

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 507 Education

**SPONSOR(S):** Education & Employment Committee, Post-Secondary Education & Lifelong Learning Subcommittee, Rizo and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 1108

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Secondary Education & Career Development Subcommittee	16 Y, 0 N	Wolff	Sanchez
2) Post-Secondary Education & Lifelong Learning Subcommittee	14 Y, 0 N, As CS	Wolff	Kiner
3) Appropriations Committee	26 Y, 0 N	Potvin	Pridgeon
4) Education & Employment Committee	21 Y, 0 N, As CS	Wolff	Hassell

### SUMMARY ANALYSIS

The bill updates the postsecondary civic literacy requirements to include both passing a civic literacy assessment and completing a course in civic literacy. These requirements may be met in high school through the administration of the civic literacy assessment in the required U.S. Government course and completion of an approved civic literacy course through an articulated accelerated mechanism, such as dual enrollment.

To enable the Department of Education to protect assessments and other materials it develops, the bill provides the DOE with the authority to hold patents, trademarks, copyrights, and service marks. The bill provides additional protections for assessments by including more assessments under the protection of State Board of Education (SBE) test security rules. The bill deletes obsolete language relating to prior statewide standardized assessments and updates the assessment publication requirement in anticipation of the implementation of new state standards.

The bill provides, subject to appropriation, for school districts to select either the SAT or the ACT and administer the selected assessment for all grade 11 students.

The bill allows, beginning with the 2022-2023 school year, an eligible student enrolled in an English for Speakers of Other Languages (ESOL) program the opportunity to meet the grade 10 ELA assessment requirement and receive a standard high school diploma by satisfactorily demonstrating grade-level expectations based on formative assessment data. The bill requires the SBE to adopt rules on the pathway.

The bill requires certain athletic associations to adopt bylaws, policies, or procedures that provide schools participating in a high school championship contest or series an opportunity to make brief opening remarks at the event. The bill establishes requirements for the procedures for the opening remarks.

The bill requires that school district character development curriculum for grades 11 and 12 include instruction on voting using the uniform primary and general election ballot adopted by the Florida Department of State.

The bill creates a pilot program, ending on July 1, 2024, to assess the effectiveness of innovative blended learning where students may elect in-person or virtual instruction and learn in part through self-paced online instruction and in part through traditional classroom instruction.

The bill has a fiscal impact related to the provision of either the SAT or the ACT to all grade 11 students. See Fiscal Comments.

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

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

STORAGE NAME: h0507g.EEC

DATE: 4/20/2021

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **State Agency Authority to Hold Copyrights**

##### Present Situation

Current law provides that all patents, trademarks, or copyrights owned or held by the state, or any board, commission or agency of the state, is granted to and vested in the Department of State (DOS).<sup>1</sup> The DOS has the authority to take all necessary actions to secure patents, trademarks, and copyrights and to enforce such rights of the state.<sup>2</sup> An agency other than the DOS, does not have the authority to seek a patent, trademark, or copyright absent independent statutory authority to do so.<sup>3</sup> Additionally, the DOS does not have the authority to seek a patent, trademark, or copyright on behalf of a state agency that lacks independent statutory authority to seek a patent, trademark, or copyright.<sup>4</sup>

The following government entities have independent statutory authority to seek a patent, trademark, or copyright:

- the DOS;<sup>5</sup>
- the Department of the Lottery;<sup>6</sup>
- the Department of Citrus;<sup>7</sup>
- the Department of Transportation;<sup>8</sup>
- each water management district;<sup>9</sup>
- the Department of Law Enforcement;<sup>10</sup>
- each state university;<sup>11</sup> and
- each Florida College System (FCS) institution board of trustees.<sup>12</sup>

##### Effect of Proposed Changes

The bill grants the DOE the authority 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 bill requires that the DOE notify the DOS 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.

#### **Civic Literacy Requirements for K-12 and Postsecondary**

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<sup>1</sup> Section 286.021, F.S.

<sup>2</sup> Section 286.031, F.S.

<sup>3</sup> Op. Att'y Gen. Fla. 2000-13 (2000).

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

<sup>5</sup> Sections 286.021 and 286.031, F.S.

<sup>6</sup> Section 24.105(10), F.S.

<sup>7</sup> Section 601.101, F.S.

<sup>8</sup> Section 334.049(1), F.S.

<sup>9</sup> Section 373.608, F.S.

<sup>10</sup> Section 943.146, F.S.

<sup>11</sup> Section 1004.23, F.S.

<sup>12</sup> Section 1004.726, F.S.

## Present Situation

As part of the 24 credits required to graduate from high school, students must earn three credits in social studies.<sup>13</sup> One-half credit of the three credits must be earned in the U.S. Government course.<sup>14</sup>

Each student entering a FCS institution or state university must demonstrate competency in civic literacy through two options: successful completion of a civic literacy course or achieving a passing score on an assessment.<sup>15</sup>

The chairs of the SBE and the Board of Governors (BOG), or their respective designees, must jointly appoint a faculty committee to:<sup>16</sup>

- develop a new course in civic literacy or revise an existing general education core course in American History or American Government to include civic literacy; and
- establish course competencies and identify outcomes that include, at a minimum:
  - an understanding of the basic principles of American democracy and how they are applied in our republican form of government;
  - an understanding of the United States 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.

The SBE must adopt in rule and the BOG must adopt in regulation at least one existing assessment that measures competencies consistent with the required course competencies.<sup>17</sup> The BOG has adopted the following assessments and passing scores to meet this requirement:<sup>18</sup>

<b>Assessment</b>	<b>Passing Score</b>
U.S. Citizenship Services Naturalization Test – Civics (with supplemental questions)	60
AP Government and Politics: United States	3
AP U.S. History	4
CLEP American Government	50

While the SBE has adopted the same Advanced Placement (AP) and College-Level Examination Program (CLEP) assessments and respective passing scores for students to meet this requirement, it has not adopted the U.S. Citizenship Services Naturalization Test.<sup>19</sup>

## Effects of Proposed Changes

The bill requires that, beginning with the 2021-2022 school year, students take the civic literacy assessment selected by the SBE and BOG during the required high school U.S. Government course. Students that pass the assessment are exempt from the postsecondary civic literacy assessment requirement.

For students first entering a FCS institution or state university in 2021-2022 school year and thereafter, the bill requires that they demonstrate civic literacy by passing a civic literacy assessment and completing a civic literacy course. These requirements may be satisfied prior to enrollment at a postsecondary institution through achieving a passing grade on the approved civic literacy assessment

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<sup>13</sup> Section 1003.4282(3)(d), F.S.

<sup>14</sup> *Id.*

<sup>15</sup> Section 1007.25(4), F.S.

<sup>16</sup> Section 1007.25(4)(a)-(b), F.S.

<sup>17</sup> Section 1007.25(4), F.S.

<sup>18</sup> Florida Board of Governors Regulation 8.006.

<sup>19</sup> *See* rule 6A-10.02413(2), F.S.

and completing an approved civics literacy course through an articulated accelerated mechanism, such as dual enrollment.

The SBE shall adopt rules and the BOG shall adopt regulations that:

- provide for the development of 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 decisionmaking; and
- approve civic literacy assessments that address the competencies of:
  - 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.

## Florida’s Statewide, Standardized Assessments

### Present Situation

In 2014, the Legislature amended the statutes relating to 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.<sup>20</sup> The SBE must adopt test security rules for the statewide, standardized assessment program.<sup>21</sup> Violation of the test security rules for assessments administered pursuant to the student assessment program for public schools is a misdemeanor in the first degree.<sup>22</sup>

Florida’s statewide, standardized assessments measure the extent to which students have mastered the Next Generation Sunshine State Standards (NGSSS).<sup>23</sup> The requirements for students in Florida are as follows:<sup>24</sup>

ELA	Mathematics	Science	Social Studies
Grades 3-10: annual participation in the ELA FSA	<ul style="list-style-type: none"> <li>• Grades 3-8: annual participation in the mathematics FSA</li> <li>• High school: Algebra I and Geometry EOC assessments</li> </ul>	<ul style="list-style-type: none"> <li>• Grades 5 and 8: Statewide Science Assessments</li> <li>• High school: Biology I EOC assessment</li> </ul>	<ul style="list-style-type: none"> <li>• Middle school: Civics EOC assessment</li> <li>• High school: U.S. History EOC assessment</li> </ul>

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.<sup>25</sup> The commissioner may discontinue the item bank if he or she determines that district participation is insufficient for its sustainability.<sup>26</sup>

To promote transparency in the statewide, standardized assessment program, the DOE must solicit cost proposals for publication of the state assessments on its website in any procurement for the

<sup>20</sup> Chapter 2014-39, L.O.F.

<sup>21</sup> Section 1008.24, F.S.

<sup>22</sup> *Id.*

<sup>23</sup> *See* s. 1008.22(3), F.S.

<sup>24</sup> *See* s. 1008.22(3)(a) and (b), F.S.

<sup>25</sup> Section 1008.22(6)(b), F.S.

<sup>26</sup> *Id.*

statewide, standardized ELA assessment in grades 3 through 10 and the statewide, standardized mathematics assessment in grades 3 through 8. Each statewide, standardized assessment<sup>27</sup> and EOC assessment,<sup>28</sup> excluding assessment retakes, must be published at least once on a triennial basis pursuant to a schedule determined by the commissioner.<sup>29</sup> The first set of assessments must be published no later than June 30, 2021, and must include, at a minimum, the statewide, standardized grade 3 ELA and mathematics assessments, the statewide, standardized grade 10 ELA assessment, and the Algebra I EOC assessment.<sup>30</sup>

In 2020, the SBE approved the NGSSS Benchmarks in Excellent Student Thinking Standards (BEST Standards).<sup>31</sup> The DOE will be implementing the new standards through the 2022-2023 school year, when the statewide, standardized assessment will be aligned to the new standards.<sup>32</sup>

### Effect of Proposed Changes

Beginning in the 2021-2022 school year and subject to appropriation, the bill requires each school district to select either the SAT or the ACT for districtwide administration to each public school student in grade 11, including students attending public high schools, alternative schools, and Department of Juvenile Justice education programs.

Throughout the statutes that implement Florida's statewide, standardized assessments, the bill removes obsolete language related to the transition from the FCAT 2.0 to the FSA assessments. Where necessary, the bill updates those statutes to conform to the current statewide, standardized assessment process described above. The bill retains the requirement that the statewide, standardized ELA and mathematics assessments for grades 3 through 6 must be provided 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 only required to include the student's results on the statewide, standardized ELA and mathematics assessments.

The bill removes 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.

The bill requires that publication of the new assessments aligned to the NGSSS BEST Standards, including the statewide, standardized ELA, mathematics, science, and social studies assessments, be initially published by June 30, 2024.

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

The bills adds additional assessments that are to be protected by the SBE test security rules to include:

- the statewide kindergarten screening;
- assessments administered by the Department of Juvenile Justice education programs;
- English language assessments for limited English proficient students;
- the postsecondary civic literacy assessment;
- the Preliminary SAT/National Merit Scholarship Qualifying Test and PreACT;

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<sup>27</sup> See s. 1008.22(3)(a), F.S.

<sup>28</sup> See s. 1008.22(3)(b)1., F.S.

<sup>29</sup> Section 1008.22(8)(a), F.S.

<sup>30</sup> Section 1008.22(8)(b), F.S.

<sup>31</sup> Florida Department of Education, *Adoptions and Implementation of Benchmarks for Excellent Student Thinking (B.E.S.T.) Standards Memorandum*, available at <https://info.fldoe.org/docushare/dsweb/Get/Document-8838/dps-2020-26.pdf>.

<sup>32</sup> *Id.*

- assessments administered to students identified as having a substantial deficiency in reading; and
- educator certification examinations.

## **Postsecondary Fees for Excess Courses**

### Present Situation

Currently, state university students must pay an excess hour surcharge for credit hours exceeding baccalaureate degree program completion requirements.<sup>33</sup> The Legislature's intent is to encourage each undergraduate student who enrolls in a state university to complete the student's respective baccalaureate degree program in the most efficient way possible while providing for access to additional college coursework. Therefore, a policy was enacted that provides incentives for efficient baccalaureate degree completion.<sup>34</sup>

Specifically, the excess hour surcharge is effective for students who enter a state university for the first time and maintain continuous enrollment as follows:<sup>35</sup>

- For the 2009-2010 and 2010-2011 academic years, an excess hour surcharge equal to 50 percent of the tuition rate for each credit hour in excess of 120 percent.
- For the 2011-2012 academic year, an excess hour surcharge equal to 100 percent of the tuition rate for each credit hour in excess of 115 percent.
- For the 2012-2013 academic year through the 2019 spring term, an excess hour surcharge equal to 100 percent of the tuition rate for each credit hour in excess of 110 percent. For the 2019 summer term and thereafter, an excess hour surcharge equal to 100 percent of the tuition rate for each credit hour in excess of 120 percent. However, a state university must refund the fee for excess courses for up to 12 credit hours to any first-time-in-college student who completes a baccalaureate degree program within 4 years after his or her initial enrollment in a state university.

All credit hours taken at the state university from which the student is enrolled are included when calculating the number of hours taken by a student, including:<sup>36</sup>

- Failed courses.
- Courses that are dropped after the university's advertised last day of the drop and add period.
- Courses from which a student withdraws, except for courses not calculated as hours required to earn a baccalaureate degree, as described below.
- Repeated courses where, due to extenuating circumstances, the individual was exempted from paying 100 percent of tuition for repeating the course.

In addition, all credit hours earned at another institution and accepted for transfer by the state university and applied toward the student's baccalaureate degree program are included in the calculation.<sup>37</sup>

Credit hours earned under the following circumstances are not calculated as hours required to earn a baccalaureate degree:<sup>38</sup>

- College credits earned through an articulated accelerated mechanism identified in s. 1007.27, F.S.
- Credit hours earned through internship programs.
- Credit hours required for certification, recertification, or certificate programs.
- Credit hours in courses from which a student must withdraw due to reasons of medical or personal hardship.
- Credit hours taken by active-duty military personnel.

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<sup>33</sup> Section 1009.286, F.S.

<sup>34</sup> Section 1009.286(1), F.S.

<sup>35</sup> Section 1009.286(2), F.S.

<sup>36</sup> Section 1009.286(3)(a), F.S.

<sup>37</sup> Section 1009.286(3)(b), F.S.

<sup>38</sup> Section 1009.286(4), F.S.

- Credit hours required to achieve a dual major taken while pursuing a baccalaureate degree.
- Remedial and English as a Second Language credit hours.
- Credit hours earned in military science courses that are part of the Reserve Officers' Training Corps program.

Each state university and FCS institution must implement a process for notifying students regarding the excess credit hour surcharge, and the notice must be provided upon a student's initial enrollment in the institution. Additionally, the notice must be provided a second time by a state university when a student has earned the credit hours required to complete the baccalaureate degree program in which the student is enrolled. The notice must include a recommendation that each student who intends to earn credit hours at the institution in excess of the credit hours required for the baccalaureate degree program in which the student is enrolled meet with his or her academic advisor.<sup>39</sup>

### Effect of Proposed Changes

The bill provides that courses taken to satisfy the civic literacy course requirements shall not be calculated as hours required to earn a baccalaureate degree for the purpose of determining excess courses fees.

## **English Language Learner Instruction**

### Present Situation

#### *Federal Law*

Passed in 2015, the Every Student Succeeds Act (ESSA)<sup>40</sup> reauthorizes and substantially revises the Elementary and Secondary Education Act of 1965 (ESEA). Like its predecessors ESEA and the No Child Left Behind Act of 2001,<sup>41</sup> ESSA aims to improve elementary and secondary education in public schools by conditioning the receipt of federal funds on the implementation of federal requirements. For purposes of state accountability systems, ESSA identifies student subgroups for specific focus—economically disadvantaged students, students from major racial and ethnic groups, children with disabilities, and English language learners (ELLs).<sup>42</sup> ESSA also requires states to establish long-term goals for all students and each subgroup in student achievement, graduation rates, and ELL progress toward language proficiency, including interim measures of progress.<sup>43</sup> In addition, Title III of ESSA provides grants for educational programming and training to support ELLs in achieving higher levels of academic attainment in English and state academic standards.<sup>44</sup>

Among its indicators of student success and school quality, ESSA includes academic achievement as measured by statewide assessments in English language arts (ELA) and math; high-schools' 4-year graduation rate; and the progress of ELLs toward English proficiency.<sup>45</sup> ESSA requires states to adopt English language proficiency standards that align with the state's academic standards and to administer annual English language proficiency assessments for all ELLs in grades K-12.<sup>46</sup>

ESSA provides that ELLs must be included in the state accountability system; however, the act provides limited exemption options from required assessments for "recently arrived" ELL students enrolled in a

<sup>39</sup> Section 1009.286(5), F.S.

<sup>40</sup> Pub. L. No. 114-95, 129 Stat. 1802 (Dec. 10, 2015); 20 U.S.C. s. 6301 *et seq.*

<sup>41</sup> Pub. L. No. 107-110, 115 Stat. 1425 (Jan. 8, 2002).

<sup>42</sup> 20 U.S.C. s. 6311(c)(2).

<sup>43</sup> 20 U.S.C. s. 6311(c)(4)(A).

<sup>44</sup> *See* U.S.C. s. 6821(b)(2). For the 2020-2021 fiscal year, \$41.1 million were allocated to Florida school districts to implement programming under Title III. Email, Florida House of Representatives Appropriations Staff, Federal Spreadsheet, Mar. 26, 2021.

<sup>45</sup> *See* 20 U.S.C. s. 6311(c)(4)(B).

<sup>46</sup> *See* 20 U.S.C. 6311(b)(1)(F); 20 U.S.C. s. 6311(b)(2)(G). Each state must establish standardized entrance and exit procedures for ELLs. 20 U.S.C. s. 6821(b)(2)(A). Any student who may be an ELL must be assessed for ELL status within 30 days of enrolling in a school in the state. *Id.*

school in the United States for less than 12 months.<sup>47</sup> A state may exempt ELLs from the required ELA assessment in their first year of enrollment in a U.S. school.<sup>48</sup> ESSA also allows states to assess and report recently arrived ELLs' performances on statewide ELA and math assessments with more flexibility and focus on measures of growth over the students' first two years enrolled in U.S. schools.<sup>49</sup>

To facilitate valid and reliable state assessment of ELLs' knowledge and understanding of reading and ELA, math, and science, ESSA requires states to provide certain appropriate accommodations.<sup>50</sup> Such accommodations should be provided until ELLs have attained English proficiency (as measured by the state's annual English proficiency assessments).<sup>51</sup>

### *Florida Law*

Florida has over 265,000 ELLs in its public school system, ranking third in the country in ELL population.<sup>52</sup> Spanish is the native language of a majority of these students; however, ELLs in Florida speak over 300 different languages.<sup>53</sup>

In Florida, a 1990 consent decree established parameters for English for Speakers of Other Languages (ESOL) instruction, in compliance with state and federal laws, to provide these ELLs equal access to all educational programs.<sup>54</sup> The consent decree provides a structure to ensure the delivery of comprehensible instruction to ELLs.<sup>55</sup>

Through Florida's accountability system, school districts are expected to provide programs and services that help ELLs achieve English proficiency as soon as possible. Funding is provided as a cost factor in the Florida Education Finance Plan (FEFP)<sup>56</sup> to assist school districts with implementing instruction for students with limited English proficiency.<sup>57</sup> The instruction is designed to efficiently develop the student's mastery of the four language skills— listening, speaking, reading, and writing.<sup>58</sup> Accordingly, the State Board of Education (SBE) has adopted English language development and proficiency standards for ELLs.<sup>59</sup> ELLs are assessed for English proficiency each year until they are reclassified as English language proficient and exit from the ESOL program.<sup>60</sup> ELLs may be determined English language proficient by achieving a passing score on ACCESS for ELLs<sup>61</sup> and the ELA assessment,<sup>62</sup> or as determined by an ELL Committee.<sup>63</sup>

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<sup>47</sup> See 20 U.S.C. s. 6311(b)(3)(A).

<sup>48</sup> See 20 U.S.C. s. 6311(b)(3)(A)(i).

<sup>49</sup> See 20 U.S.C. s. 6311(b)(3)(A)(ii).

<sup>50</sup> 20 U.S.C. s. 6311(b)(2)(B)(vii)(III).

<sup>51</sup> *Id.*

<sup>52</sup> Florida Department of Education, *English Language Learners*, <http://www.fldoe.org/academics/eng-language-learners/> (last visited April 19, 2021). See Florida Department of Education, *PK-20 Education Information Portal*,

<https://edstats.fldoe.org/SASPortal/main.do> (last visited April 19, 2021) (Select "PK-12 Public Schools." Under the "Students" header select "Enrollment." Click "State Level" in the menu bar at the top of the page. Drag "ELL Status" from the Section Data options into the table on the page.).

<sup>53</sup> Florida Department of Education, *English Language Learners*, <http://www.fldoe.org/academics/eng-language-learners/> (last visited April 19, 2021).

<sup>54</sup> Florida Department of Education, *Consent Decree*, <http://www.fldoe.org/academics/eng-language-learners/consent-decree.stml> (last visited April 19, 2021).

<sup>55</sup> *Id.*

<sup>56</sup> See Florida Department of Education, *Funding for Florida School Districts 2020-21*, at 13, available at <http://www.fldoe.org/core/fileparse.php/7507/urlt/fefpdist.pdf>.

<sup>57</sup> See Section 1003.56, F.S.

<sup>58</sup> Section 1003.56, F.S.

<sup>59</sup> Section 1003.56, F.S. See Rule 6A-1.09401(1)(k), F.A.C.

<sup>60</sup> See Rules 6A-6.09021(1) and 6A-6.0903(1), F.A.C.

<sup>61</sup> ACCESS for ELLs is a suite of assessments that serve as a tool to measure ELLs' proficiency in the English language. ACCESS for ELLs includes paper-based assessments and one-on-one teacher assessments. See Rule 6A-6.09021(1); see also Florida Department of Education, *ACCESS for ELLs*, <http://www.fldoe.org/accountability/assessments/k-12-student-assessment/access-for-ells.stml> (last visited April 19, 2021).

<sup>62</sup> See Rule 6A-6.0903(2)(a)2., F.A.C.

<sup>63</sup> A student, parent, teacher, counselor, or administrator may request a re-evaluation of a student's English proficiency by an ELL Committee. An ELL committee is a group composed of English for Speakers of Other Languages (ESOL) teachers; home language



To facilitate appropriate instruction for ELLs, district school boards must:<sup>64</sup>

- develop and submit plans for providing English language instruction to the DOE for review and approval;
- identify limited English proficient students through assessment;
- provide for students to exit from ESOL programs and reclassify into the program if necessary;
- provide limited English proficient students ESOL instruction in English and ESOL instruction or home language instruction in reading, math, science, social studies, and computer literacy;
- provide equal access to other programs for eligible limited English proficient students based on need; and
- maintain student plans, provide for parental involvement, and provide qualified teachers.

ELLs must take statewide assessments and the English language proficiency assessment.<sup>65</sup> However, for the ELA statewide assessment, the DOE provides an exemption for those students who entered the United States less than 12 months before the assessment date and for whom an ELL Committee determines that an exemption is appropriate.<sup>66</sup>

ELLs are eligible for accommodations when taking grade-level statewide, standardized assessments.<sup>67</sup> An ELL may be eligible for testing accommodations if the student is currently receiving services in accordance with an approved ELL district plan.<sup>68</sup> Testing accommodations for ELLs may include:

- flexible test scheduling which allows the student to complete a test session during several brief periods within one school day;
- additional time to complete a test session, so long as the session is completed within one school day;
- access to English-to-home language or home language-to-English dictionaries providing only word-to-word translations;
- the opportunity to be tested in a separate room with an ESOL or home language teacher serving as the test administrator; and
- assistance by an ESOL or home-language teacher using the ELL's home language for directions, prompts, items, and answer choices.<sup>69</sup>

Under Florida's accountability system, ELL academic performance is gradually included in school grade calculations. After the first year enrolled in a Florida school, their results on statewide, standardized ELA and math assessments are included in the school grade learning gains component, which measures student improvement on assessments from one year to the next.<sup>70</sup> After the second year, their results on statewide, standardized assessments are included in the achievement component, which measures the percentage of students taking and passing the assessment.<sup>71</sup> Additionally, schools

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teachers; an administrator or designee; and guidance counselors, social workers, school psychologists, or other educators as appropriate for the situation. The parent must be invited to serve on the committee for his or her child. *See* rule 6A-6.0901(5), F.A.C. The student must be assessed by at least one DOE-approved assessment instrument that covers listening, speaking, reading, and writing prior to the committee's evaluation. The ELL Committee reviews the student's academic record holistically and considers the assessment results as well as the following criteria: prior educational or academic experience, social experience, and a student interview; written recommendations and observations by instructional staff; the student's level of mastery of basic competencies or skills in English and heritage language; the student's grades; and the student's other test results. If the majority of the ELL Committee determines that the student's English is proficient, the student will be exited from the ESOL program. *See* rule 6A-6.0903(2)(c), F.A.C.

<sup>64</sup> Section 1003.56(3), F.S.

<sup>65</sup> *See* s. 1008.22(3), F.S.; Rules 6A-6.0909(1), F.A.C. and 6A-1.09432(1).

<sup>66</sup> Rules 6A-6.0909(1) and 6A-1.09432(2)(a), F.A.C. In making an exemption determination, ELL Committees must consider the student's level of mastery of basic competencies or skills in English and the home language; grades from the current or previous years; or other test results. If the ELL Committee determines the student's participation in the ELA assessment would have an unsound instructional effect, the student may be exempted. 6A-1.09432(2)(a), F.A.C.

<sup>67</sup> *See* ss. 1008.22(3)(c)3. and 1008.34(3), F.S.

<sup>68</sup> Rule 6A-6.09091(3), F.A.C.

<sup>69</sup> Section 1008.22(3)(c)3.; Rule 6A-6.09091(2)(a)-(d), F.A.C.

<sup>70</sup> *See* Section 1008.34(1)(b) and (3), F.S.; Rule 6A-1.09981(3)(g) and (4)5.-8., F.A.C.

<sup>71</sup> *See* Section 1008.34(3), F.S.; Rule 6A-1.09981(3)(g) and (4)1.-4., F.A.C.

that are not achieving success in their ESOL programs, as demonstrated through assessment results, must receive supports through the state's school improvement system.<sup>72</sup>

### *High School Graduation Requirements*

Receipt of a standard high school diploma requires a cumulative grade point average (GPA) of 2.0 on a 4.0 scale and the successful completion of 24 credits, an International Baccalaureate curriculum, or an Advanced International Certificate of Education curriculum.<sup>73</sup> In the 24-credit pathway to a standard high school diploma, a student must complete:<sup>74</sup>

- 4 credits in ELA, including passage of the grade 10 ELA assessment;
- 4 credits in mathematics, including passage of the statewide, standardized Algebra I and Geometry end of course (EOC) assessments;
- 3 credits in science, including passage of the Biology EOC assessment;
- 3 credits in social studies;
- one credit in fine or performing arts, speech and debate, or practical arts;
- one credit in physical education; and
- 8 credits in electives.

If an ELL student who has been in an ESOL program for less than 2 years meets all requirements for a standard high school diploma except for passage of any required assessments, the student may receive immersion English language instruction during the summer following the student's senior year.<sup>75</sup> After receiving the instruction, the student is eligible to take the required assessment or alternative assessment and receive a standard high school diploma upon passage of the assessment.<sup>76</sup>

### Effect of Proposed Changes

The bill provides, beginning with the 2022-2023 school year, a pathway to receive a standard high school diploma for students enrolled in an ESOL program for less than 2 years who are unable to pass the statewide, standardized grade 10 ELA assessment. If the student otherwise meets the course credit and GPA requirements for receipt of a standard high school diploma, the student may meet the grade 10 ELA assessment requirement by demonstrating grade-level expectations based on formative assessment data. The bill requires the SBE to establish the level of achievement needed to satisfy this requirement.

## **Opening Remarks at Interscholastic Athletic Events**

### Present Situation

#### *Federal Establishment Clause*

The U.S. Constitution prevents the government from establishing religion and protects privately initiated expression and activities from government interference and discrimination.<sup>77</sup> In order to determine whether a challenged state statute is permissible under the Establishment Clause, courts apply the *Lemon Test*, which requires that the challenged statute have a secular legislative purpose, have a principal or primary effect that neither advances nor inhibits religion, and avoid excessive government entanglement with religion.<sup>78</sup>

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<sup>72</sup> Florida Department of Education, Florida Organization of Instructional Leaders, *Exploring ESSA and the School Improvement Plan*, at 74-77, (May 15-16, 2019 Breakout Sessions), available at <http://www.fldoe.org/core/fileparse.php/7506/urlt/51519ExploringESSA.pdf>.

<sup>73</sup> Section 1003.4282(1)(a) and (6)(a), F.S. Students may also receive a standard high school diploma through an 18-credit pathway under the Academically Challenging Curriculum to Enhance Learning (ACCEL) options. Section 1002.3105, F.S.

<sup>74</sup> Section 1003.4282(3), F.S.

<sup>75</sup> Section 1003.433(3), F.S.

<sup>76</sup> *Id.*

<sup>77</sup> See U.S. Const., Amend. 1.

<sup>78</sup> *Lemon v. Kurtzman*, 403 U.S. 602, 612 (1971).

The Supreme Court's analysis in *Santa Fe Independent School District v. Doe* provides insight to how the Court applies the *Lemon Test* when evaluating opening remarks at athletics events on school premises.<sup>79</sup> The Court held that the school district's policy permitting student-led, student-initiated prayer over the loudspeaker at high school football games on the school's property violated the Establishment Clause.<sup>80</sup> The Court concluded that the pre-game invocations at issue were government speech because the invocations were specifically authorized by government policy and took place on government property at government-sponsored, school related events.<sup>81</sup> However, the Supreme Court cautioned that not all public speech becomes government speech simply because it is made using public facilities at government sponsored events.<sup>82</sup> Santa Fe school district's policy failed the *Lemon Test* because the Court found the policy did not have secular purpose and advanced certain religion at the expense of other religions given the narrow speaker selection process and criteria; and entangled the government with religion given the school district's specific encouragement of prayer and the history of the policy.<sup>83</sup>

### *Federal Free Speech Clause*

Speech is protected by the First Amendment of the United States Constitution.<sup>84</sup> The government or a public actor may nevertheless regulate an individual's freedom of speech within constitutional limits.<sup>85</sup> The First Amendment's free speech clause restricts government regulation of private speech but does not regulate government speech.<sup>86</sup> To determine whether speech is government speech or private speech, courts consider 3 primary factors: the history and tradition of the speech; whether a reasonable observer could conclude that the government endorses the speech; and whether the government exercise direct control over the speech.<sup>87</sup>

In 2019, the Eleventh Circuit held that the Florida High School Athletic Association's application of its Public-Address Protocol<sup>88</sup> prohibiting two schools from using the loudspeaker for a pre-game prayer at the 2A Florida High School State Championship game may have violated constitutional free speech protections.<sup>89</sup> The court's analysis hinged on whether the speech over the loudspeaker was considered government or private speech. The court determined that inconsistencies in the record and indications that the FHSAA allowed prayer over the loudspeaker at past championships suggested the factors of history and tradition of the speech and the government's direct control over the speech leaned toward a potential finding of private speech that warranted further deliberation at the district court level.<sup>90</sup>

The ability to regulate private speech on government-owned property is determined, in part, by the characterization of the type of public forum created.<sup>91</sup> There are three types of public forums: traditional public forums, limited public forums, and closed public forums.<sup>92</sup> A "traditional" or "open public forum" is a place with a longstanding tradition of freedom of expression, such as a public park, sidewalk, or street corner.<sup>93</sup> In an open public forum, the government may only impose content-neutral restrictions on the time, place, and manner of expression.<sup>94</sup> A limited public forum is a venue opened only for certain groups or topics.<sup>95</sup> A public actor may regulate the subject area content or categories of organizations

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<sup>79</sup> See *Santa Fe Independent Sch. District v. Doe*, 530 U.S. 290, 314 (2000).

<sup>80</sup> *Id.* at 317.

<sup>81</sup> *Id.* at 302.

<sup>82</sup> *Id.* See *Rosenberger v. Rector*, 515 U.S.819 (1995) (holding that the University of Virginia must provide financial subsidy to a student religious organization on the same basis as other student publications).

<sup>83</sup> *Santa Fe Independent Sch. District*, 530 U.S. at 302-10.

<sup>84</sup> U.S. Const., Amend. 1.

<sup>85</sup> *Int'l Soc'y for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672, 678 (1992).

<sup>86</sup> See *Pleasant Grove City v. Sumnum*, 555 U.S. 460, 467 (2009).

<sup>87</sup> See *Pleasant Grove City*, 555 U.S. at 460; *Walker v. Texas Division, Sons of Confederate Veterans, Inc.*, 135 S. Ct. 2239 (2015); *Mech v. Sch. Bd. of Palm Beach Cnty.*, 806 F.3d 1070 (11th Cir. 2015).

<sup>88</sup> See *supra* text accompanying notes 33-37.

<sup>89</sup> *Cambridge Christian Sch., Inc. v. Fla. High School Athletics Ass'n*, 942 F.3d 1215 (11th Cir. 2019).

<sup>90</sup> *Id.* at 1231.

<sup>91</sup> *Int'l Soc'y for Krishna Consciousness*, 505 U.S. at 678-79.

<sup>92</sup> *Id.*

<sup>93</sup> *Perry Educ. Ass'n v. Perry Local Educators Ass'n*, 460 U.S. 37, 45-46 (1992).

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

allowed in limited public forums but may not restrict expression based on a favorable or unfavorable viewpoint of a speaker or organization.<sup>96</sup> Finally, a “closed public forum” is a place that is not traditionally open to public expression, such as the teacher’s school mailroom or a military base. Restrictions on speech in a closed public forum may only be reasonable and may not be designed to silence an unfavorable viewpoint.<sup>97</sup>

### *Florida Law Regarding Opening Remarks at Interscholastic Athletic Events*

The Florida Constitution closely replicates the First Amendment’s protections against the establishment of religion.<sup>98</sup> The scope of the Florida Constitution’s protection of free speech is the same as required under the First Amendment.<sup>99</sup>

Florida law designates the Florida High School Athletic Association (FHSAA) as the governing nonprofit organization for interscholastic competition for grades 6 through 12 in Florida public schools.<sup>100</sup> Any high school, middle school, or combination school,<sup>101</sup> including charter schools, virtual schools, private schools, and home education cooperatives,<sup>102</sup> may become a member of the FHSAA.<sup>103</sup> The FHSAA is required to adopt bylaws regulating student eligibility, recruiting, and member schools’ interscholastic competition in accordance with applicable law.<sup>104</sup> Florida law establishes that the FHSAA’s authority to organize and conduct statewide interscholastic competition includes the potential for state championships and the FHSAA also has authority to establish terms and conditions for those contests.<sup>105</sup>

### *FHSAA Florida High School State Championship Series*

The FHSAA’s Florida High School State Championship Series (State Championship Series) determines official state champions, among the Association’s member schools, in sports sanctioned or recognized by the FHSAA Board of Directors.<sup>106</sup> The FHSAA limits participation in the State Championship Series to schools that are full members of the Association.<sup>107</sup> The FHSAA Board of Directors determines in which sports<sup>108</sup> a State Championship Series will be offered and establishes the terms and conditions for the competition series.<sup>109</sup>

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<sup>96</sup> *Pleasant Grove City*, 555 U.S. at 470.

<sup>97</sup> *Perry*, 460 U.S. at 37.

<sup>98</sup> Art. 1, s. 3, Fla. Const. See *Council for Secular Humanism, Inc. v. McNeil*, 44 So. 3d 112, 119 (Fla. 1st DCA 2010) (explaining that the Florida Constitution’s establishment clause is consistent with the First Amendment and imposes additional restrictions on state actors through the no-aid provision).

<sup>99</sup> Art. 1, s. 4, Fla. Const. See *Cafe Erotica v. Fla. Dep’t of Transp.*, 830 So. 2d 181, 183 (Fla. 1st DCA 2002) (stating that the scope of free speech protections in the Florida Constitution is the same as the First Amendment).

<sup>100</sup> Section 1006.20(1), F.S. If the FHSAA fails to meet its obligations and responsibilities, the Commissioner of Education (commissioner) is directed to designate a nonprofit organization to manage interscholastic athletics with the approval of the SBE). *Id.*

<sup>101</sup> A “combination school” is any school that provides instruction to students in high school and the middle school grades; elementary, middle or high school grades combined; or elementary and middle grades combined (e.g. K-12; K-8; 6-12; or 7-12). Bylaw 3.2.2.3, FHSAA.

<sup>102</sup> A “home education cooperative” is a parent-directed group of individual home education students that provides opportunities for interscholastic athletic competition to those students and may include students in grades 6-12. Bylaw 3.2.2.4, FHSAA.

<sup>103</sup> Section 1006.20(1), F.S.

<sup>104</sup> Section 1006.20(2), F.S.

<sup>105</sup> Section 1006.20(4)(d)6., F.S.

<sup>106</sup> Bylaw 2.10, FHSAA.

<sup>107</sup> *Id.* The FHSAA must allow private schools the option of maintaining full membership in the Association or membership by sport. The FHSAA may allow public schools the option of applying for consideration to join another athletic association. Section 1006.20(1), F.S.

<sup>108</sup> The FHSAA currently conducts State Championship Series in the following sports: baseball, basketball, bowling, competitive cheerleading, cross country, flag football, football, golf, lacrosse, soccer, softball, swimming and diving, tennis, track and field, volleyball, water polo, weightlifting, and wrestling. FHSAA, *2020-21 FHSAA Administrative Procedures*, at 2, available at [https://fhsaa.com/documents/2020/10/9/2021\\_admin\\_procedures\\_1009.pdf?id=319](https://fhsaa.com/documents/2020/10/9/2021_admin_procedures_1009.pdf?id=319).

<sup>109</sup> Section 1006.20(4)(d)6., F.S.; Bylaw 2.10, FHSAA.

The FHSAA's Public Address Protocol applies to all State Championship Series.<sup>110</sup> The public address announcer must maintain neutrality.<sup>111</sup> The announcer is required to follow the FHSAA script for promotional announcements, player introductions, and awards ceremonies.<sup>112</sup> The procedure limits other announcements to:<sup>113</sup>

- Those of an emergency nature;
- Those of a "practical" nature (e.g. a vehicle with lights on);
- Teams' starting lineups or entire lineups';
- Messages provided by host school management;
- Announcements about the sale of FHSAA souvenir merchandise;
- Players attempting or making a play;
- Penalties as signaled by the referee; and
- Substitutions and timeouts.

Public address announcers may not provide play-by-play commentary as if announcing a radio or television broadcast, make comments that offer an unfair advantage to one team, make comments critical of contest participants, schools, or officials.<sup>114</sup>

For regular season events, the FHSAA's Public Address Protocol states that the public address announcer must maintain neutrality.<sup>115</sup> The FHSAA encourages schools to abide by the additional requirements of the Public Address Protocol for the State Championship Series but does not require compliance for regular season events.<sup>116</sup>

### *Other Athletic Associations in Florida*

Although FHSAA is the largest school athletic association in Florida, other associations are in operation and oversee their respective member schools' athletics and interscholastic competitions.<sup>117</sup> These associations primarily serve private schools but some of the associations' memberships are growing to include more public schools.<sup>118</sup> These associations operate state championship contests for their member schools according to the associations' respective policies and procedures.<sup>119</sup>

### Effects of Proposed Changes

The bill requires athletic associations, whose memberships include public schools, to adopt bylaws, policies, or procedures that provide schools participating in a high school championship contest or series, under the direction and supervision of the association, an opportunity to make brief opening remarks at the event. If requested by the school, a speaker from the school may give remarks, no longer than 2 minutes, using the public address system at the event. Prior to the opening remarks from

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<sup>110</sup> FHSAA, 2020-21 FHSAA Administrative Procedures, Procedure 3.1.8, at 13, available at [https://fhsaa.com/documents/2020/10/9//2021\\_admin\\_procedures\\_1009.pdf?id=319](https://fhsaa.com/documents/2020/10/9//2021_admin_procedures_1009.pdf?id=319).

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> FHSAA, 2020-21 FHSAA Administrative Procedures, Procedure 2.2.1, at 11, available at [https://fhsaa.com/documents/2020/10/9//2021\\_admin\\_procedures\\_1009.pdf?id=319](https://fhsaa.com/documents/2020/10/9//2021_admin_procedures_1009.pdf?id=319).

<sup>116</sup> *Id.*

<sup>117</sup> See Sunshine State Athletic Conference, *Our Members*, <https://www.sunshinestateathletics.com/page/show/5114535-our-members> (last visited April 19, 2021); Florida Independent Christian Athletic Association, *Regions & Members*, <https://ficia.org/members> (last visited April 19, 2021); Florida Independent High School Athletic Association, *School Links*, <https://fihhsaa.org/schools/> (last visited April 19, 2021); Sunshine Independent Athletic Association, <https://www.siaa1.com/> (last visited April 19, 2021) (click "Member Schools" in menu).

<sup>118</sup> See Sunshine State Athletic Conference, *About Us*, <https://www.sunshinestateathletics.com/page/show/5084878-about-us> (last visited April 19, 2021).

<sup>119</sup> See Sunshine State Athletic Conference, *Girls Beach Volleyball*, <https://www.sunshinestateathletics.com/page/show/5114586-girls-beach-volleyball> (last visited April 19, 2021); Florida Independent High School Athletic Association, *Manual*, at 18-19, available at <https://fihhsaa.files.wordpress.com/2020/03/fihhsaa2.pdf>.

school speakers, the association must make an announcement that the school's opening remarks are not endorsed by the association nor do they reflect the views and opinions of the association.

The bill establishes that athletic associations may not control, monitor, or review the content of schools' opening remarks, nor may the associations control the schools' choice of speaker.

The bill provides that the decision to allow opening remarks before regular season contests is at the discretion of each school.

## Required Instruction in Voting

### Present Situation

The mission of Florida's K-20 education system is to "allow its students to increase their proficiency by allowing them the opportunity to expand their knowledge and skills through rigorous and relevant learning opportunities."<sup>120</sup> Civic literacy and preparing students to become civically engaged and knowledgeable adults who positively contribute to their communities is a priority of the Florida education system.<sup>121</sup>

### *Character Development Instruction*

Florida law requires that public school students in grades K-12 receive instruction on specific subjects including the history, significance, and principles of the Declaration of the Independence and the Constitution of the United States, flag education, civil government, and comprehensive health education, among others. Instructional personnel are required to teach these subjects efficiently and faithfully, using historically accurate books and materials, following prescribed courses and approved methods of instruction.<sup>122</sup> Florida law does not dictate grade level, instructional material, or instructional hour requirements.<sup>123</sup> In October 2019, the DOE adopted a rule requiring school districts to report, annually each summer, on how instruction was provided during the previous school year for certain subjects defined in s. 1003.42, F.S.<sup>124</sup> The report must include specific courses offered for each grade level and what materials and resources were used.<sup>125</sup>

Under s. 1003.42, F.S., public schools are required to develop or adopt a character development program for kindergarten through grade 12 and submit the program to the DOE for approval.<sup>126</sup> For the elementary grades, the character development program must be similar to Character First or Character Counts programs.<sup>127</sup> The character development curriculum shall stress the qualities of patriotism; responsibility; citizenship; kindness; respect for authority, life, liberty, and personal property; honesty; charity; self-control; racial, ethnic, and religious tolerance; and cooperation.<sup>128</sup> Character development programs in high schools must include instruction on:<sup>129</sup>

- developing leadership skills, interpersonal skills, organization skills, and research skills;
- creating a resume;
- developing and practicing the skills necessary for employment interviews;
- managing stress and expectations; and
- developing skills that enable students to become more resilient and self-motivated.

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<sup>120</sup> Section 1000.03(4), F.S.

<sup>121</sup> Section 1000.03(5)(c), F.S.

<sup>122</sup> Section 1003.42(2), F.S.

<sup>123</sup> *See id.*

<sup>124</sup> Rule 6A-1.094124, F.A.C.

<sup>125</sup> *Id.*

<sup>126</sup> Section 1003.42(2)(s), F.S.

<sup>127</sup> *Id.* The DOE provides access to the Character Counts curriculum through its website. Florida Department of Education, *Free Resources for Families & Teachers*, <http://www.fldoe.org/em-response/resources-families.stml> (last visited April 19, 2021).

<sup>128</sup> Section 1003.42(2)(s), F.S.

<sup>129</sup> *Id.*

The current State Board of Education adopted standards do not include character development programs, and there is no instructional model currently available in CPALMS.<sup>130</sup>

### *Voting Systems and Uniform Ballots*

Chapter 101, F.S., governs voting methods and procedures in Florida. Voting in Florida is overseen by the DOS and the DOS is required to adopt rules establishing the minimum standards for voting systems.<sup>131</sup> Pursuant to these rules, the DOS has certified two voting systems.<sup>132</sup> Current law requires the DOS to adopt rules prescribing a uniform primary and general election ballot for each certified voting system.<sup>133</sup> The DOS rule relating to uniform ballots incorporates by reference examples of both primary and general election ballots.<sup>134</sup>

### Effect of Proposed Changes

The bill requires the character development curriculum required for grades 11 and 12 include instruction on voting using the uniform primary and general election ballots adopted by the DOS.

## **Impacts of COVID-19 and Innovative Blended Learning Pilot Program**

### Present Situation

#### *Outbreak & Response in Florida*

In the face of the COVID-19 outbreak in Florida, Governor Ron DeSantis declared a state of emergency and issued a series of executive orders, including the following:

- March 1, 2020:<sup>135</sup> Directing the State Health Officer to declare a public health emergency pursuant to the State Health Officer's authority under s. 381.00315, F.S.; and directing the Department of Health to take action pursuant to its authority under ch. 381. Accordingly, the State Health Officer immediately declared a public health emergency.<sup>136</sup>
- March 9, 2020:<sup>137</sup> Declaring a general state of emergency in Florida under ch. 252, F.S.
- March 23-24, 2020:<sup>138</sup> Directing certain individuals travelling from out of state into Florida to self-quarantine for a period of time.
- April 1, 2020:<sup>139</sup> Directing Floridians to stay at home, with exceptions for "essential" services and activities.

While some of the Governor's executive orders eventually expired or were modified, the Governor has continued to extend the state of emergency, with the most recent extension occurring on February 26, 2021.<sup>140</sup>

### *Department of Education Emergency Orders*

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<sup>130</sup> CPALMS, *About CPALMS*, [http://www.cpalms.org/CPALMS/about\\_us.aspx](http://www.cpalms.org/CPALMS/about_us.aspx), (last visited April 19, 2021). CPALMS is the State of Florida's official source for standards information and course descriptions. It provides access to thousands of standards-aligned, free, and high-quality instructional/educational resources that have been developed specifically for the standards and vetted through a rigorous review process.

<sup>131</sup> Section 101.015, F.S. See ch. 1S-2, F.A.C.

<sup>132</sup> Florida Department of State, *Certified Voting Systems and Vendors*, <https://dos.myflorida.com/elections/voting-systems/certified-voting-systems-and-vendors/> (last visited April 19, 2021). As of November 2020, eighteen counties use the Democracy Suite voting system and 49 counties use the EVS voting system. Florida Department of State, *2020 Voting Systems*, available at [https://fldoswebumbracoprod.blob.core.windows.net/media/703669/voting-systems-in-use-by-county\\_4publication-website-copy-111220.pdf](https://fldoswebumbracoprod.blob.core.windows.net/media/703669/voting-systems-in-use-by-county_4publication-website-copy-111220.pdf).

<sup>133</sup> Section 101.151(9), F.S.

<sup>134</sup> Rule 1S-2.032, F.A.C.

<sup>135</sup> Fla. Exec. Order 20-51 (March 1, 2020).

<sup>136</sup> See Fla. Exec. Order 20-83 (March 24, 2020) (indicating the State Health Officer's declaration of public health emergency).

<sup>137</sup> Fla. Exec. Order 20-52 (March 9, 2020).

<sup>138</sup> Fla. Exec. Orders 20-80 (March 23, 2020) and 20-82 (March 24, 2020).

<sup>139</sup> Fla. Exec. Order 20-91 and 20-92 (April 1, 2020).

<sup>140</sup> Fla. Exec. Order 21-45 (Feb. 26, 2021).

The DOE, as authorized by the Governor's executive orders, issued a series of emergency orders in response to the COVID-19 pandemic, including the following:

- March 23, 2020:<sup>141</sup> Providing general waivers of laws and rules regarding the operation, funding, and accountability for school districts, scholarship funding organizations, private schools participating in state scholarship programs, and the DOE's vocational rehabilitation programs.
- May 13, 2020:<sup>142</sup> Providing additional, more precise, waivers of rules and statutes that govern programs overseen by the DOE.
- June 11, 2020:<sup>143</sup> Providing specific statutory and rule waivers for the summer Voluntary Prekindergarten Program and the Bright Futures Scholarship.
- July 6, 2020:<sup>144</sup> Providing for the reopening of brick and mortar school for the 2020-2021 school year. Outlined for school districts an alternate funding mechanism, an Innovative Learning Model, through which the school district, upon approval of a reopening plan, could receive full in-person funding for students participating remotely through the Innovative Learning Model.
- November 30, 2020:<sup>145</sup> Providing for continuing flexibility to school districts through the Innovative Learning Model through the spring of the 2020-2021 school year, providing that school districts begin working on providing interventions to students to address learning losses due to the COVID-19 pandemic.
- April 9, 2021:<sup>146</sup> Providing waivers of testing requirements for 2021 high school graduates, accommodations for testing and student retention, extending timeframes related to the Bright Futures scholarships, and waiving school grade and school improvement requirements while authorizing school district to opt in to school grades and school improvement ratings for the 2020-2021 school year.

### *Innovative Learning Model*

In July 2020, the DOE issued Emergency Order 2020-EO-06 that outlined the procedure for a school district to receive their full funding for students that elected to continue learning remotely during the fall of the 2020-2021 school year.<sup>147</sup> To be eligible for this funding flexibility, the school districts were required to submit a reopening plan that outlined the school district's proposal for reopening brick and mortar schools and providing students and their parents the option to attend school in person or participate remotely.<sup>148</sup> Central to the reopening plan were the following seven assurances that the school district was required make in their reopening plan:<sup>149</sup>

- All brick and mortar schools would be open at least 5 days a week, subject to the advice and orders of the Florida Department of Health and the Governor's executive orders.
- The school district will provide the full array of services that are required by law, such as, exception student education and support services provided to students from low-income families, students of migrant workers, students who are homeless, students with disabilities, students in foster care, and students who are English language learners (ELL).
- The school district will provide robust progress monitoring to all students and supports to those students who are not making adequate progress.
- The school district will work with Individualized Education Plan teams to determine needed services and determine if compensatory services are required.

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<sup>141</sup> Florida Department of Education, Emergency Order 2020-EO-01, (March 23, 2020).

<sup>142</sup> Florida Department of Education, Emergency Order 2020-EO-02 (May 13, 2020).

<sup>143</sup> Florida Department of Education, Emergency Order 2020-EO-04 (June 11, 2020) and Emergency Order 2020-EO-05 (June 11, 2020).

<sup>144</sup> Florida Department of Education, Emergency Order 2020-EO-06 (July 6, 2020).

<sup>145</sup> Florida Department of Education, Emergency Order 2020-EO-07 (Nov. 30, 2020).

<sup>146</sup> Florida Department of Education, Emergency Order 2021-EO-02 (April 9, 2021).

<sup>147</sup> Florida Department of Education, Emergency Order 2020-EO-06 (July 6, 2020).

<sup>148</sup> Florida Department of Education, Emergency Order 2020-EO-06 (July 6, 2020).

<sup>149</sup> *Id.* See Florida Department of Education, *2020-21 Florida's Optional Innovative Reopening Plan*, available at

<http://www.fldoe.org/em-response/> (click "July 9, 2020: 2020-21 Florida's Optional Innovative Plan Template" under State of Florida Guidance).



- The school district will work with ELL Committees to identify ELLs who have regressed and determine if additional or supplemental ESOL services are needed.
- The school district will regularly share progress monitoring data with the DOE.
- The school district will permit the charter school they sponsor to participate in the Innovative Learning Model if the charter school governing board elects to do so.

Under the reopening plans, the school district was required to fully open their brick and mortar schools and the determination on whether a student would attend school in-person or remotely was up to the parents.<sup>150</sup> The reopening plans approved by the DOE typically provided parents the option to opt for in-person or remote learning for the entire semester or each grading period.<sup>151</sup>

### *Blended Learning Courses*

School district are authorized to provide courses that consist of both traditional in-person instruction and online instruction, known as blended learning courses.<sup>152</sup> The funding, performance, and accountability requirements for blended learning courses are the same as those for traditional courses.<sup>153</sup>

### Effect of Proposed Changes

The bill establishes the Innovative Blended Learning and Real-Time Student Assessment Pilot Program (Pilot Program) within the DOE. The Pilot Program builds on the work done by school district in responding to the COVID-19 pandemic and their existing innovative learning instruction. The Pilot Program is designed to evaluate the effectiveness of innovative learning and real-time weekly student assessment models and the ability of these models to improve educational progress of students and close achievement gaps for Florida's traditionally underserved students.

The bill defines "innovative blended learning" as the combining of in-person and remote students into a single class where instruction is provided simultaneously to both in-person and remote students. Students will learn in part through self-paced online content and in part traditional classroom instruction.

The bill provides that the Pilot Program will be open to high-performing charter schools, high-performing charter systems, and academically high-performing school districts. Such a program desiring to participate in the Pilot Program must submit an application that includes:

- A plan for the synchronous technological and resource design, curriculum, classroom operation, school or district management, privacy protection and teacher professional development, and at least weekly progress monitoring of real-time student performance in innovative blended learning programs.
- A plan to reduce achievement gaps through innovative blended learning.
- A requirement that distance learning will always be at the choosing of the student or the student's parent or guardian and that a family will never be coerced to choose distance learning.
- A requirement that a participating classroom may not be fully virtual such that at least two-thirds of the students in a class must be present for in-person learning on any regularly scheduled school day.
- A requirement that any struggling student who is participating in this program and who, according to progress monitoring data, is on pace to learn less than a year's content in a year's time must return to in-person learning.
- A requirement that any student can choose to switch learning modalities, in person or distance, on any given day, without notice and, therefore, a seat must always be available for every student registered to take any participating course.

<sup>150</sup> Florida Department of Education, Emergency Order 2020-EO-06 (July 6, 2020).

<sup>151</sup> See Florida Department of Education, *Approved K-12 District Re-Opening Plans*, <http://www.fldoe.org/em-response/> (last visited April 19, 2021).

<sup>152</sup> Section 1003.498, F.S.

<sup>153</sup> *Id.*

- A requirement that the applicant provide all requested student-level data from participating schools to the DOE upon request.

The bill authorizes the Commissioner to review and approve applications to participate in the Pilot Program. The Commissioner may remove an approved applicant from the Pilot Program if the applicant fails to meet the required elements set forth above.

Approved school district cannot begin approved innovative blended learning programs until October 1, 2021. The bill provides that funding will be provided to school districts for students participating in the innovative blended learning program as if they were being educated full-time in-person at their school, similar to the existing blended learning courses.

The bill provides that the Pilot Program ends July 1, 2024.

## B. SECTION DIRECTORY:

**Section 1.** Amends s. 1001.23, F.S., authorizing the Department of Education to hold patents, copyrights, trademarks, and service marks; authorizing the department to take specified actions to enforce its rights under certain circumstances.

**Section 2.** Creates s. 1002.334, F.S., establishing the Innovative Blended Learning and Real-Time Student Assessment Pilot Program within the department; providing the purpose of the program; defining the term "innovative blended learning"; specifying program eligibility; requiring program applicants to submit applications to the department in a format prescribed by the department; requiring program applications to include specified information; requiring applications to be considered only for synchronous innovative blended learning programs; requiring the Commissioner of Education to select applicants to participate in the program; providing a start date for the program; providing for funding; authorizing the commissioner to remove an approved applicant from the program under certain circumstances; providing for future expiration.

**Section 3.** Amends s. 1003.42, F.S., requiring character development curriculum for certain grades to include instruction on voting using a specified ballot.

**Section 4.** Amends s. 1003.4282, F.S., removing obsolete language; requiring certain students to take a specified assessment relating to civic literacy; providing that such assessment meets certain postsecondary requirements under specified circumstances; correcting a cross-reference to changes made by the act.

**Section 5.** Amends s. 1003.433, F.S., authorizing certain students to meet the grade 10 English Language Arts assessment requirements in a specified manner.

**Section 6.** Creates 1006.185, F.S., requiring certain athletic associations to create bylaws, policies, or procedures allowing opening remarks at specified events; providing requirements for such remarks; requiring certain announcements before such opening remarks; providing that opening remarks at specified events are at the discretion of each school.

**Section 7.** Amends s. 1007.25, F.S., requiring certain postsecondary students to complete a civic literacy course and pass a specified assessment to demonstrate competency in civic literacy; authorizing students to meet the assessment requirements in high school; providing for rulemaking; authorizing the development of new civic literacy courses; providing requirements for such courses.

**Section 8.** Amends s. 1008.212, F.S., conforming cross-references to changes made by the act.

**Section 9.** Amends s. 1008.22, F.S., revising the purpose of the assessment program; removing obsolete language; requiring certain assessments be given in a paper-based format; requiring school districts to provide the SAT or ACT to grade 11 students beginning in a specified school year; requiring school districts to choose which assessment to administer; deleting specified reporting requirements; deleting a requirement that the Commissioner of Education maintain a specified item bank; deleting

specified requirements for the date of the administration of specified assessments; revising a deadline for the publication of certain assessments.

**Section 10.** Amends s. 1008.24, F.S., revising the tests which are included under test administration and security rules.

**Section 11.** Amends s. 1008.34, F.S., conforming cross-reference to changes made by this act.

**Section 12.** Amends s. 1008.3415, F.S., conforming cross-reference to changes made by this act.

**Section 13.** Amends s. 1009.286, F.S., providing an additional exception to credit hours used when calculating baccalaureate degrees.

**Section 14.** Provides an effective date of July 1, 2021.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill authorizes the DOE to hold patents, copyrights, trademarks and service marks of various educational materials it develops. The DOE would then be allowed to receive proceeds from transactions to sell, lease, license or transfer such rights. Any proceeds from the exercise of these rights, except for educational materials and products, would be deposited in the DOE's Operating Trust Fund. The amount of revenue generated as a result of these transactions is indeterminate, but is likely de minimis.

#### 2. Expenditures:

The bill has a projected \$8,000,000 fiscal impact related to the provision of either the SAT or ACT for each student in grade 11. See Fiscal Comments.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

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

None.

### D. FISCAL COMMENTS:

The bill requires that, subject to an appropriation, school districts provide the ACT or SAT to all grade 11 students. As there are approximately 200,000 grade 11 students and the cost per test is roughly \$40, the bill has a projected \$8,000,000 fiscal impact.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires the SBE to adopt rules, and the BOG to adopt regulations, relating to the civic literacy assessment and course requirement. The bill requires the SBE to adopt in rule the level of achievement needed for a student to demonstrate grade-level expectations on formative assessments for purposes of satisfying the grade 10 ELA assessment graduation requirement.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 16, 2021, the Post-Secondary Education & Lifelong Learning Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment replaces the language “centers of the Department of Juvenile Justice” with “Department of Juvenile Justice education programs.”

On April 19, 2021, the Education & Employment Committee adopted four amendments and reported the bill favorably as a committee substitute. The amendments:

- Provide, beginning with the 2022-2023 school year, an eligible student enrolled in an ESOL program a pathway to receive a standard high school diploma by meeting the grade 10 ELA assessment requirement by satisfactorily demonstrating grade-level expectations based on formative assessment data.
- Require athletic associations, whose memberships include public schools, to adopt bylaws, policies, or procedures that provide schools participating in a high school championship contest or series, under the direction and supervision of the association, an opportunity to make brief opening remarks at the event.
- Require the character development curriculum required for grades 11 and 12 to include instruction on voting using the uniform primary and general election ballots adopted by the DOS.
- Establish the Pilot Program to assess the effectiveness of innovative blended learning where students may elect in-person or virtual instruction and learn in part through self-paced online instruction and in part through traditional classroom instruction. The Pilot Program ends on July 1, 2024.

The bill analysis is drafted to the committee substitute adopted by the Education & Employment Committee.