

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 985 Use of Federal Funding to Support Online Learning
SPONSOR(S): Early Learning & Elementary Education Subcommittee, Shoaf and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1016

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Early Learning & Elementary Education Subcommittee	16 Y, 0 N, As CS	Brink	Brink
2) PreK-12 Appropriations Subcommittee	12 Y, 0 N	Bailey	Potvin
3) Education & Employment Committee			

SUMMARY ANALYSIS

In response to the global emergency caused by the COVID-19 pandemic, Florida's public K-12 schools, through a series of emergency orders, federal relief funding, and agency guidance, pivoted to online and hybrid (i.e., meeting attendance requirements both through in-person and online learning) instructional delivery for the 2019-2020 and 2020-2021 school years. Federal relief funding relating to the pandemic, including funding authorized for the purchase of educational technology, to include computers and other electronic devices, and to expand Internet access for purposes of online learning, has been provided through three congressional acts for total educational relief funding of nearly \$11 billion to Florida school districts.

The bill requires the Florida Department of Education (DOE), by November 1, 2021, to publish on its website a report including the amount of federal relief funding and other funding, by source, used by each school district in the 2019-2020 and 2020-2021 school years to provide:

- Internet access and devices to students suitable for online learning and instructional continuity, pursuant to DOE emergency orders and federal relief funding plans; and
- learning management systems and other platform-based supports for in-person and online learning, as well as related professional development.

In addition, the report must include:

- the amount of unexpended federal relief funding, including the percentage as compared to total funding received, by source;
- the estimated number of students who do not have access to a device and who do not have Internet access suitable for online learning, by district; and
- barriers identified by school districts to providing students with adequate Internet access or devices for online learning.

In the report, the DOE must identify programming, initiatives, and strategies that were effective in providing Internet access and devices to students and support innovative instructional practices. The report must provide recommendations, in consultation with the Office of Broadband, for appropriating remaining federal relief funding to close the digital divide for students, consistent with best practices and geographical need.

The bill has no fiscal impact.

The bill takes effect July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Response to COVID-19 Emergency

In response to the global emergency caused by the COVID-19 pandemic, Governor Ron DeSantis declared a state of emergency on March 9, 2020.¹ Under the authority of the emergency order and an ancillary order issued by the Florida Division of Emergency Management,² the Florida Department of Education (DOE) issued an emergency order that, among other things, provided school districts discretion in opening school campuses, consistent with Centers for Disease Control guidelines.³ Under this order and subsequent Governor's emergency orders and DOE guidance,⁴ public education in the state pivoted to a distance-based system of instruction, closing campuses through the end of the 2019-2020 school year.⁵

To assist states dealing with economic distress, health care crises, and interruptions to educational delivery, Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act,⁶ which provides financial assistance to mitigate and reverse harm caused by the pandemic and emergency responses thereto. Part of the CARES Act includes two substantial emergency relief grant programs, the Elementary and Secondary Schools Emergency Relief (ESSER) fund, and the Governor's Emergency Education Relief (GEER) fund, to provide funding to state and local educational agencies (i.e., state departments of education, local school districts, and other local educational governing entities) for authorized supports. Florida received over \$770 million under ESSER and \$173 million under GEER.⁷

In June of 2020, the DOE established a school reopening plan to provide supports for the state's educational systems, using ESSER and GEER dollars.⁸ Under the plan, over \$693 million of ESSER funds is distributed directly to school districts and other local educational agencies, conditioned upon assurances that the funding would be used in accordance with federal guidelines for, among other things, allowable activities, equitable services, and data reporting.⁹ Allowable activities included purchasing educational technology, including hardware, software, and Internet connectivity, to assist with instruction, including for low-income students and students with disabilities.¹⁰ Districts were required to submit instructional continuity plans to detail how the funds would be used to implement best practices for instruction, including planning for both online and in-person instruction as necessary

¹ Office of the Governor, *Emergency Order No. 20-52* (March 23, 2020), available at https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-52.pdf.

² Florida Division of Emergency Management, *DEM Order No. 20-004* (Mar. 13, 2020), available at <https://www.flgov.com/wp-content/uploads/covid19/DEM%20ORDER%20NO.%2020-004.pdf>.

³ Florida Department of Education, *Emergency Order No. 2020-EO-01* (March 23, 2020), at 3-4, available at <http://www.fldoe.org/core/fileparse.php/19861/urlt/DOEORDERNO2020-EO-01.pdf>.

⁴ Office of the Governor, *Emergency Order No. 20-91* (Apr. 1, 2020), available at https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-91-compressed.pdf; Florida Department of Education, *Florida Extends School Campus Closures Through May 1*, <http://www.fldoe.org/newsroom/latest-news/florida-extends-school-campus-closures-through-may-1.shtml> (last visited Mar. 31, 2021).

⁵ Leslie Portal, *Corcoran praises Florida schools for quick move to online learning during coronavirus crisis*, Orlando Sentinel (Apr. 1, 2020), available at <https://www.orlandosentinel.com/coronavirus/os-ne-coronavirus-online-education-virtual-school-20200401-bje4otfyjzdstbochddzjdakba-story.html>.

⁶ See Pub. L. No. 116-136 (Mar. 27, 2020).

⁷ Florida Department of Education, *Coronavirus Aid, Relief, and Economic Security (CARES) Act Webinar* (June 12, 2020), available at <http://www.fldoe.org/core/fileparse.php/19861/urlt/ESSERGEERWebinar.pdf> [hereinafter referred to as CARES Act Webinar].

⁸ Florida Department of Education, *Reopening Florida's Schools and the CARES Act* (June 2020), available at <https://www.fldoe.org/core/fileparse.php/19861/urlt/FLDOEReopeningCARESAct.pdf> [hereinafter referred to as Reopening Florida's Schools].

⁹ See CARES Act Webinar, *supra* note 8, at 14-15.

¹⁰ See CARES Act Webinar, *supra* note 8, at 23.

to maintain safe learning conditions during the pandemic.¹¹ \$8,000,000 in ESSER funds was retained by the DOE to support implementation of instructional continuity plans.¹² The DOE encouraged school districts to facilitate instructional continuity through learning management systems.¹³

On July 6, 2020, the DOE issued an emergency order for the safe reopening of schools for the 2020-2021 school year.¹⁴ The order required that schools reopen brick and mortar campuses in August, while providing parents the option of online learning through virtual instruction or innovative hybrid learning modalities that could involve learning at home or at school, while maintaining per-student funding levels for school districts.¹⁵ Districts were required to submit reopening plans by July 31, 2020, in order to receive flexibility in meeting statutory requirements relating to instructional hours through hybrid learning models.¹⁶

At the beginning of the 2020-2021 school year, it is estimated that 41 percent of K-12 students attended schools in person, with 55 percent attending through a hybrid option, and nearly 4 percent of students attending virtual instruction options. It is estimated that, as of February 2021, approximately 80 percent of students were attending in person, including students who were reported as enrolled using a hybrid option.¹⁷

As the beginning of the school year approached, school districts worked to provide devices and adequate Internet access to students who would be participating in classroom instruction remotely.¹⁸ To help keep students connected to participate in remote learning, some private internet services providers (ISPs) offered new low or no-cost initiatives.¹⁹ One ISP expanded the eligibility criteria for their low-cost service plans to include households participating in the National School Lunch Program²⁰ and Head Start,²¹ in addition to the previously eligible Supplement Nutrition Assistance Program²²

¹¹ See Reopening Florida's Schools, *supra* note 9, at 75-78.

¹² Reopening Florida's Schools, *supra* note 9, at 93. See Florida Department of Education, *Instructional Continuity Plan Request for Application* Feb. 16, 2021), available at <http://www.fldoe.org/core/fileparse.php/19861/urlt/ICPRFASlideDeck.pdf>.

¹³ Florida Department of Education, *Best Practices for Distance Learning*, <http://www.fldoe.org/em-response/distance-learning.stml> (last visited Mar. 31, 2021). A learning management system, e.g., CANVAS or Blackboard, is a software application used to organize and distribute online learning materials, assignments, and assessments; provide grades; and facilitate communication among students and teachers. See Dictionary.com, *Learning Management System*, <https://www.dictionary.com/browse/learning-management-system?s=t> (last visited Mar. 31, 2021).

¹⁴ Florida Department of Education, *Emergency Order 20-06* (July 6, 2020), available at <http://www.fldoe.org/core/fileparse.php/19861/urlt/DOE-2020-EO-06.pdf> [hereinafter referred to as DOE EO-20-06].

¹⁵ See *id.* at 2, 6.

¹⁶ See DOE EO-20-06 at 5-6; see also Florida Department of Education *Coronavirus (COVID-12)*, <http://www.fldoe.org/em-response/index.stml> (last visited Mar. 31, 2021).

¹⁷ Email, Bethany Swonson, Deputy Chief of Staff, Florida Department of Education, Re: PCS for HB 985, Mar. 31, 2021.

¹⁸ See, e.g., Emily Wunderlich, *Sarasota and Manatee districts take stock of remote learning devices ahead of first day of school*, Herald-Tribune, Aug. 13, 2020, available at <https://www.heraldtribune.com/story/news/education/2020/08/13/sarasota-manatee-schools-take-stock-remote-learning-devices/3344323001/>; C.D. Davidson-Hiers, *'Bring your own device': Chromebooks will not arrive for Leon County School' first day*, Aug. 12, 2020, available at <https://www.tallahassee.com/story/news/2020/08/12/bring-your-own-device-lcs-chromebooks-wont-arrive-start-school/3351362001/>; Avery Anderson, *Millions of Americans don't have internet, now they need it to go back to school*, Tampa Bay 10, July 29, 2020, available at <https://www.wtsp.com/article/entertainment/television/brightside/what-tampa-bay-schools-are-doing-to-fight-the-digital-divide/67-a968126e-9b03-4699-b1c0-8c64562520b9>.

¹⁹ Florida Department of Education, *Free Resources for Families & Teachers*, <http://www.fldoe.org/em-response/resources-families.stml#generalinternet> (last visited March 31, 2021).

²⁰ The National School Lunch Program (NSLP) is a federally assisted meal program operating in public and nonprofit private schools and residential child care institutions. It provides nutritionally balanced, low-cost or free lunches to children each school day. The program was established under the National School Lunch Act. United States Department of Agriculture, *National School Lunch Program*, <https://www.fns.usda.gov/nslp> (last visited March 31, 2021).

²¹ Head Start programs promote the school readiness of infants, toddlers, and preschool-aged children from low-income families. Services are provided in a variety of settings including centers, family child care, and children's own home. Head Start programs also engage parents or other key family members in positive relationships, with a focus on family wellbeing. United States Department of Health and Human Services, *Head Start Services*, <https://www.acf.hhs.gov/ohs/about/head-start> (last visited March 31, 2021).

²² The Supplemental Nutrition Assistance Program (SNAP) provides nutrition benefits to supplement the food budget of needy families so they can purchase healthy food and move towards self-sufficiency. United States Department of Agriculture, *Supplemental*

participants.²³ Additionally, this ISP increased the connection speeds offered through this program, where the additional bandwidth was available, and provided an initial period of service at no cost.²⁴ Another ISP opened its national network of WiFi hotspots to the public for the duration of the pandemic and will not be charging late fees for those individual unable to pay their bills due to impact of COVID-19.²⁵

Additional federal relief funding has been provided by Congress for continued economic relief in response to the pandemic, including additional funding to support educational systems. The Coronavirus Response and Relief Supplemental Appropriations Act, or “CARES II”,²⁶ allocates over \$2.8 billion for direct support to Florida school districts.²⁷ The American Rescue Plan Act of 2021, or “CARES III”, provides Florida another \$7 billion in educational supports. Both programs authorize the use of funds to provide technology for students to assist with online learning, similar to authorized expenditures under the original CARES Act.²⁸ Together, nearly \$11 billion in federal relief funding has been provided for Florida school districts since 2020, not including grant programs under ESSER and GEER.²⁹

Office of Broadband

In 2009, the Legislature authorized the Department of Management Services (DMS) to work collaboratively with Enterprise Florida, state agencies, local governments, private businesses, and community organizations to:

- assess the needs for broadband Internet service and develop data and maps that provide a baseline assessment of the availability and speed of broadband service throughout Florida;
- create a strategic plan to increase use of broadband Internet service in Florida;
- build local technology planning teams representing, among others, libraries, schools, colleges and universities, local health care providers, private businesses, community organizations, economic development organizations, local governments, tourism, parks and recreation, and agriculture; and
- encourage the use of broadband Internet service, especially in rural, unserved, and underserved areas of the state through grant programs.

In 2020, the Legislature passed CS/HB 969,³⁰ designating the Department of Economic Opportunity (DEO), rather than the DMS, as the lead state agency to facilitate the expansion of broadband Internet service in the state. The bill created the Office of Broadband within DEO’s Division of Community Development for purposes of developing, marketing, and promoting broadband Internet service, and generally transferred responsibility for meeting the requirements previously imposed on the DMS to the new office. Specifically, the Office must:

- create a strategic plan for increasing the use of broadband Internet service in the state which must include a process to review and verify public input regarding transmission speeds and availability of broadband Internet service throughout the state;

Nutrition Assistance Program (SNAP), <https://www.fns.usda.gov/snap/supplemental-nutrition-assistance-program> (last visited March 31, 2021).

²³ Florida Department of Education, *Free Resources for Families & Teachers*, <http://www.fldoe.org/em-response/resources-families.shtml#generalinternet> (last visited March 31, 2021).

²⁴ *Id.*

²⁵ *Id.*

²⁶ Pub. L. 116-260 (Dec. 27, 2020).

²⁷ National Conference of State Legislatures, *Elementary and Secondary School Emergency Relief Fund Tracker*, <https://www.ncsl.org/ncsl-in-dc/standing-committees/education/cares-act-elementary-and-secondary-school-emergency-relief-fund-tracker.aspx>

²⁸ See United States Department of Education, Office of Elementary and Secondary Education, *Fact Sheet Elementary and Secondary School Emergency Relief Fund II Coronavirus Response and Relief Supplemental Appropriations Act, 2021* (Jan. 2021), available at https://oese.ed.gov/files/2021/01/Final_ESSERII_Factsheet_1.5.21.pdf; United States Department of Education, Office of Elementary and Secondary Education, *U.S. Department of Education Fact Sheet American Rescue Plan Act of 2021 Elementary and Secondary School Emergency Relief Fund (ARP ESSER)* (Mar. 2021), available at https://oese.ed.gov/files/2021/03/FINAL_ARP-ESSER-FACT-SHEET.pdf.

²⁹ Email, Florida House of Representatives Appropriations Staff, Re: CARES I, II, and III Spending, Mar. 31, 2021.

³⁰ Ch. 2020-26, L.O.F.

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- build local technology planning teams representing, among others, libraries, schools, colleges and universities, local health care providers, private businesses, community organizations, economic development organizations, local governments, tourism, parks and recreation, and agriculture;
- encourage the use of broadband Internet service, especially in rural, unserved, and underserved³¹ areas of the state through grant programs; and
- monitor, participate in, and provide input in proceedings of the Federal Communications Commission and other federal agencies related to the geographic availability and deployment of broadband Internet service as necessary to ensure that Florida’s rural, unserved, and underserved areas are best positioned to benefit from federal and state broadband deployment programs.³²

Effect of Proposed Changes

The bill requires the DOE, by November 1, 2021, to publish on its website a report containing information relating to the delivery of online instruction. The report must include the amount of federal relief funding and other funding, by source, used by each school district in the 2019-2020 and 2020-2021 school years to provide:

- Internet access and devices to students suitable for online learning and instructional continuity, pursuant to DOE emergency orders and federal relief funding plans; and
- learning management systems and other platform-based supports for in-person and online learning, as well as related professional development.

In addition, the report must include:

- the amount of unexpended federal relief funding, including the percentage as compared to total funding received, by source;
- the estimated number of students who do not have access to a device and who do not have Internet access suitable for online learning, by district; and
- barriers identified by school districts to providing students with adequate Internet access or devices for online learning.

In the report, the DOE must identify programming, initiatives, and strategies that were effective in providing Internet access and devices to students and supporting innovative instructional practices. The report must provide recommendations, in consultation with the Office of Broadband, for appropriating remaining federal relief funding to close the digital divide for students, consistent with best practices and geographical need.

The bill takes effect July 1, 2021.

B. SECTION DIRECTORY:

Section 1. Requires the Department of Education to publish a report on its website by a specified date; provides requirements for the report; requires the department, in consultation with the Office of Broadband, to make certain recommendations.

Section 2. Provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

³¹ Section 364.0135(2)(d), F.S., defines the term “underserved” to mean a geographic area of this state in which there is no provider of broadband Internet service that offers a connection to the Internet with a capacity for transmission at a consistent speed of at least 10 Mbps downstream and at least 1 Mbps upstream

³² Section 364.0135(4), F.S.

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 1, 2021, the Early Learning and Elementary Education Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS removes provisions from the underlying bill that require each school district to annually submit a digital learning plan to the DOE and require the DOE to enter into a state term contract for the purchase of digital devices. Instead, the PCS requires the DOE to publish a report on its website by November 1, 2021, detailing how federal relief funds have been used to provide K-12 students access to devices and Internet access suitable for online learning. The PCS also requires the DOE to consult with the Office of Broadband to recommend how remaining relief funds should be appropriated to address the digital divide for low income students.