction and to identify any challenges or obstacles in addressing the incident or use of the scholarship.

The bill requires school districts to notify scholarship students in private schools who wish to participate in the statewide student assessment program or the Florida Alternate Assessment of the locations and times to take all statewide assessments.

Private schools that participate in the HSP must meet the same requirements for participation established by Florida Tax Credit Scholarship Program.

Likewise, the commissioner has the same duties and responsibilities over private schools established in the Florida Tax Credit Program.

A participating SFO is governed by the same statutory requirements as outlined in the Florida Tax Credit Scholarship Program.

The bill specifically requires the SFO to:

- receive applications and determine student eligibility;
- notify parents of their receipt of a scholarship on a first-come, first-served basis, based upon the funds provided;
- award scholarships on a first-come, first-serve basis, giving priority to renewing students; and
- notify the DOE of any violations regarding the program.

The bill requires the Auditor General (AG) to conduct an annual operational audit of accounts of each participating SFO, which must include a verification of students served and transmission of that



information to the DOE. The AG also must notify the DOE of any SFO that fails to comply with a request for information.

The scholarship amount is calculated as a percentage of the unweighted FTE as follows:

- Eighty-eight percent for students in grades K-5.
- Ninety-two percent for students in grades 6-8.
- Ninety-six percent for students enrolled in grades 9-12.

The HSP is funded by taxpayers who make an eligible contribution to a scholarship funding organization. The eligible contribution provides the taxpayer with a credit against any tax due as a result of the purchase or acquisition of a motor vehicle. The credit may not exceed the amount of taxes owed. Each eligible contribution is limited to a single payment of \$105 at the time of purchase of a motor vehicle or at the time of registration of a motor vehicle that was not purchased from a dealer. The purchaser elects whether or not to contribute at the time of the purchase or registration of the vehicle. The election form must include a statement describing the program as specified in the bill. Contributions must be made to a dealer at the time of purchase or to an agent of the Department of Revenue (DOR) at the time of registration, if the vehicle was not purchased from a dealer.

The bill provides that a dealer, designated agent, or private tag agent must:

- provide the purchaser a contribution election form, as prescribed by the DOR, at the time of purchase or at the time of registration if the vehicle is not purchased from a dealer;
- collect eligible contributions;
- remit to the SFO no later than the date the return is due the total amount of contributions made to the SFO and collected during the preceding reporting period. The dealer shall also report this information to DOR no later than the date the return is due; and
- report on each return filed with the DOR the total amount of credits allowed during the preceding calendar month.

The SFO must report to the DOR, on or before the 20th day of each month, the total amount of contributions received in the preceding calendar month. The report must include:

- the federal employer identification number of each designated agent, private tag agent, or dealer who remitted contributions to the SFO during that reporting period; and
- the amount of contributions received from each designated agent, private tag agent, or dealer during that reporting period.

If a dealer or organization fails to submit the above required reports, they will be subject to a \$1,000 penalty for every month, or part thereof, the report is not provided, up to a maximum of \$10,000. The penalty shall be collected by DOR and transferred to the General Revenue Fund. The penalty must be settled or compromised if DOR determines that the noncompliance is due to reasonable cause and not to willful negligence, willful neglect, or fraud.

A person who, with intent to unlawfully deprive or defraud the program of money, fails to remit HSP contributions is guilty of theft, punishable as follows:

- If the amount stolen is less than \$300, the offense is a second-degree misdemeanor. Upon a second conviction, the offender is guilty of a first-degree misdemeanor. Upon a third or subsequent conviction, the offender is guilty of a third degree felony.
- If the amount stolen is \$300 or more, but less than \$20,000, the offense is a third-degree felony.
- If the amount stolen is \$20,000 or more, but less than \$100,000, the offense is a second-degree felony.
- If the amount stolen is \$100,000 or more, the offense is a first-degree felony.

The sentencing judge must order an offender to make restitution to the SFO in the amount stolen. Upon finding that a dealer failed to remit a contribution for which the dealer claimed credit, DOR must notify the affected SFO of the dealer's name, address, federal employer identification number, and

information related to differences between credits taken by the dealer and amounts remitted to the organization.

The bill authorizes the SBE and DOR to adopt rules to administer the program.

### *Reading Scholarship Accounts*

The bill establishes Reading Scholarship Accounts to provide funds for public school students to purchase certain programs or services that will assist them in improving their reading skills. Eligibility for an account is limited to students in grades 3 through 5 who scored below a Level 3 on the Grade 3 or Grade 4 statewide, standardized English language arts (ELA) assessment in the previous school year. The scholarship must be offered on a first-come, first-served basis, contingent upon available funds, with students provided with instructional services for English language learners receiving priority.

In order to participate, the parent and student must:

- submit an application to an eligible scholarship funding organization by the deadline established by the scholarship funding organization;
- submit eligible expenses to the scholarship funding organization for reimbursement of qualifying expenditures, which may include:
  - instructional materials;
  - curriculum, which means a complete course of study for a particular content area or grade level, including any required supplemental materials and associated online instruction;
  - tuition and fees for part-time tutoring services provided by a person who holds a baccalaureate degree in the subject area; a person with a valid educator certificate; a person who holds an adjunct teaching certificate;<sup>29</sup> or a person who has demonstrated a mastery of subject area knowledge;<sup>30</sup>
  - fees for summer education programs and after-school education programs that are designed to improve reading or literacy skills;
- be responsible for the payment of all eligible expenses in excess of the amount in the account and the terms agreed to between the parent and the providers; and
- not receive any refund or rebate of any expenditures made in accordance with the purchase of allowable services.

The program must be administered by a SFO that is eligible to participate in the FTC.<sup>31</sup> The organization may establish reading scholarship accounts for eligible students in accordance with current requirements of such organization, including but not limited to:

- Verification of eligible students.
- Verification of eligible expenditures.
- Applications for scholarships.
- Issuing scholarships on a first-come, first-served basis.
- Complying with annual expenditure requirements.<sup>32</sup>

Additionally, a participating SFO:

- may develop a system for payment of benefits by funds transfer, including, but not limited to, debit cards, electronic payment cards, or any other means of payment that the department deems to be commercially viable or cost-effective;
- must provide payments no less frequently than on a quarterly basis; and
- may receive up to 3 percent of the amount of each scholarship award from state funds for administrative expenses if the organization has operated as a nonprofit entity for at least the

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<sup>29</sup> See s. 1012.57, F.S.

<sup>30</sup> See s. 1012.56(5), F.S.

<sup>31</sup> See s. 1002.395(16), F.S.

<sup>32</sup> See s. 1002.395(6), F.S.

preceding 3 fiscal years and did not have any findings of material weakness or material noncompliance in its most recent audit as required by law.<sup>33</sup>

By September 30, the school district must notify the parent of each student in grades 3 through 5 who scored below a Level 3 on the assessment in the previous school year of the process to request and receive a scholarship.

The bill provides the DOE the same oversight responsibilities as those required in existing scholarship programs.<sup>34</sup> The DOE must provide a student's scholarship funds to the organization once the organization has notified the DOE of a student's eligibility. The scholarship amount for the 2018-2019 school year is \$500. Thereafter, the maximum amount of the scholarship for a student must be provided in the General Appropriations Act. One hundred percent of the funds must be released to the DOE at the beginning of the first quarter of each fiscal year.

A student's scholarship account must be closed and any remaining funds revert to the state after:

- denial or revocation of program eligibility by the Commissioner of Education for fraud or abuse, including, but not limited to, the student or student's parent accepting any payment, refund, or rebate, in any manner, from a provider of any services received; or
- three consecutive fiscal years in which an account has been inactive.

## **Florida Sales Tax Credit Scholarship Program and Gardiner Scholarship Program**

### Present Situation

#### *Funding for School Choice Scholarship Programs*

The FTC is funded with contributions to private non-profit SFOs from taxpayers who receive a tax credit for use against their liability for corporate income tax; insurance premium tax, severance taxes on oil and gas production, self-accrued sales tax liabilities of direct pay permit holders; or alcoholic beverage taxes on beer, wine and spirits.<sup>35</sup> The credit is equal to 100 percent of the eligible contributions made.<sup>36</sup> To receive a credit the taxpayer must submit an application to the Department of Revenue (DOR) and specify each tax for which the taxpayer requests a credit and the applicable taxable or state fiscal year for the credit.<sup>37</sup> Taxpayers can rescind tax credits, which will become available to another eligible taxpayer in that fiscal year.<sup>38</sup>

The maximum amount of tax credits that may be awarded in FY 2017-18 is \$698 million. The Revenue Estimating Conference estimates that contributions applicable against this limit will be \$639.2 million in FY 2017-18. In any state fiscal year when the annual tax credits granted for the prior state fiscal year are equal to or greater than 90 percent of the tax credit cap amount applicable to that state fiscal year, the tax credit cap amount is increased by 25 percent.<sup>39</sup> Consequently, the maximum amount of tax credits expected to be available for award in FY 2018-19 is \$873.6 million.

The GSP is funded with appropriations made by the state to SFOs based on a funding formula provided in s. 1002.385(13), F.S. Under the GSP, a parent of an eligible child may request a GSP scholarship by submitting an application to a SFO. The GSP is directly administered by SFOs, and GSP funds may be awarded to parents to reimburse purchases of the certain items or services related to the child's education. A student is not eligible for the program if he or she is receiving a scholarship pursuant to the FTC under s. 1002.395, F.S.

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<sup>33</sup> See s. 1002.395(6)(m), F.S.

<sup>34</sup> See ss. 1002.385(9), F.S., 1002.39(9), F.S., and 1002.395(9), F.S.

<sup>35</sup> Sections 1002.395(1) and (5), F.S.

<sup>36</sup> Sections 220.1875 and 1002.395(5), F.S.

<sup>37</sup> Section 1002.395(5)(b), F.S.

<sup>38</sup> Section 1002.395(5)(e), F.S.

<sup>39</sup> Section 1002.395(5)(a), F.S.

## *Sales Tax on Commercial Leases of Real Property*

Florida imposes a sales tax on the total rent charged under a commercial lease of real property under s. 212.31, F.S.<sup>40</sup> Sales tax is due at the rate of 5.8 percent on the total rent paid for the right to use or occupy commercial real property and county sales surtax can also be levied on total rent.<sup>41</sup> If the tenant makes payments such as mortgage, ad valorem taxes, or insurance on behalf of the property owner, such payments are also classified as rent and are subject to the tax. The tenant must pay the tax to his or her landlord at the time the tenant pays the rental or license fee as required by the rental or license fee arrangement.<sup>42</sup> The landlord remits the tax to the DOR at the times and in the manner required for all other dealers to remit taxes under Chapter 212, F.S.<sup>43</sup>

Commercial real property includes land, buildings, office or retail space, convention or meeting rooms, airport tie-downs, and parking and docking spaces. It may also involve the granting of a license to use real property for placement of vending, amusement, or newspaper machines. However, there are numerous commercial rentals that are not subject to sales tax, including:

- rentals of real property assessed as agricultural;
- rentals to nonprofit organizations that hold a current Florida consumer's certificate of exemption;
- rentals to federal, state, county, or city government agencies;
- properties used exclusively as dwelling units; and
- public streets or roads used for transportation purposes.

### Effect of the Bill

The bill creates s. 212.099, F.S., establishing tax credits that may be taken against certain sales tax liabilities for contributions to the GSP or the FTC. The credit is equal to the amount of the monetary contribution made by an eligible business to a SFO. An eligible business is a tenant that uses property from which the rental or licensee fee is subject to the business rent tax under s. 212.031, F.S. Similar to the FTC, a business may not designate a specific student as the beneficiary of the contribution.

To receive a credit, the eligible business must submit an application to DOR. Within 10 days after approving or denying an application, DOR will provide a copy of its approval or denial letter to the SFO specified by the business in the application. Upon receipt of an eligible contribution, the SFO must provide the eligible business with a certificate of contribution as a receipt for the contribution. Each dealer that receives from an eligible business a copy of DOR's approval letter and a certificate of contribution from a SFO shall reduce the tax collected from the eligible business under s. 212.031, F.S., by the total amount of contributions indicated in the certificate of contribution. The reduction may not exceed the amount of credit allocation approved by DOR and may not exceed the amount of tax that would otherwise be collected from the eligible business by a dealer when a payment is made under the rental or license fee arrangement. However, payments by an eligible business to a dealer may not be reduced before October 1, 2018.

Eligible businesses may carry forward credits not fully used within any period that a payment is due under the rental or license fee arrangement for a period not to exceed 10 years. However, tax credits cannot be claimed on an amended return or through a refund of previously paid taxes.

Eligible businesses generally cannot transfer credits to another entity, unless the other entity has acquired all of the business's assets. An eligible business can rescind its tax credit allocation, which will become available to another eligible business in that fiscal year.

SFOs are required to report to DOR, on or before the 20th day of each month, the total amount of contributions received in the preceding calendar month on a form provided by DOR. Such report shall

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<sup>40</sup> Chapter 1969-222, L.O.F.

<sup>41</sup> Section 212.031, F.S., and rule 12A-1.070, F.A.C. Beginning January 1, 2019 the tax rate will be 5.7 percent.

<sup>42</sup> Sections 212.031(2) and (3), F.S.

<sup>43</sup> Section 212.031(3), F.S.

include the amount of contributions received during that reporting period and the federal employer identification number of each dealer associated with the contribution.

SFOs can use contributions for either FTC or GSP scholarships. However, contributions may not be used for GSP scholarships unless all of the funds appropriated to the SFO in a fiscal year for that purpose are used. When the appropriations are exhausted the SFO must first use contributions for GSP scholarships. Any remaining contributions can then be used for FTC scholarships. (Note, that pursuant to section 7 of HB 5003 (Ch. 2018-10, L.O.F.), contributions under the newly created tax credit program may not be used for GSP scholarships during fiscal year 2018-19.) Similar to the FTC, an SFO can use up to three percent of contributions from eligible businesses for administrative expenses, subject to the limitations in s. 1002.395(6)(j)l., F.S.

The sum of tax credits under this new statute that may be approved by DOR in any state fiscal year is \$57.5 million. This cap is unrelated to current statutory caps in s. 1002.395, F.S., for the FTC.

DOR is required to adopt rules to administer the new tax credits.

## **Information Sharing**

### Current Situation

Section 213.053, F.S., provides that all information contained in tax returns, reports, accounts, or declarations received by DOR is confidential and exempt from public disclosure under Florida's public records law.<sup>44</sup> The law provides exceptions to this general rule allowing for disclosure of confidential taxpayer information under specified circumstances.

### Effect of the Bill

The bill amends s. 213.053, F.S., and creates a new subsection to require the DOR to disclose under certain circumstances the 200 taxpayers with the greatest corporate income tax liability reported during the previous calendar year. The list is to be provided to and at the request of eligible nonprofit SFOs that are eligible to use up to 3% of eligible contributions for administrative expenses. The list shall be in alphabetical order based on the taxpayer's name and include the taxpayer's address. The list shall not disclose the amount of tax owed by the taxpayer. An eligible nonprofit SFO may request the list once each calendar year and may use the list only to notify the taxpayer of the opportunity to make an eligible contribution to the FTC. DOR must provide such information within 45 days after receiving the request.

## **FTC Credit Carry Forwards**

### Current Situation

If any tax credits under the FTC are not used within the state fiscal year originally specified by the taxpayer due to insufficient tax liability, the credit may be carried forward for a period of five years.<sup>45</sup> To carryforward an unused tax credit the taxpayer must submit an application for approval in the year that the taxpayer intends to use the carryforward credit.<sup>46</sup>

### Effect of the Bill

The bill extends from five years to ten the period for which unused credits may be carried forward by a taxpayer. Additionally, the need to apply for carry forwards is eliminated.

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<sup>44</sup> Section 119.07(1), F.S.

<sup>45</sup> s. 1002.395(5)(c), F.S.

<sup>46</sup> s. 1002.395(5)(c), F.S.

## Sales Tax Dealer Collection Allowance

### Current Situation

In 2010, the revenue sources against which tax credits can be claimed through the Florida Tax Credit Scholarship Program were expanded to include self-accrued sales tax liabilities of direct pay permit holders pursuant to s. 212.1831.<sup>47</sup>

Section 212.183, F.S., establishes a process for the self-accrual of sales taxes, in limited circumstances,<sup>48</sup> which involves DOR granting a direct pay permit to a taxpayer, who then pays the taxes directly to DOR instead of paying taxes to the seller of purchased items.<sup>49</sup>

Current law authorizes a collection allowance for certain sales tax dealers (including direct pay permit holders) as compensation for the prescribed record keeping, accounting for, and for the timely reporting and remitting of sales and use tax and discretionary sales surtax by electronic means.<sup>50</sup> Such persons will be allowed 2.5 percent of "the amount of the tax due", accounted for, and remitted to DOR in the form of a deduction. The collection allowance is limited to 2.5 percent of the first \$1,200 of the tax due, not to exceed \$30 in any filing period.<sup>51</sup>

Direct pay permit holders using tax credits under the FTC often are unable to take a dealer collection allowance because "the amount of tax due," upon which the allowance is based, may be zero.

### Effect of the Bill

For purposes of the dealer's collection allowance under s. 212.12, F.S., the bill requires that the amount of tax due shall include any eligible contribution made to an eligible nonprofit SFO from a direct pay permit holder, thereby allowing the taxpayer to retain their dealer collection allowance.

## Use of Credits Against Estimated Payments

### Current Situation

Corporate income tax payers must make four payments of a portion of their estimated tax liability during their taxable year, following certain requirements as to timing and amounts.<sup>52</sup> Currently, corporate income tax payers making contributions under the FTC must use the amount of the credit earned to reduce the next estimated payment that is due immediately following a contribution in that taxable year.<sup>53</sup>

### Effect of the Bill

The bill allows corporate income tax payers to use credits earned against any of their estimated payments due instead of against the estimated payment due immediately following the contribution date.

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<sup>47</sup> s. 212.1831, F.S.

<sup>48</sup> See s. 212.183, F.S., and Rule 12A-1.0911, F.A.C.

<sup>49</sup> Direct pay was originally designed to overcome the tax complexities in situations where the taxability of a transaction could not be easily determined at the time of purchase. For example, a number of states exempt transactions if the item purchased is used in a particular manner, e.g., for manufacturers, if the item is used in the manufacturing process or as an "ingredient and component part" of their sale products. In such instances, direct pay authority would allow an entity to purchase certain products for all types of uses and to report the appropriate tax after the actual use had been determined. See *Model Direct Payment Permit Regulation: A Report of the Steering Committee*, Task Force on EDI Audit and Legal Issues for Tax Administration, June 2000, available at <https://www.taxadmin.org/assets/docs/Publications/dpay.pdf>

<sup>50</sup> s. 212.12, F.S., and Rule 12A-1.056(2)(a), F.A.C.

<sup>51</sup> Rule 12A-1.056(2)(b), F.A.C.

<sup>52</sup> s. 220.33, F.S.

<sup>53</sup> s. 1002.395(5)(g)1., F.S.

## Timing of Scholarship Contributions

### Current Situation

When corporate income tax payers wishing to make contributions to the FTCP and use the allowable tax credits apply to the DOR for a tax credit allocation, they must indicate which of the taxpayer's taxable years the credits will apply to. To use the credits allocated to them by the DOR, the taxpayer must make the actual contribution to the program during the taxable year indicated in the application.<sup>54</sup>

Corporate income tax payers often do not have a precise knowledge of their tax liability until their taxable year is completed.

Provisions generally applicable to corporate income tax payers require annual tax returns to be filed on or before the first day of the fifth month following the close of the taxpayer's taxable year. Further, current law allows the final due date of tax returns to be extended by another six months, but only after tentative payments of final taxes owed.<sup>55</sup>

### Effect of the Bill

The bill amends s. 220.1875(1), F.S., to provide that an eligible contribution must be made to an eligible nonprofit SFO on or before the date that the taxpayer is required to file a return pursuant to s. 220.222, F.S. This would allow a contribution to be made after a taxpayer's taxable year is complete but would allow the credit to be taken against that taxable year.

The bill also adds subsection (4) to provide if a taxpayer applies and is approved for a credit under s. 1002.395, F.S., after timely requesting an extension to file a return, credits granted under such circumstances shall not reduce the amount of tax due for purposes of the determination of whether the taxpayer was in compliance with the requirements under ss. 220.222 and 220.32, F.S. These provisions are designed to prevent a taxpayer from making a contribution (and using credits) to avoid penalties and interest associated with under payment of tentative final tax payments. The taxpayer's noncompliance with the requirement to pay tentative taxes (s. 220.32, F.S.) shall result in the revocation and rescindment of any credits and the taxpayer shall be assessed for any taxes, penalties, or interest due to noncompliance with the requirement to pay tentative taxes.

The bill adds s. 220.13(1)(b), F.S., to provide that if the amount taken as credit under s. 220.1875, F.S., is added to taxable income in the previous taxable year and is subsequently allowed as a deduction from taxable income for federal tax purposes in the current taxable year, the amount of the deduction shall not be added back to the current year. This provision is intended to ensure that the credit under s. 220.1875, F.S., is added in the applicable tax year and does not result in a duplicate addition in a subsequent year.

## Private Educational Choice Scholarship Program Accountability

### Present Situation

Each specific statute establishing the McKay program, the FTC, and the GSP outlines the following:

- student eligibility criteria;
- private school eligibility and responsibilities;
- parent responsibilities;
- DOE responsibilities; and
- Commissioner of Education responsibilities.

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<sup>54</sup> s. 1002.395(5)(b)1., F.S.

<sup>55</sup> ss. 220.222 and 220.32, F.S.

While student eligibility criteria is specific to each program, many of the requirements regarding private schools, DOE, and the commissioner are identical.<sup>56</sup> Currently, s. 1002.421, F.S., outlines some of the common eligibility requirements and private school responsibilities. Specifically, it provides that a private school must be a Florida private school as defined in s. 1002.01(2), F.S., must be registered, and must:

- comply with the antidiscrimination provisions of 42 U.S.C. s. 2000d;
- notify the DOE of its intent to participate in a scholarship program;
- notify the DOE of any change in the school's name, school director, mailing address, or physical location within 15 days after the change;
- complete student enrollment and attendance verification requirements, including use of an online attendance verification form, prior to scholarship payment;
- annually complete and submit to the DOE a notarized scholarship compliance statement certifying that all school employees and contracted personnel with direct student contact have undergone background screening pursuant to s. 943.0542, F.S.;
- demonstrate fiscal soundness and accountability;
- meet applicable state and local health, safety, and welfare laws, codes, and rules, including fire safety and building safety;
- employ or contract with teachers who hold baccalaureate or higher degrees, have at least 3 years of teaching experience in public or private schools, or have special skills, knowledge, or expertise that qualifies them to provide instruction in subjects taught;
- require each employee and contracted personal with direct student conduct, upon employment or engagement to provide services, to undergo a state and national background screening, pursuant to s. 943.0542, F.S.;
- disqualify instructional personnel and school administrators who fail the background screening;
- adopt policies establishing standards of ethical conduct for instructional personnel and school administrators; and
- before employing instructional personnel or school administrators in any position that requires direct contact with students, conduct employment history checks of each of the personnel's or administrators' previous employers, screen the personnel or administrators through use of the educator screening tools described in s. 1001.10(5), F.S., and document the findings.<sup>57</sup>

Requirements for the commissioner are similar throughout all three current scholarship programs and include the authority to:

- deny, suspend, or revoke a private school's participation in the program and to take other action as necessary to ensure compliance with the laws governing private schools participating in the program;
- deny, suspend, or revoke a private school's participation in the program if the commissioner determines that an owner or operator of the private school is operating or has operated an educational institution in Florida or in another state or jurisdiction in a manner contrary to the health, safety, or welfare of the public; and
- immediately suspend payment of scholarship funds if there is probable cause to believe that there is an imminent threat to the health, safety, and welfare of the students or if there is fraudulent activity on the part of the private school.<sup>58</sup>

The DOE has similar responsibilities across all three programs, including:

- annually verifying the eligibility of private schools;<sup>59</sup>
- establishing a process that allows for individuals to notify DOE of violations of state law relating to program participation;<sup>60</sup>

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<sup>56</sup> See ss. 1002.39, F.S., 1002.385, F.S., and 1002.395, F.S.

<sup>57</sup> Section 1002.421, F.S.

<sup>58</sup> Sections 1002.385(10), F.S., 1002.39(7), F.S., and 1002.395(11), F.S.

<sup>59</sup> Sections 1002.385(9)(a), F.S., 1002.39(6)(b), F.S., and 1002.395(9)(c), F.S.

<sup>60</sup> Sections 1002.385(9)(c), F.S., 1002.39(6)(c), F.S.; and 1002.395(9)(f), F.S.



- annually receiving and retaining from every participating private school a notarized, sworn compliance statement certifying compliance with state law,<sup>61</sup> and
- cross-checking the list of participating scholarship students with public school enrollment lists to avoid duplicate payments.<sup>62</sup>

A number of stakeholders representing participating private schools, scholarship funding organizations, and the DOE brought several recommendations for strengthening the oversight and accountability of the scholarship programs to the PreK-12 Innovation Subcommittee Meeting on December 6, 2017.<sup>63</sup> Subsequently, these recommendations were presented to the full Education Committee on January 18, 2018.<sup>64</sup>

### Effect of Proposed Changes

In order to provide clarity, transparency, and improve accountability, the bill:

- streamlines and consolidates private school eligibility, DOE obligations, and commissioner authority regarding the McKay, FTC, and GSP scholarship programs;
- applies requirements and responsibilities consistently across all three scholarship programs; and
- introduces new accountability measures and strengthens specific current requirements as recommended by stakeholders.

The bill combines all the common provisions regarding private school participation requirements, the DOE's obligations, and commissioner's authority into the current common section of statute, s. 1002.421, F.S., and removes duplicative language in the individual program statutes.

In addition to the relocation of current requirements, the bill includes new accountability provisions presented before the Education Committee that:<sup>65</sup>

- require the DOE to conduct site visits for new private schools entering a scholarship program;
- authorize the DOE to conduct site visits to any school that has had a complaint filed regarding a violation of state law or state board rule;
- require the DOE to coordinate with the entities conducting the health and fire inspections to obtain copies of the inspection reports directly from that entity, rather than the private school;
- require private schools to provide, at a minimum, written information to the parents regarding the school's services and programs, and the qualifications of classroom teachers;
- require private schools to provide the parent with a quarterly report of the student's progress, rather than just an annual report;
- require the owner or operator of a private school to meet the same background screening requirements as owners of SFOs and report results to the DOE;
- require the owner or operator of a private school that intends to transfer ownership of the school to notify the parents at least 30 calendar days in advance of the transfer;
- prohibit an owner or operator that was deemed ineligible to participate from transferring ownership or management authority to a relative in order to continue participation in a scholarship program; and
- require a private school, if it receives more than \$250,000 in total scholarship program funds in a fiscal year, to submit an annual financial report to the SFO or the DOE, as applicable.

<sup>61</sup> Sections 1002.385(9)(1002.39(6)(d), F.S.; and 1002.421(e), F.S.

<sup>62</sup> Sections 1002.385(9)(e), F.S., 1002.39(6)(e), F.S., and 1002.395(9)(h), F.S.

<sup>63</sup> PreK-12 Innovation Subcommittee Meeting, Dec. 6, 2017, available at: <https://thefloridachannel.org/videos/12-6-17-house-prek-12-innovation-subcommittee/>

<sup>64</sup> Florida House of Representatives; Education Committee Meeting, Jan. 18, 2018, available at <https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=2906&Session=2018&DocumentType=Meeting%20Packets&FileName=edc%201-18-18.pdf>.

<sup>65</sup> *Id.*

The bill requires the SBE to adopt rules establishing deadlines for private school applications and timelines for site visits.

Owners or operators of a participating private school will continue to undergo state and national background screening requirements; however, in addition to the offenses listed in s. 435.04, F.S., the results will also be screened against offenses, including, but not limited to: fraud, forgery, and criminal use of personal identification information. Owners or operators who fail the background screening requirements are not eligible to participate in a scholarship program.

A private school that fails to meet the requirements of s. 1002.421, F.S., fails to meet a specific requirement pertaining to an individual scholarship program, or has consecutive years of material exceptions in their annual financial report, may be deemed ineligible to participate in a scholarship program under chapter 1002, F.S.

In addition to conforming changes in the GSP, the bill revises the list of allowable expenditures by providing that GSP funds may be used for:

- tuition or fees associated with full-time or part-time enrollment in an eligible private school;
- part-time tutoring services provided by a person who has a bachelor's degree or a graduate degree in the subject area in which instruction is given; and
- tuition or fees associated with enrollment in a nationally or internationally recognized research-based training program for children with neurological disorders or brain damage.

Currently, the law specifically references the Learning Systems Institute at Florida State University as the agency responsible for conducting the annual student achievement report required under the FTC program. The bill replaces the reference to the Learning System Institute with "state university." It also reduces the annual project appropriation from \$500,000 per year to \$250,000 per year.

## **Funding for Instruction of Struggling Schools and Students**

### Present Situation

#### *Supplemental Academic Instruction*

In 1999, the Legislature created the Supplemental Academic Instruction (SAI) Categorical Fund as part of the A+ Education Plan<sup>66</sup> for assisting school districts in providing supplemental instruction to students in kindergarten through grade 12.<sup>67</sup>

The SAI categorical funds are allocated annually to each school district in the amount provided in the General Appropriations Act. These funds are provided in addition to the funds appropriated on the basis of FTE student membership in the Florida Education Finance Program (FEFP) and are included in the total funds for each district. For Fiscal Year 2017-2018, each school district that has one or more of the 300 lowest-performing elementary schools based on the statewide reading assessment must use these funds, together with the funds provided in the district's research-based reading instruction allocation, to provide an additional hour of intensive reading instruction<sup>68</sup>. After this requirement has been met, school districts may use these funds for: modified curriculum, reading instruction, after-school instruction, tutoring, mentoring, class size reduction, extended school year, intensive skills development in summer school, and other methods for improving student achievement.

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<sup>66</sup> Section 23, ch. 99-398, L.O.F.

<sup>67</sup> Florida House of Representatives, Council for Lifelong Learning, Supplemental Academic Instruction Fact Sheet (Sept. 2001) available at

<http://archive.flsenate.gov/data/publications/2002/house/reports/EdFactSheets/fact%20sheets/supplementalacademicinstruction.pdf>.

<sup>68</sup> s. 1011.62(1)(f), F.S.

## Research-Based Reading Instruction Allocation

Funds for comprehensive, research-based reading instruction are allocated annually to each school district in the amount provided in the General Appropriations Act. Each eligible school district receives the same minimum amount as specified in the General Appropriations Act, and any remaining funds are distributed to eligible school districts based on each school district's proportionate share of K-12 base funding.<sup>69</sup> These funds must be used to provide a system of comprehensive reading instruction to students enrolled in K-12 programs.

Currently, priority of the funds is to provide an additional hour of intensive reading instruction beyond the normal school day for each day of the entire school year for the students in the 300 lowest-performing elementary schools based on the statewide reading assessment.<sup>70</sup> This additional hour of instruction must be provided by teachers or reading specialists who are effective in teaching reading. Students enrolled in the schools that have level 5 reading assessment scores may choose to participate in the additional hour of instruction on an optional basis.<sup>71</sup>

Annually, school districts must submit a K-12 comprehensive reading plan that outlines their specific use of the research-based reading instruction allocation for review and approval by the DOE's Just Read, Florida! Office (JRFO).<sup>72</sup> On or before June 1 of each year, the office must approve or reject a district's plan. If a school district and the office cannot reach agreement on the plan's contents, the school district may appeal to the SBE for resolution. No later than July 1 annually, the department shall release the school district's allocation of appropriated funds to those districts having approved plans. The department may withhold a school district's funds if the department determines that such funds are not being used to implement the approved plan.<sup>73</sup>

The JRFO was established by the Legislature in 2006 to implement the Just Read, Florida! initiative, which aimed to help students become successful, independent readers.<sup>74</sup> Among other things, the office must:

- work with the Lastinger Center for Learning at the University of Florida to develop training for K-12 teachers, reading coaches, and school principals on effective content-area-specific reading strategies and the integration of content-rich curriculum from other core subject areas into reading instruction;
- develop and provide access to sequenced, content-rich curriculum programming, instructional practices, and resources that help elementary schools use state-adopted instructional materials to increase students' background knowledge and literacy skills; and
- work with the Florida Center for Reading Research to identify scientifically researched and evidence-based reading instructional and intervention programs that incorporate explicit, systematic, and sequential approaches to teaching phonemic awareness, phonics, vocabulary, fluency, and text comprehension and incorporate decodable or phonetic text instructional strategies.<sup>75</sup>

### Effect of the Bill

The bill modifies the FEFP SAI allocation by requiring that each school district with a school earning a grade of "D" or "F" use that school's portion of the SAI allocation to implement the intervention and support strategies required under Florida's system for school improvement. In addition, the bill modifies

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<sup>69</sup> See, e.g., s.6, ch. 2017-234, L.O.F.

<sup>70</sup> See s. 1011.62(9)(c), F.S.

<sup>71</sup> Section 1011.62(9)(a), F.S.

<sup>72</sup> Section 1011.62(9)(d)1., F.S.

<sup>73</sup> s. 1011.62(9), F.S.

<sup>74</sup> Section 8, ch. 2006-74, L.O.F. The initiative was established by Governor Jeb Bush in 2001. See Exec. Order No. 01-260 (2001).

<sup>75</sup> See s. 1001.215(3), (4), and (8), F.S. Reading intervention includes evidence-based strategies frequently used to remediate reading deficiencies and includes, but is not limited to, individual instruction, multisensory approaches, tutoring, mentoring, or the use of technology that targets specific reading skills and abilities. Section 1001.215(8), F.S.

identification of the 300 lowest-performing elementary schools on a 3-year average of the statewide, standardized ELA assessment.

Each school district that has one or more of the 300 lowest-performing elementary schools must use that school's portion of the SAI allocation to provide an additional hour per day of intensive reading instruction. Such instruction is not required to be in addition to the school day. Participation in the extra hour is optional for students who scored a Level 4 or Level 5 on the previous year's assessment. For all other schools, the school district may use the SAI for eligible purposes currently described in law.

The bill also requires:

- summer reading camps to be taught by a teacher certified or endorsed in reading;
- supplemental instructional materials purchased using reading allocation funds to incorporate research-based practices identified by the JRFO;
- each district with one or more of the 300 lowest-performing elementary schools to use reading allocation funds in providing the extra hour of reading instruction;
- requires that, beginning with the 2020-2021 school year, intensive reading interventions provided pursuant to a school district's reading plan must be delivered by a teacher who is certified or endorsed in reading; and
- intensive interventions to incorporate the evidence-based intervention strategies identified by the JRFO.

## Reading Instructor Credentials

### *Educator Certification Coverage Areas and Endorsements*

#### Present Situation

In order for a person to serve as an educator in a traditional public school, charter school, virtual school, or other publicly operated school, the person must hold a certificate issued by the Florida DOE.<sup>76</sup> Persons seeking employment at a public school as a school supervisor, school principal, teacher, library media specialist, school counselor, athletic coach, or in another instructional capacity must be certified.<sup>77</sup> The purpose of certification is to require school-based personnel to “possess the credentials, knowledge, and skills necessary to allow the opportunity for a high-quality education in the public schools.”<sup>78</sup>

Each educator certificate has subject area “coverage”—a designation on the certificate that indicates the field in which the educator has content knowledge (e.g., Mathematics, grades 6-12). An “endorsement” is a “rider” shown on an educator certificate that signifies the educator has knowledge of instructional strategies that target particular levels, stages of development, or circumstances (e.g., Reading Endorsement or Endorsement in English for Speakers of Other Languages).<sup>79</sup>

To add subject area coverage or an endorsement to a professional certificate or temporary certificate, an educator must submit an application and the required fee and complete requirements as specified in state board rule.

The specialization requirements for a K-12 reading certification are:

- a master's or higher degree with a graduate major in reading; or

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<sup>76</sup> Sections 1012.55(1) and 1002.33(12)(f), F.S.

<sup>77</sup> Sections 1002.33(12)(f) (charter school teachers) and 1012.55(1), F.S. District school boards and charter school governing boards are authorized to hire non-certificated individuals who possess expertise in a given field to serve in an instructional capacity. Rule 6A-1.0502, F.A.C.; ss. 1002.33(12)(f) and 1012.55(1)(c), F.S. Occupational therapists, physical therapists, audiologists, and speech therapists are not required to be certified educators. Rule 6A-1.0502(10) and (11), F.A.C.

<sup>78</sup> Section 1012.54, F.S.; see rule 6A-4.001(1), F.A.C.

<sup>79</sup> See Florida Department of Education, *Certificate Additions*, <http://www.fldoe.org/teaching/certification/additions/> (last visited Jan. 11, 2018).

- a bachelor's or higher degree with 30 semester hours in reading to include the following areas:
  - Six semester hours in foundations of reading instruction to include the elementary and secondary levels.
  - Six semester hours in diagnosis of reading disabilities and techniques of corrective or remedial reading.
  - Three semester hours in educational measurement.
  - Three semester hours in literature for children or adolescents.
  - Three semester hours in methods of teaching language arts at the elementary or secondary level.
  - Three semester hours in administration and interpretation of instructional assessments with instructional strategies and materials based upon scientifically based reading research for the prevention and remediation of reading difficulties.
  - Three semester hours in a supervised reading practicum to obtain practical experience in increasing the reading performance of a student(s) with the prescription and utilization of appropriate strategies and materials based upon scientifically based reading research to address the prevention, identification, and intervention of reading difficulties.<sup>80</sup>

The specialization requirements for a reading endorsement are a bachelor's or higher degree with certification in an academic, degreed vocational, administrative, or specialty class coverage and 15 semester hours in reading coursework, based upon scientifically based reading research with a focus on both the prevention and remediation of reading difficulties, to include the following:

- Six semester hours in understanding reading as a process of student engagement in both fluent decoding of words and construction of meaning.
- Three semester hours in the administration and interpretation of instructional assessments to include screening, diagnosis, and progress monitoring with purposes of prevention, identification, and remediation of reading difficulties.
- Three semester hours in understanding how to prescribe, differentiate instruction, and utilize appropriate strategies and materials based upon scientifically based reading research in order to address the prevention, identification, and remediation of reading difficulties in order to increase reading performance.
- Three semester hours in a supervised practicum to obtain practical experience in increasing the reading performance of a student(s) with the prescription and utilization of appropriate strategies and materials based upon scientifically based reading research to address the prevention, identification, and remediation of reading difficulties.<sup>81</sup>

By July 1, 2018, and at least once every five years thereafter, the DOE must review specialization and coverage area requirements in the elementary, reading, and exceptional student educational areas. At the conclusion of each review, the DOE must recommend to the State Board of Education changes to the specialization and coverage area requirements based upon any instructional or intervention strategies identified by the DOE that are proven to improve student reading performance.<sup>82</sup>

### Effect of the Bill

The bill requires the DOE's review of specialization and endorsement coverage areas to consider the award of an endorsement to an individual who holds a certificate issued by an internationally recognized organization that establishes standards for providing evidence-based interventions to struggling readers or who completes a postsecondary program that is accredited by such an organization. The bill specifies that any such certificate must require an individual who completes the certificate or accredited program to demonstrate competence in reading intervention strategies through clinical experience.

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<sup>80</sup> Rule 6A-4.0291, F.A.C.

<sup>81</sup> Rule 6A-4.0292, F.A.C.

<sup>82</sup> Section 1012.586(1)(b), F.S., *as amended by* s. 12, ch. 2017-116, L.O.F.

## Statewide Assessment Program

### Present Situation

The statewide assessment program for Florida's public schools includes statewide, standardized assessments for ELA (grades 3-10) and mathematics (grades 3-8); end-of-course (EOC) assessments for Algebra I, Geometry, Biology I, Civics, and U.S. History; and the Statewide Science Assessment (grades 5 and 8).<sup>83</sup> The assessments measure the extent to which students have mastered Florida's academic content standards: the Next-Generation Sunshine State Standards (NGSSS), including Florida Standards for ELA and math.<sup>84</sup> The grade-level ELA and math assessments and Algebra I and Geometry EOC assessments are referred to as the Florida Standards Assessments (FSA). EOC assessments count as 30 percent of a student's final course grade.<sup>85</sup> Results from the assessments are used to calculate school grades and school improvement ratings<sup>86</sup> and determine student readiness for promotion to 4<sup>th</sup> grade and high school graduation.<sup>87</sup> In addition, school districts use student performance data from the assessments in the performance evaluations for instructional personnel and school administrators.<sup>88</sup>

In 2017, the Legislature amended the law to reduce the assessment burden on public schools. Specifically, the Legislature eliminated the Algebra II end-of-course assessment and required that all statewide, standardized ELA and math assessments in grades 3 through 6 must be delivered only in a paper-based format no later than the 2018-2019 school year.<sup>89</sup> As of the 2017-2018 school year all assessments, except the statewide, standardized Grade 3 ELA assessment, the writing portion of the ELA assessment for grades 4 through 7, and the science assessments for grades 5 and 8, are administered on computers.<sup>90</sup>

In addition, the DOE must publish each statewide, standardized assessment and statewide EOC assessment on the DOE's website, excluding retake and alternate assessments, at least once every three years.<sup>91</sup> When published, each assessment must have been administered during the most recent school year. The law allows the commissioner to determine the schedule for publishing assessments during the 3- year period; however, subject to appropriation, the initial publication must occur no later than June 30, 2021, and must include the grade 3 ELA and mathematics assessments, the grade 10 ELA assessment, and the Algebra I EOC assessment.<sup>92</sup> The DOE, as part of the next procurement of assessments, must solicit cost proposals for publication of assessments. The DOE must also publish materials on its website to help the public interpret the published assessment information.<sup>93</sup>

### Effect of the Bill

The bill specifies that the statewide, standardized assessments published by the DOE must be published in a format that facilitates sharing of assessment items. To increase the focus on developing student literacy skills through content-rich curriculum and instruction, the bill requires that reading passages and writing prompts used in statewide, standardized ELA assessments incorporate grade-level Social Studies core curricular content.

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<sup>83</sup> Sections 1008.22(3), 1003.4156, and 1003.4282, F.S. (2017) Retake administrations are offered for the Grade 10 FSA ELA and Algebra I EOC assessment.

<sup>84</sup> See Florida Department of Education, *ESEA Flexibility Request* (August 21, 2015) at 98, available at <http://www.fldoe.org/core/fileparse.php/5637/urlt/15WaiverRenewalESEA.pdf>.

<sup>85</sup> Sections 1003.4156(1)(c)-(d) and 1003.4282(3), F.S.

<sup>86</sup> See ss. 1008.34 and 1008.341, F.S.

<sup>87</sup> See ss. 1008.25(5) and 1003.4282(3)(a) and (b), F.S.

<sup>88</sup> See s. 1012.34(3)(a)1., F.S.; rule 6A-5.030(2)(a), F.A.C.

<sup>89</sup> See s. 35, ch. 2017-116, L.O.F., codified at s. 1008.22(3), F.S. (2017).

<sup>90</sup> See Staff of the Florida House of Representatives, *Legislative Bill Analysis for CS/HB 7069* (2017).

<sup>91</sup> See s. 35, ch. 2017-116, L.O.F., codified at s. 1008.22(8), F.S. (2017).

<sup>92</sup> See *id.*

<sup>93</sup> See *id.*

## Professional Development and Curriculum

### Present Situation

Currently, the DOE publishes test specification sheets that identify standards that are measured through the statewide, standardized assessments.<sup>94</sup> However, the specification sheets are not designed to assist with the development, selection, or implementation of curriculum. The 2017 Legislature took initial steps to help school districts implement standards-based curricula to develop core knowledge and literacy skills by requiring the Just Read, Florida! Office to develop and provide access to sequenced, content-rich curriculum programming, instructional practices, and resources that help elementary schools use state-adopted instructional materials to increase students' background knowledge and literacy skills, including student attainment of the Next Generation Sunshine State Standards for social studies, science, and the arts.<sup>95</sup>

Florida law requires a number of entities, including the DOE, public postsecondary educational institutions, public school districts, public schools, state education foundations, consortia, and professional organizations, to work collaboratively to develop a coordinated system of professional development. The purpose of the system is to increase student achievement, enhance classroom instructional strategies that promote rigor and relevance throughout the curriculum, and prepare students for continuing education and the workforce.<sup>96</sup>

Part of the DOE's responsibility in the professional development system is to disseminate to the school community research-based professional development methods and programs that have demonstrated success in meeting identified student needs.<sup>97</sup> At least one method of dissemination must be through a web-based statewide performance support system, including a database of exemplary professional development activities, a listing of available professional development resources, training programs, and available assistance.<sup>98</sup> In addition, the DOE must disseminate, using the web-based statewide performance-support system, proven model professional development programs that have demonstrated success in increasing rigorous and relevant content, increasing student achievement and engagement, meeting identified school needs, and providing effective teacher mentorship activities.<sup>99</sup> The DOE must also disseminate, using web-based technology, research-based best practice methods by which the state and district school boards may evaluate and improve the professional development system.<sup>100</sup>

### Effect of the Bill

To help school districts and teachers plan and implement effective, standards-based curricula, the bill requires that professional development resources disseminated through the web-based statewide performance-support system include sample course-at-a-glance and unit overview templates that school districts may use when developing curricula. The templates must provide an organized structure for addressing the Florida Standards, grade-level expectations, evidence outcomes, and 21<sup>st</sup> Century skills that build toward mastery at each grade level.

Each template must support teaching to greater intellectual depth and:

- provide course or year-long sequencing of concept-based unit overviews based on the Florida Standards;
- describe the knowledge and vocabulary required within the standards;

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<sup>94</sup> See, e.g., Florida Department of Education, *DRAFT Grade 4 Mathematics Item Specifications* (Nov. 2017), available at [https://fsassessments.org/assets/documents/Math\\_G4\\_FSA-Item-Specifications\\_v5\\_101617.pdf](https://fsassessments.org/assets/documents/Math_G4_FSA-Item-Specifications_v5_101617.pdf).

<sup>95</sup> Section 15, ch. 2017-116, L.O.F., codified at s. 1001.215(4), F.S. (2017).

<sup>96</sup> Section 1012.98(1), F.S.

<sup>97</sup> Section 1012.98(4)(a), F.S. The web-based statewide performance support system can be accessed at <https://www.floridaschoolleaders.org>.

<sup>98</sup> *Id.*

<sup>99</sup> Section 1012.98(11), F.S.

<sup>100</sup> Section 1012.98(7), F.S.

- promote the instructional shifts required within the standards; and
- illustrate the interdependence of grade level expectations within and across content areas within a grade.

## Charter Schools

### *School Leader Preparation Programs*

#### Present Situation

The law requires the SBE to classify school services, designate certification subject areas, establish competencies for certification, and establish certification requirements for all school-based personnel.<sup>101</sup> In Florida, aspiring school administrators<sup>102</sup> must complete a state-approved school leader preparation program and attain certification as an educational leader.<sup>103</sup>

The law establishes two classes of certification for school administrators – educational leadership and school principal. There are two types of school leader preparation programs:

- Level I programs are offered by school districts and postsecondary institutions and lead to initial certification in educational leadership for the purpose of preparing individuals to serve as school administrators.
- Level II programs are offered by school districts, build upon Level I training, and lead to certification as a school principal.<sup>104</sup>

The DOE must establish a process for the approval and renewal of Level I and Level II school leader preparation programs.<sup>105</sup> Initial approval of a Level I or Level II program lasts for 5 years and must be approved by the DOE. Program proposals may be submitted by a postsecondary institution or school district.<sup>106</sup>

#### Effect of the Bill

The bill allows charter schools and charter management organizations to submit applications to establish Level I and Level II leader preparation programs or program renewals.

### *Charter School Opening*

#### Present Situation

Once a charter school application is approved, the initial startup commences with the beginning of the public school calendar for the district in which the charter is granted. A charter school may defer the opening of the school's operations for up to 2 years to provide time for adequate facility planning. The charter school must provide written notice of such intent to the sponsor and the parents of enrolled students at least 30 calendar days before the first day of school.

#### Effect of the Bill

The bill allows a charter school to defer opening for up to 3 years, rather than two. The bill also specifies that an applicant may determine when its charter school will open.

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<sup>101</sup> Section 1012.55(1)(b), F.S.

<sup>102</sup> School administrators include school principals, school directors, and assistant principals. *See s. 1012.01(3)(c), F.S.*

<sup>103</sup> *See s. 1012.55(1)(b), F.S.; rule 6A-4.0081, F.A.C.*

<sup>104</sup> *Id.*

<sup>105</sup> Section 1012.562, F.S.

<sup>106</sup> Section 1012.562(2) and (3), F.S.



## *Surplus Property*

### Present Situation

If a district school board facility or property is available because it is surplus, marked for disposal, or otherwise unused, it must be provided for a charter school's use on the same basis as it is made available to other public schools in the district. A charter school receiving property from the school district may not sell or dispose of such property without written permission of the school district.<sup>107</sup>

Tangible personal property that has been properly classified as surplus by a district school board must be disposed of in accordance with current surplus property requirements.<sup>108</sup> The district may offer surplus property to other governmental units in the county or district for sale or donation or may offer the property to private nonprofit agencies by sale or donation. If no acceptable bid is received within a reasonable time, then the property must be offered directly to such governmental units for sale or donation.<sup>109</sup>

### Effect of the Bill

The bill requires that tangible personal property that has been properly classified as surplus, marked for disposal, or otherwise unused by a district school board must be provided for a charter school's use on the same basis as it is made available to other public schools in the district. A charter school receiving such property may not sell or dispose of the property without written permission of the school district.

## *Targeted Enrollment*

### Present Situation

The law allows charter schools to limit the enrollment process to target the following student populations:

- Students within specific age groups or grade levels.
- Students considered at risk of dropping out of school or academic failure.
- Students enrolling in a charter school-in-the-workplace or charter school-in-a-municipality.
- Students residing within a reasonable distance of the charter school, subject to a random lottery and to racial/ethnic balance requirements.
- Students who meet reasonable academic, artistic, or other eligibility standards established by the charter school and included in the charter school application and charter or, in the case of existing charter schools, standards that are consistent with the school's mission and purpose.
- Students articulating from one charter school to another pursuant to an articulation agreement between the charter schools that has been approved by the sponsor.
- Students living in a development in which a business entity provides the school facility and related property having an appraised value of at least \$10 million to be used as a charter school for the development. Such students are entitled to 50 percent of the student stations in the charter school.

### Effect of the Bill

With respect to business-owned facilities, the bill reduces the minimum appraised value of the facility to \$5 million and specifies that the school must have been established to mitigate the educational impact created by the development of new residential dwelling units. The bill also specifies that students in the development are entitled to no more than 50 percent of the school's student stations.

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<sup>107</sup> Section 1002.33(18)(e), F.S.

<sup>108</sup> Section 1013.28 (2)(a), F.S.

<sup>109</sup> Section 274.05, F.S.

## 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.<sup>110</sup> 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 opinion<sup>111</sup> on each annual financial audit; and
- has not received an annual financial audit that reveals a financial emergency condition.<sup>112</sup>

Initial eligibility for “high-performing” status is verified by the Commissioner of Education, upon request by a charter school. Thereafter, the commissioner must annually verify continued eligibility.<sup>113</sup>

High-performing charter schools may take advantage of various benefits. Among other benefits, the operator of a high-performing charter school may submit an application in any Florida school district to establish and operate a new charter school that substantially replicates one of its high-performing charter schools. The application process for such applications is streamlined to expedite approval.<sup>114</sup> A high-performing charter school may not be replicated more than once in any given year and may not replicate again until the new charter school achieves “high-performing” status.<sup>115</sup> Systems may replicate their high-performing charter schools using the same process applicable to high-performing charter schools.<sup>116</sup> Additionally, a high-performing charter school may have the term of its charter extended to up to 15 years.<sup>117</sup>

A high-performing charter school may increase the school’s enrollment once per year to more than the capacity identified in the charter and expand grade levels within kindergarten through grade 12 to add grade levels not already served as long as the increase in enrollment in either case does not exceed the current facility capacity.<sup>118</sup>

## Effect of the Bill

The bill revises the criteria determining a high-quality charter school by also allowing a school that receives two consecutive grades of “A” to be determined a high-performing charter school. It allows a high-performing charter school to replicate up to two new schools that substantially replicate one of its high-performing schools. For those schools qualifying under the two consecutive grades of “A” provision, the bill revises the financial eligibility requirements to require only 2 years of financial audits that received an unqualified opinion and no state of financial emergency.

The bill clarifies that the increase in student enrollment may occur as long as it does not exceed the capacity of the facility at the time the enrollment increase will take effect, rather than the original capacity of the facility, allowing a charter school that has expanded its original facility or has access to additional facilities to increase enrollment without being limited to the original facility capacity.

The bill also provides that facility capacity for purposes of grade level expansion must include any improvements to an existing facility or any new facility in which a majority of the students of the high-performing charter school will enroll.

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<sup>110</sup> Section 1002.331(1), F.S.; *see s. 218.503(1), F.S.* (financial emergency conditions).

<sup>111</sup> 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).

<sup>112</sup> Section 1002.331(1), F.S.; *see s. 218.503(1), F.S.* (financial emergency conditions).

<sup>113</sup> Sections 1002.331(5) and 1002.332(2)(a), F.S.

<sup>114</sup> Section 1002.331(2), F.S.

<sup>115</sup> Section 1002.331(3)(b), F.S.

<sup>116</sup> Section 1002.332(2), F.S.

<sup>117</sup> Section 1002.331(4), F.S.

<sup>118</sup> Section 1002.331(2)(a) and (b), F.S.

## Present Situation

Each charter school must enter into a performance contract with its sponsor, known as a charter. The charter lists specific objectives that the charter school must meet to remain in operation. The terms of the charter must be negotiated by the applicant and sponsor within 30 days after approval of the application. The parties then have 40 days to finalize the charter.<sup>119</sup> The initial term of a charter is 4 or 5 years and must include specific requirements provided in law.<sup>120</sup>

A sponsor must make student academic achievement for all students the most important factor when determining whether to renew or terminate a contract. The sponsor may also 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; or
- other good cause shown.<sup>121</sup>

At least 90 days before renewing, nonrenewing, or terminating a charter, the sponsor must notify the governing board of the school of the proposed action in writing and stipulate that the school's governing board, within 14 calendar days of receiving the notice, may request a hearing that is conducted at the sponsor's election in accordance with either of the following procedures:

- A direct hearing conducted by the sponsor within 60 days after receipt of the request for a hearing. The hearing must be conducted in accordance with ss. 120.569 and 120.57, F.S. The sponsor shall decide upon nonrenewal or termination by a majority vote, and the sponsor's decision shall be a final order; or
- A hearing conducted by an administrative law judge assigned by the Division of Administrative Hearings, conducted within 60 days after receipt of the request for a hearing and in accordance with chapter 120, F.S.. The administrative law judge's recommended order shall be submitted to the sponsor. The sponsor, by a majority vote, is required to adopt or modify the administrative law judge's recommended order and issue a final order.<sup>122</sup>

The sponsor must state the specific reasons for the decision in the final order and provide the final order to the charter school's governing board and DOE no later than 10 calendar days after its issuance. The charter school's governing board may, within 30 calendar days of receiving the final order, appeal the decision pursuant to s. 120.68, F.S.<sup>123</sup>

## Effect of the Bill

The bill revises the initial term of a charter to 5 years. The bill allows a planning period of 2 years in addition to the 5-year charter.

The bill specifies that, in the event of a termination or nonrenewal, the sponsor must have clear and convincing evidence that one of the disqualifying factors occurred. The bill also specifies that a violation of law must be material in order to constitute a disqualifying factor.

The bill revises the hearing procedures once a charter school receives its notice of termination or nonrenewal by removing the option for the school district to conduct a direct hearing. The hearing must

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<sup>119</sup> Section 1002.33(6)(h), F.S.

<sup>120</sup> Section 1002.33(7), F.S.

<sup>121</sup> Section 1002.33(8)(a), F.S.

<sup>122</sup> Section 1002.33(8)(b), F.S.

<sup>123</sup> Section 1002.33(8)(c), F.S.

be conducted by an administrative law judge within 90 days after receipt of the request for a hearing, and the administrative law judge must issue the final order. The administrative law judge must also award the prevailing party reasonable attorney fees and costs incurred during the administrative proceeding and any appeals.

The charter school governing board may, within 30 calendar days after receiving the judge's final order, appeal the decision pursuant to s. 120.68, F.S.

The bill also revises the ability of charter schools to modify their charter due to consolidation and provides that a charter school that is not required to complete a school improvement plan and closes as part of a consolidation must be reported by the school district as a consolidation.

### *Contract Disputes*

#### Present Situation

Currently, a school district can provide goods and services to a charter school on a contractual basis. The services must be provided to the charter school at a rate no greater than the actual cost to the district unless mutually agreed upon in a contract negotiated separately from the charter. When mediation has failed to resolve disputes over contracted services or contractual matters not included in the charter, an appeal may be made for a dispute resolution hearing before the Charter School Appeals Commission.<sup>124</sup>

#### Effect of the Bill

If a dispute regarding a contract to provide goods and services cannot be resolved through mediation, an appeal may be made to an administrative law judge appointed by the Division of Administrative Hearings, rather than the Charter School Appeals Commission. The administrative law judge has final order authority to rule on the dispute and shall award the prevailing party reasonable attorney fees and costs incurred during the mediation process, administrative proceeding, and any appeals, to be paid by the non-prevailing party.

### *Background Screening*

#### Present Situation

Instructional and noninstructional personnel who are employed or contracted to fill positions in a charter school and members of the charter school governing board must undergo a Level 2 background screening.<sup>125</sup> Level 2 background screening is a state and national fingerprint-based criminal history check conducted to determine whether an individual has a criminal history and, if so, whether such history contains one or more statutorily designated offenses that disqualify an individual from employment.<sup>126</sup> A charter school must disqualify any individual convicted of a disqualifying offense from employment in an instructional or school administrator position that requires direct student contact.<sup>127</sup>

Prior to hiring an individual for an instructional or school administrator position with direct student contact, a charter school must conduct an employment history check and screen the person using DOE-provided educator screening tools. Such efforts, including any inability to contact previous employers, must be documented.<sup>128</sup>

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<sup>124</sup> Section 1002.33(20)(b), F.S.

<sup>125</sup> Sections 1002.33(12)(g)1., 1012.32(2)(b), 1012.465, and 1012.56(10), F.S.

<sup>126</sup> Section 435.04, F.S. The disqualifying offenses specific to Level 2 background screening are supplemented by additional disqualifying offenses specific to educator certification and employment of instructional personnel and school-based administrators. Section 1012.315, F.S.

<sup>127</sup> Sections 435.04, 1002.33(12)(g)2., 1002.33(12)(g)2., and 1012.315, F.S.

<sup>128</sup> Sections 1001.10(5) and 1002.33(12)(g)4., F.S.

## Effect of the Bill

If a charter school has a governing board member or an instructional or noninstructional member of its staff undergo background screening through the sponsoring school district, the bill requires the district to provide the results to the charter school within the earlier of 14 days after receipt of the results or 30 days of submission of the fingerprints. If the district fails to do so, the cost of the screening must be reimbursed.

## *Charter School Capital Outlay*

### Present Situation

Charter school capital outlay funding consists of revenue resulting from the discretionary millage authorized in s. 1011.71(2), F.S., and state funds when such funds are appropriated in the General Appropriations Act.<sup>129</sup>

If the school board levies the discretionary millage, the DOE must calculate the amount of revenue raised by the discretionary millage that the school district must distribute to each eligible charter school.<sup>130</sup> The calculation must reduce the total discretionary millage revenue by the school district's annual debt service obligation incurred as of March 1, 2017, and any amount of participation requirement pursuant to s. 1013.64(2)(a)8., F.S., that is being satisfied by discretionary millage revenues.

Among other things, revenues raised using the discretionary millage may be used by school district to fund payments for educational facilities and sites due under a lease-purchase agreement not exceeding, in the aggregate, an amount equal to three-fourths of the revenues. School districts must annually distribute capital outlay funds to charter school by February 1, beginning on February 1, 2018.<sup>131</sup>

### Effect of the Bill

For the 2018-2019 school year, the bill provides that charter school capital outlay consists of state funds appropriated by the Legislature. The bill further specifies that, beginning with the 2019-2020 school year, charter school capital outlay funds consist of state funds when such funds are provided; however, if in any given fiscal year the amount of state funds for charter school capital outlay is less than the average charter school capital outlay funds per unweighted full-time equivalent student for the 2018-2019 fiscal year, multiplied by the estimated number of charter school students for the applicable fiscal year and adjusted by changes in the Consumer Price Index from the previous year, charter school capital outlay funding must also consist of revenue resulting from the discretionary 1.5 millage authorized in s. 1011.71(2), F.S. The bill does not prohibit a school district from electing to share revenue from the discretionary 1.5 millage with charter schools it sponsors.

The bill modifies the calculation for distributing discretionary millage revenue to eligible charter schools by clarifying that the debt service obligation that can be reduced from the distribution is the debt service obligation incurred by March 1, 2017, which has not subsequently been retired. The bill specifies that school districts must distribute any remaining funds after February 1 upon receipt until the total calculated amount is distributed.

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<sup>129</sup> The 2017 Legislature appropriated \$50 million for charter school capital outlay. Specification Appropriation 18, s. 2, ch. 2017-70, L.O.F.

<sup>130</sup> See s. 1013.62(3), F.S.

<sup>131</sup> See s. 1011.71(2)(e), F.S.

The bill requires each school district, annually by October 1, to certify to the DOE the amount of debt service and the participation requirement can be reduced from the total discretionary millage revenue. The Auditor General must verify compliance during scheduled operation audits of school districts.

The bill further provides that if aggregate lease-purchase agreement payments, including lease-purchase agreements entered into before June 30, 2009, exceed three-fourths of the discretionary millage proceeds, the district may not withhold the administrative fees authorized in law<sup>132</sup> from any charter school operating in the school district.

## **Flexibility from State Requirements for Educational Facilities**

### Present Situation

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.<sup>133</sup> District school boards must adhere to the SREF when planning and constructing educational facilities and ancillary plants. Generally, 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.<sup>134</sup>

Facilities for non-conversion charter schools must meet the requirements of the uniform statewide building code, except for the SREF.<sup>135</sup>

District school boards may adopt a resolution to implement an exception to one or more of the following SREF requirements:<sup>136</sup>

- use of wood studs in interior nonload-bearing walls;
- paved walkways, roadways, driveways, and parking areas;
- covered walkways for relocatable buildings; and
- site lighting.

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:<sup>137</sup>

- 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.<sup>138</sup>

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<sup>132</sup> See s. 1002.33(20), F.S.

<sup>133</sup> Section 1013.37(1), F.S.

<sup>134</sup> See, e.g., s. 1013.12 (casualty, safety, sanitation, and fire safety standards and inspection of property) and 1013.451, F.S. (life-cycle cost comparison)

<sup>135</sup> Section 1002.33(18)(a), F.S.

<sup>136</sup> See s. 1013.385(2), F.S.

<sup>137</sup> Section 1013.385(1), F.S.

<sup>138</sup> *Id.*

## Effect of the Bill

The bill expands the available exceptions a district school board may adopt to include any other provisions in SREF that limit the ability of a school to operate in a facility on the same basis as a charter school. In order to adopt the exception, the regional planning council must determine that there is sufficient shelter capacity within the school district as documented in the Statewide Emergency Shelter Plan.<sup>139</sup>

## **Principal Autonomy Pilot Project Initiative**

### Present Situation

In 2016, the Principal Autonomy Pilot Project Initiative (PAPPI) was established within the DOE to provide principals of participating schools in participating school districts<sup>140</sup> with increased autonomy and authority over allocation of resources and staffing.<sup>141</sup> Each participating school district must identify three schools that received at least two school grades of “D” or “F” during the previous three school years, describe the areas in which increased autonomy will be granted, and state measurable goals regarding student achievement and operation efficiency. The principal assigned to each school must have earned a highly effective performance evaluation rating in the previous year.<sup>142</sup> Each participating principal, along with a three-member leadership team from each participating school and district personnel working with each school, must also complete a nationally recognized school turnaround program focusing on improving leadership, instructional infrastructure, talent management, and differentiated support and accountability.<sup>143</sup>

In order to receive a salary supplement of \$10,000, the principal must be transferred to a school that earned a grade of “F” or three consecutive grades of “D” and must have implemented a turnaround option at a school as the school’s principal in which the school improved by at least one letter grade.<sup>144</sup>

Among other things, the principal of a participating school is granted greater authority to hire qualified instructional personnel or refuse placement or transfer of such personnel and deploy financial resources to school programs at the principal’s discretion to help improve student achievement and meet goals identified in the district’s PAPPI proposal.<sup>145</sup>

A participating school is exempt from the provisions of chapters 1000-1013, F.S., and implementing state board rules, except for statutes pertaining to:<sup>146</sup>

- the election and compensation of school board members and the election, appointment, or compensation of district school superintendents;
- the student assessment program and school grading;
- the uniform start date;
- student progression and graduation;
- services to students with disabilities;
- class size, except compliance is calculated at the school, rather than classroom, level;
- civil rights and discrimination;
- student health, safety and welfare;

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<sup>139</sup> See s. 252.385(2)(b), F.S.

<sup>140</sup> Participation in PAPPI is currently limited to the Broward, Duval, Jefferson, Madison, Palm Beach, Pinellas, and Seminole school districts. See s. 1011.6202(1), F.S.

<sup>141</sup> See ch. 2016-223, L.O.F., *codified at s 1011.6202*, F.S. Plans were submitted to the State Board of Education by the Broward, Palm Beach, and Pinellas school districts. Each plan was approved by the state board at its March 22, 2017 meeting. See Florida State Board of Education, *Minutes State Board of Education Meeting* (May 16, 2017), available at <http://www.fldoe.org/core/fileparse.php/18491/urlt/minutes.pdf>.

<sup>142</sup> See s. 1011.6202(2)(a), F.S.

<sup>143</sup> Section 1011.6202(4), F.S.

<sup>144</sup> See s. 1011.6202(7), F.S.

<sup>145</sup> See s. 1012.28(8)(a) and (b), F.S.

<sup>146</sup> See s. 1011.6202(3)(b), F.S.

- educator evaluation, pay schedules, and employment contracts;
- school facilities, with certain exceptions;
- equitable distribution of Title I funds;
- public meetings and records public inspection and criminal and civil penalties;
- public records; and
- code of ethics for public officers and employees.

Each participating school must submit an annual report to the SBE, and the SBE must annually report on the implementation of the pilot project. At the end of the 3-year pilot, the commissioner must submit a full evaluation of the effectiveness of the program to the Senate President, the Speaker of the House of Representatives, and the Governor.<sup>147</sup>

The initial term of the program is 3 years.<sup>148</sup> Thereafter, schools must receive authorization from the SBE to renew their participation in the program.<sup>149</sup>

### Effect of the Bill

The bill expands PAPPi from a 3-year pilot to a statewide program and allows any school district, beginning with the 2018-2019 school year and contingent upon available funds, to submit a principal autonomy proposal to the SBE by December 1. If the SBE approves the proposal, the district is eligible to participate in the program for 3 years. The bill deletes annual reporting requirements for principals and districts participating in the pilot and deletes the requirement that the commissioner submit an evaluation of the pilot program.

In addition, the bill establishes district innovation academies and zones to allow school districts to authorize participating principals to manage multiple schools. The bill specifies that a zone may include the school at which the principal is assigned, persistently low-performing schools, feeder pattern schools, or a group of schools identified by the school district. The principal may allocate resources and personnel among the schools under his or her administration. The bill specifies that a school managed by a participating principal, continues its exemption from laws and rules beyond the initial 3-year period so long as the school receives a school grade no lower than a “B.”

Subject to appropriation each year, the DOE must:

- fund the costs of the program to include the administrative and enrollment costs for the school turnaround training program; and
- provide up to \$10,000 for each participating principal as an annual salary supplement for 3 years.

The bill revises salary supplement eligibility requirements to allow a participating principal to qualify by transferring to a school that earned two consecutive grades of “D” rather than three. The bill also specifies that a participating principal may qualify for a salary supplement by managing a persistently low performing school.

## **Commissioner of Education Authority**

### Present Situation

The commissioner is the chief educational officer of the state, and is responsible for giving full assistance to the State Board of Education (SBE) in enforcing compliance with the mission and goals of the K-20 education system except for the State University System.<sup>150</sup> The commissioner’s office operates all statewide functions necessary to support the SBE, including strategic planning and budget

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<sup>147</sup> Section 1011.6202(6), F.S.

<sup>148</sup> Section 1011.6202(5), F.S.

<sup>149</sup> *Id.*

<sup>150</sup> Section 1001.10, F.S.



development, general administration, assessment, and accountability.<sup>151</sup> The commissioner is appointed by the SBE<sup>152</sup> and serves as the Executive Director of the DOE.<sup>153</sup>

The DOE is responsible for coordinating, when necessary, the use of educational facilities during emergency activations among federal and state agencies, local school districts, colleges and universities.<sup>154</sup> The DOE also serves as the primary liaison in coordinating all phases of emergency response from pre-disaster planning through post disaster recovery of educational facilities.<sup>155</sup>

The DOE staff members are assigned to serve as contacts (called “Emergency Management (EM) Buddies”).<sup>156</sup> Staff for the Divisions of Blind Services and Vocational Rehabilitation perform the same function for their local offices.<sup>157</sup> In an emergency situation, the commissioner activates the EM Buddies for the affected areas of the state.<sup>158</sup> The EM Buddies provide the direct communications conduit between the DOE, district school superintendents, Florida College System (FCS) institution presidents, and state and local emergency operations centers.<sup>159</sup> The primary functions of the EM Buddies are to provide information directly to schools and districts and to collect status information from district school superintendents, FCS institution presidents, and county emergency operations centers.<sup>160</sup> The role of the EM Buddies spans over three phases of an emergency event: preparedness for the emergency event and monitoring, survival of the event, and assessment of and recovery from the event.<sup>161</sup>

The DOE emergency management staff transmit instructions and specific requests to, and receive regular reports from, EM Buddies.<sup>162</sup> DOE emergency management staff organize information into regular reports for the commissioner<sup>163</sup> and State Emergency Operations Center on shelter status, school closings and openings, plans, and needs.<sup>164</sup>

### Effect of the Bill

To enable school districts, Florida College System institutions, and satellite offices of the Division of Blind Services and the Division of Vocational Rehabilitation to safely reopen as soon as possible after an emergency situation, the bill authorizes the commissioner to coordinate with these entities to assess their need for resources and assistance.

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<sup>151</sup> *Id.* at (2).

<sup>152</sup> Art. IX, s. 2, Fla. Const.

<sup>153</sup> Section 20.15(2), F.S.

<sup>154</sup> Florida Division of Emergency Management, *The State of Florida 2016 Comprehensive Emergency Management Plan, 2016 Draft Revision*,

[http://www.floridadisaster.org/documents/CEMP/2016/2016%20State%20CEMP%20\(COMPLETE%20FINAL%20DRAFT\).pdf](http://www.floridadisaster.org/documents/CEMP/2016/2016%20State%20CEMP%20(COMPLETE%20FINAL%20DRAFT).pdf), at 10 of ESF 6 Appendix.

<sup>155</sup> Florida Division of Emergency Management, *The State of Florida 2016 Comprehensive Emergency Management Plan, 2016 Draft Revision*,

[http://www.floridadisaster.org/documents/CEMP/2016/2016%20State%20CEMP%20\(COMPLETE%20FINAL%20DRAFT\).pdf](http://www.floridadisaster.org/documents/CEMP/2016/2016%20State%20CEMP%20(COMPLETE%20FINAL%20DRAFT).pdf), at 10 of ESF 6 Appendix.

<sup>156</sup> Florida Department of Education, Presentation to the Senate Committee on Education, *Emergency Coordination of State and Local Entities* (Oct, 9, 2017), available at <http://www.flsenate.gov/Committees/Show/ED/Meeting%20Packet/3952>, at 2. The Board of Governors employs a similar process for the state universities. *Id.*

<sup>157</sup> Florida Department of Education, Presentation to the Senate Committee on Education, *Emergency Coordination of State and Local Entities* (Oct, 9, 2017), available at <http://www.flsenate.gov/Committees/Show/ED/Meeting%20Packet/3952>, at 2.

<sup>158</sup> Email, Florida Department of Education (March 17, 2017).

<sup>159</sup> Florida Department of Education, Presentation to the Senate Committee on Education, *Emergency Coordination of State and Local Entities* (Oct, 9, 2017), available at <http://www.flsenate.gov/Committees/Show/ED/Meeting%20Packet/3952>, at 3.

<sup>160</sup> *Id.*

<sup>161</sup> *Id.* at 4.

<sup>162</sup> *Id.* at 5.

<sup>163</sup> Email, Florida Department of Education (March 17, 2017).

<sup>164</sup> Florida Department of Education, Presentation to the Senate Committee on Education, *Emergency Coordination of State and Local Entities* (Oct, 9, 2017), available at <http://www.flsenate.gov/Committees/Show/ED/Meeting%20Packet/3952>, at 5.

## Florida Virtual School

### Present Situation

The Florida Virtual School (FLVS) is established for the development and delivery of online and distance learning education.<sup>165</sup> The FLVS is a fully accredited public school choice providing elementary, middle, and high school curriculum to Florida residents for free. All courses are fully online.<sup>166</sup>

The FLVS is available to students in all Florida school districts.<sup>167</sup> At the beginning of each school year, district school boards must notify parents of high school students of the opportunity and benefits of acceleration mechanisms and FLVS courses and options for early high school graduation.<sup>168</sup> School districts must provide students at all grade levels with access to FLVS courses during and after the normal school day and through summer school enrollment.<sup>169</sup>

Public school students receiving full-time instruction in kindergarten through grade 12 by the FLVS must participate in the statewide assessment program. Public school students receiving part-time instruction by the FLVS in courses requiring statewide end-of-course assessments must take all end-of-course statewide assessments. Unless an alternative testing site is mutually agreed to by FLVS and the school district or as contracted by the school district, all statewide assessments must be taken at the school to which the student is assigned according to district school board attendance areas. A school district must provide the student access to the school's testing facilities.<sup>170</sup>

### Effect of the Bill

The bill specifies that industry certification examinations, national assessments, and statewide assessments offered by a school district must be available to all FLVS students. The bill also provides that such examinations and assessments must be taken at the school to which the student would be assigned according to local attendance areas unless an alternative testing site is agreed upon.

## Dual Enrollment

### Present Situation

The dual enrollment program is an acceleration mechanism that allows an eligible secondary<sup>171</sup> or home education student to enroll in a postsecondary course creditable toward high school completion and an associate or baccalaureate degree or career certificate.<sup>172</sup> Upon successful completion of a dual enrollment course, the student simultaneously receives high school and college, university or career certificate credit.<sup>173</sup>

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<sup>165</sup> Section 1002.37(1)(a), F.S. FLVS began as two independent programs in Alachua and Orange Counties. The two counties partnered to establish the FLVS as a grant-based pilot project in the 1996-97 academic year. In 2000, the Legislature removed the program's pilot status and statutorily codified the school. Chapter 2000-224, L.O.F

<sup>166</sup> Florida Virtual School, *Accreditation*, available at <https://www.flvs.net/meet-flvs/accreditation> (last visited May 3, 2016).

<sup>167</sup> Florida Virtual School, *Florida Virtual School 2014-15 Legislative Report*, at 5, available at <http://www.flvs.net/areas/aboutus/Pages/LegislativeReport.aspx> (last visited July 29, 2016).

<sup>168</sup> Section 1003.02(1)(i), F.S.

<sup>169</sup> Sections 1001.42(23) and 1003.498 F.S.

<sup>170</sup> Section 1002.37(9), F.S.

<sup>171</sup> For purposes of dual enrollment, "secondary" is defined as a student who is enrolled in grades 6-12 in a Florida public school or Florida private school. Section 1007.271(2), F.S.

<sup>172</sup> Section 1007.271(1), F.S.

<sup>173</sup> Florida Department of Education, Office of Articulation, *Dual Enrollment Frequently Asked Questions*, available at <http://fldoe.org/core/fileparse.php/5421/urlt/DualEnrollmentFAQ.pdf> (last visited March 15, 2017).

Home education students can participate in the dual enrollment program. To participate in dual enrollment, a home education student must:<sup>174</sup>

- provide proof of enrollment in a home education program that meets statutory requirements;<sup>175</sup>
- be responsible for his or her own instructional materials unless provided for in the articulation agreement; and
- sign a home education articulation agreement<sup>176</sup> with the postsecondary institution in which the student plans to enroll.

Each postsecondary institution eligible to participate in the dual enrollment program is required to enter into a home education articulation agreement with each eligible home education student seeking enrollment in a dual enrollment course and the student's parent. Initial and continued eligibility requirements for home education students may not exceed those required of other dually enrolled students. Articulation agreements must be annually submitted by the postsecondary institution to the DOE on or before August 1.<sup>177</sup>

In addition, each eligible postsecondary institution must also enter into a private school articulation agreement with each eligible private school in its geographic service area. The private school articulation agreement must include:<sup>178</sup>

- a delineation of courses and programs available to the private school student;
- the initial and continued eligibility requirements for private school student participation, not to exceed those required of other dual enrollment students;
- the student's responsibilities for providing his or her own instructional materials and transportation;
- a provision clarifying that the private school will award appropriate credit toward high school completion for the postsecondary course under the dual enrollment program;
- a provision expressing that costs associated with tuition and fees, including registration, and laboratory fees, will not be passed along to the student; and
- a provision stating whether the private school will compensate the postsecondary institution for the standard tuition rate per credit hour for each dual enrollment course taken by its students.

Currently, a dual enrollment student is not required to pay registration, tuition or lab fees for dual enrollment courses taken at a public postsecondary career center, FCS institution or state university.<sup>179</sup> Home education students are responsible for their instructional materials and transportation. However, a FCS institution is not prohibited from providing instructional materials at no cost to a home education student.<sup>180</sup>

### Effect of the Bill

The bill provides that a home education student participating in a dual enrollment program at a public postsecondary institution is not responsible for providing his or her own instructional materials. The bill also removes the requirement that a private school articulation agreement include a provision stating whether the private school will compensate the postsecondary institution for the standard tuition rate per credit hour.

The bill also:

- prohibits an articulation agreement from limiting the number of dual enrollment courses in which a student may enroll based upon enrollment by the student at an independent postsecondary institution;

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<sup>174</sup> Section 1007.271(13), F.S.

<sup>175</sup> Requirements for home education programs are outlined in s. 1002.41, F.S.

<sup>176</sup> Section 1007.271(13)(b), F.S.

<sup>177</sup> *Id.*

<sup>178</sup> See s. 1007.271(24)(b), F.S.

<sup>179</sup> Section 1009.25(1)(a), F.S.; section 1007.271(2) and (16), F.S.

<sup>180</sup> Section 1007.271(17), F.S.

- specifies that an articulation agreement with a home education student may not limit courses or programs that exceed such limitations for other dual enrollment students;
- specifies that a high school grade point average may not be required for home education students who meet the minimum score on a common placement test for initial participation in dual enrollment; and
- specifies that requirements relating to home education and private school articulation agreements apply to public postsecondary institutions.

## **Title I Funding**

### Present Situation

Title I, Part A of the Elementary and Secondary Education Act, provides financial assistance to LEAs and schools with high numbers or high percentages of children from low-income families to help ensure that all children meet challenging state academic standards. Federal funds are currently allocated through four statutory formulas that are based primarily on census poverty estimates and the cost of education in each state.<sup>181</sup>

In 2017, the Legislature implemented several revisions to the distribution of Title I funds, requiring school districts to provide Title I funds directly to all eligible schools and to limit the amount of Title I funds that a district may withhold as follows:<sup>182</sup>

- One percent for parent involvement
- A necessary and reasonable amount for administration not to exceed eight percent
- A reasonable and necessary amount to provide:<sup>183</sup>
  - homeless programs;
  - delinquent and neglected programs;
  - prekindergarten programs and activities;
  - private school equitable services; and
  - transportation for foster care children to their school of origin or choice program.

After providing Title I funds to schools above the 75 percent poverty threshold, the district must distribute all remaining Title I funds to all eligible schools in accordance with federal law and regulation. The threshold for identifying eligible schools may not exceed the threshold established by a school district for the 2016-2017 school year or the statewide percentage of economically disadvantaged students, as determined annually.<sup>184</sup> Schools may participate in district-wide or district sponsored initiatives by paying a proportionate share of Title I funds to the school district.

Of the 7 percent of Title I funds that must be set aside for school improvement, 95 percent must be awarded to districts through either a formula or competitive approach or some combination thereof. The remaining 5 percent would be used primarily to support DA regional activities.<sup>185</sup>

### Effect of the Bill

The bill clarifies that when districts distribute Title I funds to schools above the 75 percent poverty threshold, the 75 percent may include high schools above the 50 percent threshold as permitted by federal law. The bill also raises the amount of funds a school district may withhold for administration from 8 percent to 10 percent.

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<sup>181</sup> U.S. Department of Education, *Improving Basic Programs Operated by Local Educational Agencies (Title I, Part A)*, available at <https://www2.ed.gov/programs/titleiparta/index.html?exp=0>.

<sup>182</sup> See s. 45, ch. 2017-116, L.O.F. codified at s. 1011.69(5), F.S. (2017)

<sup>183</sup> Section 1011.69(5)(a), F.S.

<sup>184</sup> Section 1011.69(5), F.S.

<sup>185</sup> See 20 U.S.C. s. 6303(a).

The bill specifies that a district may also withhold a necessary and reasonable amount of Title I funds, not to exceed 1 percent, for Title I schools to provide educational services in accordance with the district's approved Title I plan.

The bill also specifies that any funds provided by an eligible school to participate in discretionary educational services provided by the school district and any funds carried forward by the school district are not subject to the statutory distribution requirements.

## **Employee Organizations**

### Present Situation

Collective bargaining is a constitutional right afforded to public employees<sup>186</sup> in Florida.<sup>187</sup> Chapter 447, F.S., specifies that public employees have the right to be represented in collective bargaining by any employee organization of their own choosing or to refrain from being represented.<sup>188</sup> An employee organization is defined as a "labor organization, union, association, fraternal order, occupational or professional society, or group, however organized or constituted, which represents, or seeks to represent, any public employee or group of public employees concerning any matters relating to their employment relationship with a public employer."<sup>189</sup> An employee organization that is authorized to represent public employees in collective bargaining is known as a certified bargaining agent.<sup>190</sup>

An employee organization seeking to become a certified bargaining agent for a unit of public employees must register with and be certified by the commission. To register, the employee organization must submit an application to the commission that includes the following information:

- The name and address of the organization and of any parent organization or organization with which it is affiliated.
- The names and addresses of the principal officers and all representatives of the organization.
- The amount of the initiation fee and of the monthly dues that members must pay.
- The current annual financial statement of the organization.
- The name of its business agent, if any; if different from the business agent, the name of its local agent for service of process; and the addresses where such person or persons can be reached.
- A pledge, in a form prescribed by the commission, that the employee organization will conform to the laws of the state and that it will accept members without regard to age, race, sex, religion, or national origin.
- A copy of the current constitution and bylaws of the employee organization.

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<sup>186</sup> The term "public employee" means any person employed by a public employer except:

(a) Persons appointed by the Governor or elected by the people, agency heads, and members of boards and commissions.

(b) Persons holding positions by appointment or employment in the organized militia.

(c) Individuals acting as negotiating representatives for employer authorities.

(d) Persons who are designated by the Public Employees Relations Commission (commission) as managerial or confidential employees pursuant to specific criteria.

(e) Persons holding positions of employment with the Florida Legislature.

(f) Persons who have been convicted of a crime and are inmates confined to institutions within the state.

(g) Persons appointed to inspection positions in federal/state fruit and vegetable inspection service whose conditions of appointment are affected by the following:

1. Federal license requirement.
2. Federal autonomy regarding investigation and disciplining of appointees.
3. Frequent transfers due to harvesting conditions.

(h) Persons employed by the commission.

(i) Persons enrolled as undergraduate students in a state university who perform part-time work for the state university.

The term "public employer" means the state or any county, municipality, or special district or any subdivision or agency thereof which the commission determines has sufficient legal distinctiveness properly to carry out the functions of a public employer. Section 447.203, F.S.

<sup>187</sup> Art. I, s. 6, FLA. CONST.

<sup>188</sup> Section 447.301(2), F.S.

<sup>189</sup> Section 447.203(11), F.S.

<sup>190</sup> Section 447.203(12), F.S.

- A copy of the current constitution and bylaws of the state and national groups with which the employee organization is affiliated or associated.<sup>191</sup>

A registration granted to an employee organization is valid for one year and must be renewed annually.<sup>192</sup> The renewal application must reflect any changes to the information provided to the commission in the preceding application and must include a current annual financial report that contains the following information:

- Assets and liabilities at the beginning and end of the fiscal year.
- Receipts of any kind and the sources thereof.
- Salary, allowances, and other direct or indirect disbursements, including reimbursed expenses, to each officer and each employee who, during such fiscal year, received more than \$10,000 in the aggregate from the employee organization and any other affiliated employee organization.
- Direct and indirect loans made to any officer, employee, or member that aggregated more than \$250 during the fiscal year, together with a statement of the purpose, security, if any, and arrangements for repayment.
- Direct and indirect loans to any business enterprise, together with a statement of the purpose, security, if any, and arrangements for repayment.<sup>193</sup>

After registering with the commission, an employee organization may begin the certification process. In order to be certified, an employee organization that is selected by a majority of the employees in an appropriate unit as their representative must first request recognition by the public employer.<sup>194</sup> If the public employer recognizes the employee organization as the collective bargaining representative for that unit, the employee organization must then petition the commission for certification.<sup>195</sup> If the unit proposed by the employee organization is deemed appropriate, the commission must immediately certify the employee organization as the exclusive representative of all employees in the unit.<sup>196</sup>

However, if the employer refuses to recognize the employee organization, the employee organization must file a petition with the commission that is accompanied by dated statements signed by at least 30 percent of the employees in the proposed unit, indicating that such employees desire to be represented by the employee organization.<sup>197</sup> If the commission determines the petition to be sufficient, it must order an election by secret ballot to determine whether the employee organization will be certified.<sup>198</sup> The petitioning employee organization is placed on the ballot along with any other registered employee organization that submits dated statements signed by at least 10 percent of the employees in the proposed unit, indicating their desire to be represented by that employee organization.<sup>199</sup> When an employee organization is selected by a majority of the employees voting in an election, the commission must certify the employee organization as the exclusive collective bargaining representative of all employees in the unit.<sup>200</sup>

An employee or group of employees who no longer desires to be represented by the certified bargaining agent may file with the commission a petition to revoke certification. The petition must be accompanied by dated statements signed by at least 30 percent of the employees in the unit, indicating that such employees no longer desire to be represented by the certified bargaining agent. If the commission finds the petition to be sufficient, it must immediately order an election by secret ballot. If a majority of voting employees vote against the continuation of representation by the certified bargaining agent, the organization's certification is revoked.<sup>201</sup>

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<sup>191</sup> Section 447.305(1), F.S.

<sup>192</sup> Section 447.305(2), F.S.

<sup>193</sup> *Id.*

<sup>194</sup> Section 447.307(1)(a), F.S.

<sup>195</sup> *Id.*

<sup>196</sup> *Id.*

<sup>197</sup> *Id.*

<sup>198</sup> Section 447.307(3)(a), F.S.

<sup>199</sup> Section 447.307(2), F.S.

<sup>200</sup> Section 447.307(3)(b), F.S.

<sup>201</sup> Section 447.308, F.S.

## Effect of the Bill

The bill requires an employee organization that has been certified as the collective bargaining agent for a unit of instructional personnel to include for each such certified bargaining unit the following information in its renewal of registration:

- The number of employees in the bargaining unit who are eligible for representation by the employee organization.
- The number of employees who are represented by the employee organization, specifying the number of members who pay dues and the number of members who do not pay dues.

If the employee organization's dues-paying membership for a unit of instructional personnel is less than 50 percent of the employees eligible for representation in the unit, the organization must petition the PERC for recertification as the exclusive representative of all employees in the unit within 1 month after the date on which the organization applies for renewal of registration.

If the registered employee organization does not comply with the recertification requirements or if it does not include the required information in its application for recertification renewal, the organization's certification for that unit is revoked.

## **Other Provisions**

The bill also:

- removes obsolete language requiring the DOE to develop a statewide operating electronic Individual Educational Plan (IEP) system by July 1, 2007. The DOE launched the IEP system before the deadline;
- requires, before the start of the 2019-2020 school year, each school district and the certified collective bargaining unit for instructional personnel to negotiate a memorandum of understanding that addresses the selection, placement, and expectations of instructional personnel and provides school principals with the same autonomy over budgetary and personnel decisions as principals participating in the Principal Autonomy Program Initiative;
- requires each district school board to adopt rules that require all schools and all buildings used by the school board to display in a conspicuous place the state motto, In God We Trust;
- specifies that revenue raised by the 1.5 discretionary millage may be used to fund construction projects consistent with cost-per-student station requirements;
- specifies that school districts may use locally generated funds to complete capital outlay projects without an education plant survey recommendation;
- allows home education, charter school, and FLVS students to participate in extracurricular activities at a public school after the start of the season;
- clarifies that a classroom teacher who qualifies for a Best and Brightest Teacher Scholarship but is reassigned to a non-classroom teacher position in the district before the award is disbursed may still receive the award;
- provides that early learning coalitions may refuse to contract with School Readiness and Voluntary Prekindergarten providers that have a class I violation;
- specifies requirements for CPR instruction that schools may provide; and
- provides Marjory Stoneman Douglas High School, the site of a mass-casualty shooting event on February 14, 2018, waiver of assessment requirements for the 2017-2018 school year and instructional time and assessment-based graduation and diploma designation requirements for the school's 2017-2018 graduating class and allows the school to maintain its "A" grade for purposes of school recognition funds and designation as a School of Excellence for the 2017-2018 school year.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

For the Hope Scholarship Program, on December 1, 2017, the Revenue Estimating Conference (REC) evaluated the language related to the Hope Scholarship Program, except that the language evaluated called for a \$20 contribution per vehicle purchase instead of \$105 as in CS/HB 7055. The REC estimated, at the \$20 contribution level, the negative impact on General Revenue collections would be at least \$7.9 million annually. Based on that analysis, at the \$105 contribution level staff estimates the negative impact on General Revenue collections will be at least \$41.5 million.

For the Florida Sales Tax Credit Scholarship Program, the sum of tax credits that may be approved by the Department of Revenue in any state fiscal year is \$57.5 million pursuant to the bill; this is the estimated negative impact on General Revenue collections for any state fiscal year.

#### 2. Expenditures:

See Fiscal Comments, *infra*.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

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

None.

### D. FISCAL COMMENTS:

For the 2018-2019 fiscal year, the bill appropriates to the Department of Education the sum of \$13,750,000 in recurring funds from the General Revenue Fund for the following provisions of the bill:

- \$9,700,000 to fund the Reading Scholarship Accounts and \$300,000 to fund administrative expenses of the eligible nonprofit scholarship-funding organization.
- \$2,000,000 to fund the Department of Education's obligations for implementation of the Hope Scholarship program.
- \$950,000 to fund the Department of Education's additional oversight requirements for school choice scholarship and program accountability.
- \$250,000 for the Department of Education to issue a competitive grant award for purposes of reporting on assessment data provided by participating private schools in the Florida Tax Credit Scholarship Program.
- \$550,000 to fund instructional materials for home education students.



Contingent upon HB 1279 or similar legislation in the 2018 regular session or an extension thereof becoming law,<sup>202</sup> for the 2018-2019 fiscal year, the bill appropriates to the Department of Education the sum of \$100,000 in nonrecurring funds from the General Revenue Fund to implement the provisions of s. 1011.051(2)(b), Florida Statutes, as provided in HB 1279.

For the 2017-2018 fiscal year, the bill appropriates to the Department of Revenue the sum of \$150,000 in nonrecurring funds from the General Revenue Fund to implement the creation of the Florida Sales Tax Credit Scholarship Program.

To determine the apportionment of state funds, s. 1011.84, F.S., requires the Department of Education to estimate the annual enrollment of each Florida College System institution for the current fiscal year and for the three subsequent fiscal years. Eligible private school students enrolled in dual enrollment are included within the estimate. In 2016-2017, there were more than 3,000 students from private schools participating in dual enrollment at a Florida College System institution with a potential fiscal impact of up to \$2 million. However, whether postsecondary institutions required compensation for the standard tuition rate per credit hour associated with dual enrollment instruction is uncertain. Consequently, the fiscal impact to postsecondary institutions due to the loss of revenue is indeterminate.

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<sup>202</sup> CS/CS/CS/HB 1279 was signed into law on March 12, 2018; Chapter No. 2018-5, L.O.F.