

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 Appropriations

BILL: CS/CS/SB 1108

INTRODUCER: Appropriations Committee; Judiciary Committee; and Senator Diaz

SUBJECT: Education

DATE: April 21, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Ravelo</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u>Sagues</u>	<u>Bouck</u>	<u>ED</u>	Favorable
3.	<u>Underhill</u>	<u>Sadberry</u>	<u>AP</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/CS/SB 1108 revises several areas of education law, primarily relating to graduation requirements and statewide standardized assessments. Specifically, the bill:

- Requires every school district, alternative school, and the Department of Juvenile Justice (DJJ) to offer either the SAT or ACT to every student in the 11th grade free of charge, subject to an appropriation for that purpose;
- Amends the civic literacy requirement for post-secondary education to include both an assessment and a course, as opposed to one or the other;
- Creates a process to allow students in high school to earn the civic literacy requirement before enrolling in a public college or university in this state;
- Requires the statewide, standardized math and English learning assessments in grades 3 through 6 to be paper-based;
- Deletes obsolete language relating to prior statewide standardized assessments, and updates the assessment publication requirement in anticipation of the implementation of new state standards;
- Authorizes the Department of Education (DOE) to hold certain intellectual property rights, including the right to patent, copyright, and trademark. This authority will allow the DOE to protect certain materials, such as state authored assessments, from being sold or distributed without authorization; and
- Creates the Innovative Blended Learning and Real-Time Student Assessment Pilot Program.

The bill does not require a state appropriation. However, the DOE estimates that an appropriation of \$8 million would be necessary to provide funding for the SAT or ACT to be offered to each student in the 11th grade.

The bill provides an effective date of July 1, 2021.

II. Present Situation:

Course and Testing Requirements

Florida Statewide Standardized Assessments

The Next Generation Sunshine State Standards (NGSSS) establish the core curricula, knowledge, and skills expected of K-12 students in Florida. Standards may be adopted by rule through the State Board of Education.¹ In 2014, the Legislature amended Florida's assessment program to set forth the transition process from the prior statewide, standardized assessment (FCAT and FCAT 2.0) to the Florida Standards Assessment (FSA), including new English Language Arts (ELA) and mathematics assessments.²

The statewide standardized assessments measure the extent to which students have mastered the NGSSS.³ Students are required to take a standardized assessment in the following courses:

- English Language Arts (grades 3-10);
- Mathematics (grades 3-8);
- Science (grades 5 and 8); and
- EOC assessments in Algebra 1, Biology 1, Civics, Geometry, and U.S. History.⁴

The Commissioner of Education (commissioner) assists and supports districts in measuring student performance on the state standards by maintaining a statewide item bank, facilitating the sharing of developed tests or test items among school districts, and providing technical assistance in best assessment practices. The commissioner may discontinue the item bank if he or she determines that district participation is insufficient for its sustainability.⁵

High School Course Requirements

As part of the 24 credits required to graduate from high school, students must earn three credits in social studies, including:

- One credit in United States History;
- One credit in World History;
- One-half credit in economics; and
- One-half credit in the United States Government.⁶

¹ Section 1003.41(1) and (4), F.S.

² Chapter 2014-39, Laws of Fla.

³ Section 1008.22(3), F.S.

⁴ Section 1008.22(3)(a) and (b), F.S.

⁵ Section 1008.22(6)(b), F.S.

⁶ Section 1003.4282(3)(d), F.S.

Collegiate Course Requirements

Each student graduating from a Florida College System or state university must demonstrate civic literacy.⁷ Currently, civic literacy may be accomplished by either passing an assessment or taking a course. Florida State University, for example, offers for students to enroll in certain courses for credit or obtain a score of 60 out of 100 on the U.S. Citizenship and Immigration Services Naturalization Test, which is offered free of charge.⁸

Intellectual Property

Under Florida Law:

An agency created by statute does not possess any inherent powers. Rather, the agency is limited to the powers that have been granted, either expressly or by necessary implication, by the statute that created the agency.⁹

A state agency, for example, is not authorized to secure or hold a copyright, trademark, or patent absent specific statutory authority.¹⁰ While the Department of State (DOS) has administrative authority to enforce any copyright, trademark, or patent *held* by the state,¹¹ the DOS does not have unilateral authority to apply for or enforce intellectual property rights outside of a specific statutory authorization. For example, the following agencies have independent statutory authority to seek and enforce a copyright, trademark, or patent:

- The Department of Lottery;¹²
- The Department of Citrus;¹³
- The Department of Transportation;¹⁴
- Each water management district;¹⁵
- The Department of Law Enforcement;¹⁶
- The Florida Virtual School;¹⁷
- Each state university;¹⁸ and
- Each Florida College System institution Board of Trustees.¹⁹

⁷ Section 1007.25(4), F.S.

⁸ Florida State University, Civic Literacy Requirement, *Ways to Meet the Requirement*, <https://liberalstudies.fsu.edu/civic-literacy.html> (last visited Mar. 24 2021).

⁹ *Florida Virtual Sch. v. K12, Inc.*, 148 So. 3d 97, 99–100 (Fla. 2014) (citing *St. Regis Paper Co. v. State*, 237 So. 2d 797, 799 (Fla. 1st DCA 1970)). Additionally, “[a]n agency’s powers are limited to those conferred by the Legislature.” *Schindelar v. Fla. Unemployment Appeals Comm’n*, 31 So. 3d 903, 905 (Fla. 1st DCA 2010).

¹⁰ *Microdecisions, Inc. v. Skinner*, 889 So. 2d 871, 876 (Fla. 2d DCA 2004) (“Florida’s Constitution and its statutes do not permit public records to be copyrighted unless the Legislature specifically states they can be.”) and Op. Att’y Gen. Fla. 00-13 (2000).

¹¹ Sections 286.021 and 286.031, F.S.

¹² Section 24.105(10), F.S.

¹³ Section 601.101, F.S.

¹⁴ Section 334.049(1), F.S.

¹⁵ Section 373.608, F.S.

¹⁶ Section 943.146, F.S.

¹⁷ Section 1002.37(2)(c), F.S.

¹⁸ Section 1004.23, F.S.

¹⁹ Section 1004.726, F.S.

A state agency without such authority is ineligible to use these intellectual property rights.

Blended Learning

School districts may deliver courses through blended learning courses consisting of both traditional classroom and online instructional techniques. Students in a blended learning course must be full-time students of the school. The funding, performance, and accountability requirements for blended learning courses are the same as those for traditional courses.²⁰

District Innovation School of Technology Program

An innovation school of technology is a school that has, on a schoolwide basis, adopted and implemented a blended learning program. A blended learning program is an education program in which a student learns in part through online delivery of content and instruction with some element of student control over time, place, path, or pace and in part at a supervised brick-and-mortar location away from home. Blended learning models must include major components such as differentiated instruction, data-driven placement, flexible scheduling, differentiated teaching, and self-paced learning. The school may use one of the following blended learning models:

- Flipped classroom model in which students use online instructional videos and practice concepts in the classroom with the support of the teacher;
- Flex model in which students learn primarily online and teachers act as facilitators; or
- Rotation model in which students move between different learning modalities, such as online instruction, teacher-directed instruction, seminar or group projects, and one-on-one teacher coaching. Rotation models include individual, station, and laboratory models.²¹

A school district may operate an innovation school for a period of five years upon their application being approved by the State Board of Education. An innovation school must be guided by the principles set forth in statute and is exempt from specified provisions of law in chs. 1000-1013, Florida Statutes. School districts must annually submit a report that delineates the academic performance of students enrolled in the innovation school.²²

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 1001.23, F.S., to authorize the DOE to hold patents, copyrights, trademarks, and service marks. Additionally, the DOE is authorized to take any actions necessary to enforce its rights in regard to any such patent trademark, copyright, or service mark. The DOE must notify the Department of State in writing when it secures a patent, trademark, copyright, or service mark. Except for educational materials and products, any proceeds received by the DOE from the exercise of such rights must be deposited in the DOE's Operating Trust Fund.

Section 2 of the bill creates s. 1002.334, F.S., to establish the Innovative Blended Learning and Real-Time Student Assessment Pilot Program. The bill defines "innovative blended learning" as a mode of learning where in-person and remote students are combined in one classroom

²⁰ Section 1003.498, F.S.

²¹ Section 1002.451, F.S.

²² *Id.*

experience where students learn in part through online delivery of content and instruction with some element of student control over time, place path, or pace and in part at a supervised classroom location.

Eligible applicants include high-performing charter schools, high-performing charter school systems, and academically high-performing school districts. The application submitted to DOE must include:

- A plan for synchronous technological and resource design, curriculum, classroom operation, school or district management, privacy protection, teacher professional development, and weekly progress monitoring of real-time student performance.
- A plan to reduce achievement gaps.
- A requirement that distance learning will always be at the choosing of the student or parent.
- A requirement that a participating classroom may not be fully virtual and that at least two-thirds of students are present in the classroom on any regularly scheduled day.
- A requirement that any struggling student must return to learning in person.
- A requirement that any student can switch learning modalities on any given day.
- A requirement that the applicant provide all requested student-level data.

Applicants approved by the Commissioner of Education are authorized to receive funding based upon the number of FTE students as if each student was physically present at the school. Districts and schools may not begin programs until October 1, 2021. The commissioner may remove an approved applicant if the applicant fails to meet the requirements of the pilot program, which is scheduled to sunset on July 1, 2024.

Section 3 of the bill amends s. 1003.4282, F.S., to require every student who takes the United States Government course in high school to take a civic literacy assessment, beginning with the 2021-2022 school year. Students who earn a passing score on the course assessment are exempt from the postsecondary civic literacy requirement.

Section 4 of the bill amends s. 1007.25, F.S., to require students who initially enter a Florida College Institution or state university during or after the 2021-2022 school year demonstrate civic literacy by passing an assessment *and* taking a course on civic literacy. Students in high school may complete the civic literacy requirement through an accelerated mechanism, such as dual enrollment.

The bill requires the State Board of Education and the Board of Governors to adopt rules and regulations to:

- Develop one or more new civic literacy courses that provide students, at a minimum, opportunities to engage synchronously in political discussion and civil debates with multiple points of view and master the ability to synthesize information to inform civic decision-making; and
- Approve civic literacy assessments that address competencies that include:
 - An understanding the basic principles of American democracy and how they are applied in our republican form of government;
 - An understanding of the U.S. Constitution;

- Knowledge of the founding documents and how they have shaped the nature and functions of our institutions of self-governance; and
- An understanding of landmark Supreme Court cases and their impact on law and society.

Section 5 of the bill amends s. 1008.212, F.S., to conform cross-references to changes made by the act.

Section 6 of the bill amends s. 1008.22, F.S., to make adjustments to student assessments. Specifically, the bill requires school districts, alternative schools, and the DJJ education programs, subject to appropriation, to provide either the SAT or ACT to all 11th grade students. The DOE estimates that such an initiative would require an \$8 million appropriation per year.²³

The bill requires the standardized English language arts and the mathematics assessments for grades 3 through 6 to be delivered in a paper-based format.

The bill requires that a student's results on the statewide, standardized science and social studies assessments be included in the mandatory report of assessment results provided to students, parents, and teachers. The mandatory report was previously required to only include the student's results on the statewide, standardized ELA and mathematics assessments.

The bill deletes the requirement that the DOE include data on students who enroll in adult education following 8th grade rather than other secondary education from the required annual report on assessments.

The bill repeals the requirement that the commissioner maintain a statewide item bank, facilitate the sharing of developed tests or test items among school districts, and provide technical assistance in best assessment practices. Additionally, the bill repeals language regarding certain statewide standardized assessments that are no longer used, which specifically includes the standardized reading assessment and the standardized writing assessment for grades 3 through 10. The bill retains the existing English Language Arts Assessments, which has replaced the assessment that the bill repeals. The bill removes the requirement for each school district to administer specified assessments no earlier than four weeks before the last day of school for the district.

Section 7 of the bill amends the test administration and security public records exemption under s. 1008.24, F.S., which currently protects tests under the student assessment program, to expressly identify the protected assessment tests. The assessment tests expressly incorporated into the exemption relate to:

- Statewide kindergarten screening;
- Assessments administered by the Department of Juvenile Justice education programs;
- English language assessments for limited English proficient students;
- Postsecondary General Education courses;
- The Florida Partnership for Minority and Underrepresented Student Achievement;

²³ E-mail from Bethany Swanson, Deputy Chief of Staff, Florida Department of Education, *RE: SB 1108* (March 2021) (on file with the Senate Committee on Judiciary). *See also* Florida Department of Education, *2021 Agency Analysis of SB 1108* (Feb. 11, 2021).

- The Student assessment programs for public schools;
- The public school student progression, student support, reporting requirements; and
- Educator certification.

Section 8 of the bill amends s. 1008.34, F.S., conforming cross-reference to changes made by this act.

Section 9 of the bill amends s. 1008.3415, F.S., conforming cross-reference to changes made by this act.

Section 10 of the bill amends s. 1009.286, F.S., to exempt the civics literacy requirement from the excess credit charges under the excess credit hour for a baccalaureate degree program at state universities. If a student at a state university achieves an excess of 120 percent of credit hours required for a baccalaureate program, the remaining hours are charged an additional 100 percent of the tuition.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Article I, s. 24 of the Florida Constitution allows the general public to “inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state[.]”²⁴ Generally, a public records exemption is required when a bill prevents access to public records, including when Florida law provides copyright protection.²⁵

The bill gives the DOE the authority to protect certain public records, such as state authored exam questions, by allowing the Department to assert patent, copyright, and trademark protections. The bill does not specifically create a new public records exemption, and the DOE intends to use these intellectual property protections on public records that are already exempt, such as public records under to s. 1008.23, F.S., regarding testing and assessments and s. 1002.221, F.S., regarding education records.²⁶ Thus, a public records exemption is not required to specifically allow for copyright, trademark, or patent protections to the extent that these protections will be used on public records that are already exempt.

²⁴ FLA. CONST. art. I, s. 24.

²⁵ See *supra* note 12, and accompanying text.

²⁶ Conversation with Matthew Mears, General Counsel, Florida Department of Education (Mar. 15 2021). Additionally, See *supra* note 22.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

CS/SB 1108 requires school districts, alternative schools, and the DJJ education programs to provide either the SAT or ACT to all 11th grade students, subject to an appropriation. The DOE estimates that such an initiative would require an \$8 million appropriation per year.²⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1001.23, 1003.4282, 1007.25, 1008.212, 1008.22, 1008.24, 1008.34, 1008.3415, and 1009.286.

The bill creates section 1002.334 of the Florida Statutes.

²⁷ See *supra* note 22.

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

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

CS/CS by Appropriations on April 19, 2021:

The committee substitute creates s. 1002.334, F.S. to establish the Innovative Blended Learning and Real-Time Student Assessment Pilot Program. Specifically, the amendment:

- Defines “innovative blended learning” as a mode of learning where in-person and remote students are combined in one classroom experience where students learn in part through online delivery of content and instruction with some element of student control over time, place path, or pace and in part at a supervised classroom location.
- Requires an applicant to be a high-performing charter school or high-performing charter school system, or an academically high-performing school district.
- Requires an applicant to submit a DOE developed application that includes:
 - A plan for synchronous technological and resource design, curriculum, classroom operation, school or district management, privacy protection, teacher professional development, and weekly progress monitoring of real-time student performance.
 - A plan to reduce achievement gaps.
 - A requirement that distance learning will always be at the choosing of the student or parent.
 - A requirement that a participating classroom may not be fully virtual and that at least two-thirds of students are present in the classroom on any regularly scheduled day.
 - A requirement that any struggling student must return to learning in person.
 - A requirement that any student can switch learning modalities on any given day.
 - A requirement that the applicant provide all requested student-level data.
- Authorizes the Commissioner of Education to pick applicants to participate in the program.
- Restricts districts and schools from beginning programs until October 1, 2021.
- Authorizes approved applicants to receive funding based upon the number of FTE students as if each student was physically present at the school.
- Authorizes the commissioner to remove an approved applicant if the applicant fails to meet the requirements of the pilot.
- Sunsets the pilot July 1, 2024.

CS by Judiciary on March 22, 2021:

The committee substitute provides that each school district administer the SAT or ACT to 11th grade students in the “Department of Juvenile Justice education programs” as opposed to “centers of the Department of Juvenile Justice.”

B. Amendments:

None.