

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Education

BILL: CS/SB 376

INTRODUCER: Education Committee and Senator Lee

SUBJECT: English Language Learners

DATE: December 9, 2019 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sagues	Sikes	ED	Fav/CS
2.			AED	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 376 modifies the requirements for a standard high school diploma and student assessment program for English Language Learners (ELLs) in public schools. The bill authorizes ELLs who enrolled in a public school in grade 9 or later beginning in the 2020-2021 school year, at the discretion of a district school board or a charter school governing board, to be exempt from passing the grade 10 English Language Arts (ELA) assessment in order to earn a standard high school diploma. In lieu of passing the grade 10 ELA assessment the student must show sufficient learning gains in ELA, as demonstrated on the World-Class Instructional Design and Assessment (WIDA) Consortium ACCESS for ELLs assessment at thresholds set by the State Board of Education (SBE).

The bill also modifies the college and career acceleration component of the school grading model for high schools by adding the percentage of students who enrolled in a public school in grade 9 or later as an ELL and passed the grade 10 ELA assessment.

The bill takes effect on July 1, 2020.

II. Present Situation:

Every Student Succeeds Act (ESSA)

The Every Student Succeeds Act (ESSA), which reauthorized the Elementary and Secondary Education Act (ESEA), was signed into law on December 10, 2015. ESSA includes provisions to:¹

- Help ensure success for students and schools through advancing equity by upholding protections for disadvantaged and high-need students.
- Require that all students be taught to high academic standards that will prepare them to succeed in college and careers.
- Ensure that vital information is provided to educators, families, students, and communities through annual statewide assessments that measure students' progress.
- Support and grow local innovations.
- Increase access to high-quality preschool.
- Maintain an expectation that there will be accountability and action to effect positive change in the lowest-performing schools.

ESSA requires that statewide assessments be administered in mathematics and reading or language arts to all students, including students with disabilities and English Language Learners (ELLs) in each of grades 3 through 8 and at least once in grades 9 through 12. Science assessments are required to be administered three times, including at least one time during grades 3 through 5, one time in grades 6 through 9, and one time in grades 10 through 12.²

Under ESSA, states must annually assess the English language proficiency of ELLs, provide reasonable accommodations for ELLs on state assessments, and develop new accountability systems that include long-term goals and measures of progress for ELLs.³ ESSA requires that at least 95 percent of students in each school, as well as 95 percent of students in each specified subgroup⁴ including ELLs, be tested in mathematics and reading or language arts using a statewide assessment.⁵

ESSA allows for an assessment exception for recently arrived ELLs who have been enrolled in a school for less than 12 months. A state may choose to:⁶

- Exclude an ELL from one administration of the reading or language arts assessment requirements and exclude the ELL's results on any of the required assessments for the first year of the ELLs enrollment in school for the purposes of the State-determined accountability system; or

¹ U.S. Department of Education, *Every Student Succeeds Act (ESSA)*, <https://www.ed.gov/essa?src=rn> (last visited Nov. 20, 2019).

² 20 U.S.C. s. 6311(b)(2).

³ U.S. Department of Education, *Our Nation's English Learners*, <https://www2.ed.gov/datastory/el-characteristics/index.html#four> (last visited Nov. 20, 2019).

⁴ Subgroups include each major racial and ethnic group, economically disadvantaged students, children with disabilities, English proficiency, gender, and migrant status. 20 U.S.C. s. 6311(b)(2)(B)(xi).

⁵ 20 U.S.C. s. 6311(c)(4)(E)(i).

⁶ 20 U.S.C. s. 6311(b)(3)(A).

- Assess and report the performance of an ELL on the reading or language arts and mathematics assessments required in each year of the student's enrollment in school. For the purposes of the State-determined accountability system, exclude the results on the assessments required in the first year of the student's enrollment, include a measure of student growth on the assessments in the second year of the student's enrollment, and include proficiency on the assessments in the third and each succeeding year of the student's enrollment in school.

English Language Learners (ELLs)

ELLs are a growing part of the K–12 student population in the United States. Between the 2009–10 and 2014–15 school years, the percentage of ELL students increased in more than half of the states, with increases of over 40 percent in five states.

Over 4.8 million ELLs were enrolled in schools across the country in 2016-17.⁷ This represents 10 percent of the total K-12 student population. Nearly all ELLs (97 percent) participated in language instruction education programs.⁸

In total, ELLs in public schools speak over 400 different languages. In 2014–15, more than three-quarters of all ELLs spoke Spanish. The next most commonly spoken non-English languages were Arabic, Chinese, and Vietnamese. However, these languages were spoken much less commonly than Spanish, representing about 2 percent each.⁹

World-Class Instructional Design and Assessment (WIDA) Consortium

The World-Class Instructional Design and Assessment (WIDA) Consortium is an educational consortium of state departments of education. Currently, 37 states and territories, including Florida, participate in the WIDA Consortium. WIDA designs and implements proficiency standards and assessment for grade K-12 students who are ELLs.¹⁰

The WIDA ACCESS for ELLs assessment is given yearly and the results are used to determine the student's growth and progress, as well as to inform instruction for the next year. This test has been administered annually in WIDA member states beginning in the 2005-2006 academic year. The assessment is used in the U.S. and several other countries as a test of English language proficiency.¹¹

⁷ National Center of Education Statistics, *ELL Students Enrolled in Public Elementary and Secondary Schools* https://nces.ed.gov/programs/digest/d18/tables/dt18_204.20.asp (last visited Nov. 25, 2019).

⁸ U.S. Department of Education, *Our Nation's English Learners*, <https://www2.ed.gov/datastory/el-characteristics/index.html#four> (last visited Nov. 25, 2019).

⁹ *Id.*

¹⁰ WIDA Consortium, *Development and Field Test of WIDA Model, 2014* available at: <https://wida.wisc.edu/sites/default/files/resource/MODEL-tech-report-grades6to12-2012.pdf>

¹¹ Wikipedia, *WIDA Consortium* https://en.wikipedia.org/wiki/WIDA_Consortium (last visited Nov. 19, 2019).

English Language Learners (ELLs) in Florida

In Florida, English Language Learner (ELL) means “Limited English Proficient Student.”¹² A limited English proficient student is defined as having sufficient difficulty speaking, reading, writing, or listening to the English language to deny such individual the opportunity to learn successfully in classrooms where the language of instruction is English, and who:¹³

- Was not born in the U.S. and whose native language is a language other than English;
- Comes from a home environment where a language other than English is spoken in the home; or
- Is an American Indian or Alaskan native and who comes from an environment where a language other than English has had a significant impact on his or her English language proficiency.

Instruction for limited English proficient students is designed to rapidly develop the student’s mastery of four language skills; listening, speaking, reading, and writing.¹⁴ School districts must engage in a number of procedures to meet instructional requirements for ELL students. School districts must:¹⁵

- Develop and submit a plan for providing English language instruction to the Florida Department of Education (DOE) for review and approval.
- Identify limited English proficient students through assessment.
- Provide limited English proficient students with English for Speakers of Other Languages (ESOL) instruction in English and ESOL instruction or home language instruction in the basic subject areas of reading, mathematics, science, social studies, and computer literacy.
- Maintain a student plan.
- Provide qualified teachers.
- Provide equal access to other programs based on need.
- Provide for parental involvement.

English Language Learners (ELLs) and Florida’s Every Student Succeeds Act (ESSA)

Florida’s ESSA plan received approval from the United States Department of Education on September 26, 2018.¹⁶ As required under ESSA, ELLs are expected to master the same grade-level academic standards as all other students.¹⁷

Spanish is the most prevalent language other than English spoken by Florida students. The percent of English Language Arts (ELA) test takers who are Spanish-speaking ELLs is 6.8 percent.¹⁸ There are an additional 240 languages spoken by Florida’s other ELLs, which account

¹² Rule 6A-6.0901, F.A.C.

¹³ Section 1003.56, F.S.

¹⁴ English for Speakers of Other Languages (ESOL) and English Learners (ELs) are other terms used to describe limited English proficient students and instructional programs. *Id.* and U.S. Department of Education, *Our Nation’s English Learners*, <https://www2.ed.gov/datastory/el-characteristics/index.html#four> (last visited Nov. 25, 2019).

¹⁵ Section 1003.56(3), F.S.

¹⁶ Florida Department of Education, *Every Student Succeeds Act (ESSA)*, <http://www.fldoe.org/academics/essa.stml> (last visited Nov. 20, 2019).

¹⁷ *Id.* at 8.

¹⁸ Florida Department of Education, *ESSA State Plan, September, 24, 2018*, available at <http://www.fldoe.org/core/fileparse.php/14196/urlt/FL-ESSA-StatePlan.pdf> at 7.

for 2.1 percent of the ELA student test takers.¹⁹ Florida, which has one of the largest populations of ELLs in the nation, serves its population of ELLs through a comprehensive program of teaching, assessing, and, where necessary, providing additional assistance to such students in an English-language environment.

Florida's goal is to transition ELLs to full English proficiency in as few years as possible. The SBE has a 2015-2020 strategic plan goal to close the achievement gap by reducing the gap between ELL and non-ELL students in each subject area by one-third.²⁰ In 2018-19, there was improvement in three of the four measured subject areas, although no subject area was on track to meet the 2020 target.²¹ In November, 2019, the SBE adopted a new strategic plan for 2020-2025 with targets to continue to reduce the achievement gap between student subgroups, including ELL students.²²

A large proportion of Florida's ELLs enter the public school system in kindergarten. These children typically become proficient in English quickly while others who enter the U.S. later in life or with little formal schooling may need more time to become proficient.²³ The timeline for students to achieve English language proficiency is variable based on the needs of the individual student. Florida's timeline for students to achieve English language proficiency is five or fewer years. Florida's ELLs can exit the program if they score at level 4 or above on the WIDA ACCESS for ELLs assessment and also score at least a level 4 on the Reading subtest, and score at level 3 or above on the ELA assessment.²⁴

In order to graduate from a Florida public high school, all students are required to pass the grade 10 ELA Florida Standards Assessment (FSA). In 2018-2019, there were 14,736 ELL students in grade 9, 13,956 in grade 10, 13,032 in grade 11, and 9,976 in grade 12.²⁵ The percent of grade 10 ELL students who scored a level 3 or above on the ELA FSA was 7.2 percent compared to 56.3 percent of non-ELL students in the 2018-19 school year.²⁶ ELLs who fail to pass the required grade 10 ELA FSA are eligible for an additional year of public education, or "thirteenth year," to allow these students additional time to pass the required grade 10 ELA FSA and earn a standard high school diploma.²⁷ A recently adopted SBE rule allows ELLs that have exited the ESOL program within two years, to receive accommodations on statewide assessments.²⁸

¹⁹ Florida Department of Education, *ESSA State Plan, September, 24, 2018*, available at <http://www.fldoe.org/core/fileparse.php/14196/urlt/FL-ESSA-StatePlan.pdf> at 7.

²⁰ Florida Department of Education, *Framework for the State Board of Education Strategic Plan, April 2018* available at <http://www.fldoe.org/core/fileparse.php/7734/urlt/Framework.pdf>.

²¹ Florida Department of Education, *Strategic Plan 2015-2020 State Board of Education Update, August 21, 2019* available at <http://www.fldoe.org/core/fileparse.php/7734/urlt/StrategicPlan-0819.pdf>.

²² Florida Department of Education, *Strategic Plan 2020-2025 Complete details of Proposed Measures, November 15, 2019* available at <http://fldoe.org/core/fileparse.php/18826/urlt/StrategicPlanWorkingDoc.pdf> at 7.

²³ Florida Department of Education, *ESSA State Plan, September, 24, 2018*, available at <http://www.fldoe.org/core/fileparse.php/14196/urlt/FL-ESSA-StatePlan.pdf> at 16.

²⁴ *Id.*

²⁵ Florida Department of Education, *PK-12 Education Information Portal, Student Enrollment* <https://edstats.fldoe.org/SASWebReportStudio/gotoReportSection.do?sectionNumber=1> (last visited Oct. 17, 2019).

²⁶ Florida Department of Education, *PK-12 Education Information Portal* <https://edstats.fldoe.org/SASWebReportStudio/gotoReportSection.do?sectionNumber=1> (last visited Oct. 17, 2019).

²⁷ Rule 6A-6.0909 F.A.C.

²⁸ Rule 6A-6.09091 F.A.C. Adopted in November 2019.

Under the Florida ESSA plan, for recently arrived ELLs who have been enrolled in a Florida school for less than 12 months, Florida has chosen to assess and report the performance of ELLs on the reading or language arts and mathematics assessments required in each year of the student's enrollment in school. For the purposes of the State-determined accountability system, Florida excludes the results on the assessments required in the first year of the student's enrollment, includes a measure of student growth on the assessments in the second year of the student's enrollment, and includes proficiency on the assessments in the third and each succeeding year of the student's enrollment in school.²⁹

The ELL high school graduation rate in Florida for the 2017-2018 school year was 75 percent, up 7.7 percentage points from the 2016-2017 school year (67.3 percent³⁰), but still lower than the overall graduation rate of 86.1 percent.³¹

Graduation Requirements

In Florida, a student must successfully complete 24 credits specified in law, an International Baccalaureate curriculum, or an Advanced International Certificate of Education curriculum to earn a standard high school diploma.³² The required credits may be earned through equivalent, applied, or integrated courses or career education courses, including work-related internships approved by the SBE and identified in the course code directory. However, any must-pass assessment requirements must be met.³³ A student may also earn a standard high school diploma through the 18 credit Academically Challenging Curriculum to Enhance Learning Option (ACCEL)³⁴ or the Career and Technical Education Graduation Pathway Option.³⁵ Both 18 credit options also require students to meet English language arts, mathematics, science, and social studies credit and assessment requirements.³⁶

Standard high school diploma requirements, and allowable alternatives for meeting those requirements, apply to all students in the state regardless of the district or school in which the student is enrolled.³⁷ To earn a standard high school diploma, a student must complete the specified requirements and earn a cumulative grade point average (GPA) of 2.0 or higher on a 4.0 scale.³⁸ A student must also pass the statewide, standardized grade 10 ELA FSA and the

²⁹ Florida Department of Education, *ESSA State Plan, September, 24, 2018*, available at <http://www.fldoe.org/core/fileparse.php/14196/urlt/FL-ESSA-StatePlan.pdf> at 10.

³⁰ Florida Department of Education, *PK-12 Education Information Portal* <https://edstats.fldoe.org/SASWebReportStudio/gotoReportSection.do?sectionNumber=1> (last visited Oct. 17, 2019).

³¹ Department of Education, *Florida's Federal Graduation Rates by Special Category by School and District* <http://www.fldoe.org/core/fileparse.php/7584/urlt/FedGradRateCategory1718.xls> (last visited Nov 25, 2019).

³² Section 1003.4282(1)(a), F.S.

³³ *Id.* at (1)(b). An equivalent course is one or more courses identified by content-area experts as being a match to the core curricular content of another course, based upon review of the Next Generation Sunshine State Standards for that subject. An applied course aligns with Next Generation Sunshine State Standards and includes real-world applications of a career and technical education standard used in business or industry. An integrated course includes content from several courses within a content area or across content areas.

³⁴ Section 1002.3105, F.S.

³⁵ Section 1003.4282(11), F.S.

³⁶ *Id.* and Section 1002.3105, F.S.

³⁷ *See* Section 1003.4282, F.S.

³⁸ Section 1003.4282(6)(a), F.S.

statewide, standardized Algebra I End-of-Course (EOC) assessment. Concordant and comparative scores may be used to satisfy the passing score requirements for the statewide ELA FSA and Algebra 1 EOC assessments, respectively.³⁹ Students typically have multiple opportunities to retake the grade 10 FSA ELA and Algebra 1 EOC assessments prior to graduation.⁴⁰

Statewide Assessment Program

The primary purpose of the student assessment program is to provide student academic achievement and learning gains data to students, parents, teachers, school administrators, and school district staff. The data is to be used by districts to improve instruction; by students, parents, and teachers to guide learning objectives; by education researchers to assess national and international education comparison data; and by the public to assess the cost benefit of the expenditure of taxpayer dollars.⁴¹

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).⁴² Results from the assessments are used to calculate school grades and school improvement ratings⁴³ and determine student readiness for promotion to 4th grade and high school graduation.⁴⁴

School Grading System

School grades provide an easily understandable way to measure the performance of a school. Parents and the general public can use the school grade and its components to understand how well each school is serving its students.⁴⁵ School grades are used in the state system of school improvement and accountability to determine the need for school intervention and support,⁴⁶ or to determine whether a school is eligible for school recognition funds.⁴⁷

Schools are graded using one of the following grades:⁴⁸

- “A,” schools making excellent progress (62 percent or higher of total applicable points).
- “B,” schools making above average progress (54 to 61 percent of total applicable points).
- “C,” schools making satisfactory progress (41 to 53 percent of total applicable points).
- “D,” schools making less than satisfactory progress (32 to 40 percent of total applicable points).
- “F,” schools failing to make adequate progress (31 percent or less of total applicable points).

³⁹ Florida Department of Education, *2020 Agency Analysis of SB 376* (Nov. 19, 2019) at 2.

⁴⁰ *Id.* at 3.

⁴¹ Section 1008.22(1), F.S.

⁴² Sections 1008.22(3) and 1003.4156, F.S.

⁴³ *See* ss. 1008.34 and 1008.341, F.S.

⁴⁴ *See* ss. 1008.25(5) and 1003.4282(3)(a) and (b), F.S.

⁴⁵ Florida Department of Education, *2019 School Grades Overview*, available at <http://www.fldoe.org/core/fileparse.php/18534/urlt/SchoolGradesOverview19.pdf>.

⁴⁶ *See* s. 1008.33(4), F.S.

⁴⁷ *See* s. 1008.36, F.S.

⁴⁸ Section 1008.34(2), F.S.; rule 6A-1.09981(4)(d), F.A.C.

Elementary schools, middle schools, and high schools each share a basic model for determining school grades, based on the percentage of total points earned by a school for each component in the model. All schools are graded on the percentage of eligible students who pass assessments in ELA, mathematics, science, and social studies; student learning gains in ELA and mathematics; and students in the lowest 25 percent of ELA and mathematics performers who make learning gains.⁴⁹ Middle and high school models include additional components beyond the basic model.⁵⁰

For a high school comprised of grades 9 through 12 or grades 10 through 12, the school's grade is also based on following components:⁵¹

- The 4-year high school graduation rate of the school as defined by State Board of Education (SBE) rule.⁵²
- The percentage of students who were eligible to earn college and career credit through College Board Advanced Placement (AP) examinations, International Baccalaureate (IB) examinations, dual enrollment courses, or Advanced International Certificate of Education (AICE) examinations; or who, at any time during high school, earned national industry certification identified in the CAPE Industry Certification Funding List, pursuant to rules adopted by the SBE.

In addition, Federal Percent of Points Index data are calculated and reported to comply with Florida's approved ESSA plan. The federal index incorporates the existing school grades calculation and components with one additional component, English Language Proficiency (ELP) Progress. The ELP Progress component is based on the percentage of students who show progress on the WIDA ACCESS for ELLs assessments, including the Alternate ACCESS for ELLs assessments.⁵³

III. Effect of Proposed Changes:

CS/SB 376 amends ss. 1003.4282 and 1008.22, F.S., to exempt an English Language Learner (ELL) who enrolls in a public school in grade 9 or later from the requirement to pass the grade 10 English Language Arts (ELA) Florida Standards Assessment (FSA) to earn a standard high school diploma, at the discretion of a district school board or a charter school governing board, beginning with the 2020-2021 school year. In lieu of meeting this requirement, the bill requires the student to show sufficient learning gains in ELA, as demonstrated on the World-Class Instructional Design and Assessment (WIDA) ACCESS for ELLs assessment at thresholds set by the State Board of Education (SBE). The student must take the grade 10 ELA FSA for progress monitoring purposes.

⁴⁹ Section 1008.34(3)(b), F.S. If a school does not have at least 10 students with complete data for one or more of the components, those components may not be used in calculating the school's grade. Section 1008.34(3)(a), F.S.

⁵⁰ See s. 1008.34(3)(b), F.S.; rule 6A-1.09981(4)(a)-(c), F.A.C.

⁵¹ Section 1008.34(3)(b)2., F.S., and rule 6A-1.09981(4)(c)2. and 3., F.A.C.

⁵² The four-year high school graduation rate of the school as measured according to 34 CFR §200.19, Other Academic Indicators, effective November 28, 2008. Rule 6A-1.09981(4)(c)1., F.A.C.

⁵³ Florida Department of Education, *2020 Agency Analysis of SB 376* (Nov. 19, 2019) at 3.

The bill may require the Florida Department of Education (DOE) to amend the current approved Every Student Succeeds Act (ESSA) plan and obtain approval of the amended plan by the United States Department of Education.⁵⁴

Authorizing a district school board or charter school governing board to allow ELLs to show sufficient learning gains in ELA as demonstrated on the WIDA ACCESS for ELLs assessment, rather than requiring ELLs to pass the grade 10 ELA FSA, may lead to more ELLs graduating from high school and may improve the state's high school graduation rates. This discretion may also allow students to earn a standard high school diploma while meeting different graduation requirements based on the school district or school in which they are enrolled.

The bill also amends ss. 1008.34, F.S., and modifies the school grading model for high schools by adding the percentage of students who enrolled in a public school in grade 9 or later as an ELL and passed the grade 10 ELA FSA as a school grade component.

The bill takes effect on July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

⁵⁴ Florida Department of Education, *2020 Agency Analysis of SB 376* (Nov. 19, 2019) at 3.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the Florida Department of Education (DOE), it is unclear whether the requirements of the bill are consistent with the requirements of the Every Student Succeeds Act (ESSA). Florida will likely need to amend its current ESSA plan based on the requirements of the bill. If the amended ESSA plan is not approved by the United States Department of Education it could impact Florida's eligibility for certain federal education funding.⁵⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1003.4282, 1008.22, and 1008.34.

IX. Additional Information:

- A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Education on December 9, 2019:

The committee substitute makes the following changes to the bill:

- Adds language to authorize a district school board and a charter school governing board discretion in implementing the grade 10 English Language Arts (ELA) Florida Standards Assessment (FSA) exemption for English Language Learners (ELLs) who enrolled in a public school within the school district in grade 9 or later.
- Clarifies the name of the alternate assessment from the World Class Instructional Design and Assessment (WIDA) test to the ACCESS for ELLs assessment.
- Changes the statutory reference for ELA FSA requirements from s. 1008.22(3), to s. 1008.22(3)(a).

⁵⁵ Florida Department of Education, *2020 Agency Analysis of SB 376* (Nov. 19, 2019) at 7.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
