

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

EDUCATION PRE-K - 12
Senator Wise, Chair
Senator Bullard, Vice Chair

MEETING DATE: Wednesday, March 23, 2011
TIME: 1:00 —3:00 p.m.
PLACE: 301 Senate Office Building

MEMBERS: Senator Wise, Chair; Senator Bullard, Vice Chair; Senators Alexander, Benacquisto, and Montford

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
<p>A proposed committee substitute for the following bill (SB 1546) is expected to be considered:</p>			
1	SB 1546 Thrasher	Charter Schools; Revises provisions relating to the sponsoring entities of charter schools. Authorizes state universities and colleges to approve charter school applications and develop charter schools under certain circumstances. Creates the Charter School Review and Appeals Panel. Provides for the designation of charter schools as high-performing if certain requirements are met. Creates the College-Preparatory Boarding Academy Pilot Program for dependent or at-risk students, etc.	ED 03/23/2011 HE BC
2	SB 1844 Gaetz (Compare H 1255, S 1696)	Career and Professional Academies; Revises provisions relating to the Florida Career and Professional Education Act. Replaces references to local workforce boards with regional workforce boards. Requires that economic development agencies collaborate with each district school board, regional workforce boards, and postsecondary institutions to develop a strategic 5-year plan that addresses local and regional workforce demands. Requires that the strategic plan include access to courses offered through virtual education providers and a review of career and professional academy course, etc.	ED 03/23/2011 BC

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Education Pre-K - 12

Wednesday, March 23, 2011, 1:00 —3:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	SB 1124 Montford (Similar H 109)	Public School Buses; Provides for district school board policies that authorize commercial advertisements on school buses. Provides policy requirements relating to reimbursement to the school district, prohibited advertisements, and signage and equipment standards. Requires a school bus to be withdrawn from use under certain circumstances. Provides school district indemnification from liability. Provides for the remittance and allocation of revenue.	
		ED 03/23/2011 TR BC	
4	SB 1822 Benacquisto (Similar H 1331)	School Choice; Revises legislative intent and eligibility requirements for participation in the Opportunity Scholarship Program. Deletes provisions that authorize an opportunity scholarship for attendance at a private school. Requires that an opportunity scholarship remain in force until the student graduates from high school. Revises school district obligations and deletes provisions relating to private schools to conform to changes made by the act. Deletes an obsolete provision relating to the John M. McKay Scholarships for Students with Disabilities Program, etc.	
		ED 03/23/2011 BC	

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Education Pre-K - 12 Committee

BILL: SB 1546

INTRODUCER: Senator Thrasher

SUBJECT: Charter Schools

DATE: March 21, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Matthews	ED	Pre-meeting
2.	_____	_____	HE	_____
3.	_____	_____	BEA	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Authority is expanded for state universities and state colleges to approve charter schools. University- and community college-approved charter schools, other than lab schools, would enter into charter contracts with the local school district. This bill also increases grade levels available to community colleges to develop charter schools with school districts, from secondary schools, to kindergarten through grade 12 programs.

The Charter School Appeal Commission and the Charter School Review Panel are abolished, and a substitute appeal process is provided through the creation of the Charter School Review and Appeals Panel (Panel). As in current law, the State Board of Education (Board) decision to approve or deny an application is not subject to the administrative process and represents final action, with judicial review in the district court of appeal. The process for charter school non-renewals and terminations, however, adds administrative review, at the option of the school, which would then result in a final order issued by the sponsor and subject to judicial review.

This bill establishes the designation of “high performing charter schools”, provides qualifications and outlines benefits. High performing charter school systems are also created.

Greater flexibility for charter schools-in-the-workplace is provided.

The bill removes the requirement of a charter school to provide transportation for its students.

This bill establishes the College Preparatory Boarding Academy Pilot Program to serve at-risk students.

OPPAGA is required to compare charter school with traditional school funding, and recommend improvements to accountability and equity.

This bill substantially amends sections 163.3180, 196.1983, 1002.32, 1002.33, 1002.34, 1002.345, 1011.68, 1012.32, and 1013.62 of the Florida Statutes. The bill creates one undesignated section of law.

II. Present Situation:

Approved Sponsors of Charter Schools

Local school districts may approve and sponsor charter schools and universities may sponsor charter lab schools.¹ However, current law limits the number of charter lab schools eligible for state funding that may be authorized to one per university, except for certain charter lab schools authorized prior to June 1, 2003.² Additionally, community colleges may work with local school districts to develop charter schools but are limited to approval of secondary programs.³

Process for Appeal of Application Denials and Nonrenewal or Termination of a Charter

No later than 30 calendar days after receipt of a denial, the applicant may appeal the decision to the State Board of Education (Board), with notice to the sponsor. Upon receipt of notice of the appeal from the Board, the Commissioner of Education (COE) is required to convene a meeting of the Charter School Appeal Commission to make recommendations to the Board about the appeal. The Board must decide no more than 90 calendar days after the appeal is filed, and the sponsor is bound by the decision. The Board's decision is not subject to the ch. 120, F.S., administrative process, and represents, instead, final action, subject to judicial review in the appropriate district court of appeal.⁴

Besides issuing recommendations in applicant appeal cases, the Charter School Appeal Commission assists the COE and the Board in non-renewal and termination cases.⁵ In addition to other grounds, a sponsor may non-renew, or terminate a charter for failure to meet generally accepted standards of fiscal management.⁶ At least 90 days before renewing or terminating a charter, the sponsor must provide written notification and notice that the school may request an informal hearing, to be held by the sponsor within 30 days of request receipt. The applicant is authorized to then follow the appellate process established for denials of new applicants.

Charter School Training

The Department of Education (DOE) is required to offer or arrange for training and technical assistance to charter school applicants in business development, expenses and income. Charter school applicants are required to participate in training, either at the DOE or through a qualifying sponsor program.⁷

¹ s. 1002.33(5), F.S.

² s. 1002.32(2), F.S. The previously authorized charter schools are Florida State University Charter Lab K-12 School in Broward County, Florida Atlantic University (FAU) Charter Lab 9-12 High School in Palm Beach County, and FAU Charter Lab K-12 School in St. Lucie County.

³ s. 1002.33(5)(b)4., F.S.

⁴ s. 1002.33(6)(c), F.S.

⁵ s. 1002.33(6)(e), F.S.

⁶ s. 1002.33(8)(a)2., F.S.

⁷ s. 1002.33(6)(f)2., F.S.

Term of Operation for Charter Schools

The initial term of a charter is 4 to 5 years. Charter schools operated by a municipality, charter lab schools, and charters operating under a private not-for-profit s. 501(c)(3) corporation are eligible for an initial term of up to 15 years.⁸

Charter School Review Panel

The DOE staffs and convenes a Charter School Review Panel to review charter school issues, practices and policies, for the purpose of making recommendations to the Legislature, the DOE, charter schools and school districts for improving operations and oversight.⁹

III. Effect of Proposed Changes:**Additional Authorizers of Charter Schools**

This bill authorizes state universities and state colleges to approve charter schools that are not lab schools. University- and community college-approved charter schools, other than lab schools, must enter into a charter contract with the local school district. However, the bill does not explicitly repeal the cap in s. 1002.32(2), F.S. Accordingly, it is unclear whether the additional schools authorized by a state university would be eligible for state funding. Additionally, it is unclear who the sponsor of a charter school is in the situation when the university or state college approves the charter school.

The bill limits the authority of community colleges that may authorize additional charter schools to state colleges. It is unclear why community colleges should not also have the same authority to approve new charter schools as a state college.

This bill expands authority granted to community colleges to develop charter schools with school districts from secondary schools to students from kindergarten through grade 12. While the original restriction in law may have been designed to prevent community college mission creep, the bill contemplates that community colleges could run effective K-12 charter schools.

The Charter School Review and Appeals Panel (Panel)

The bill abolishes the Charter School Appeal Commission and the Charter School Review Panel and creates an entity that merges the functions of the two entities. The new Charter School Review and Appeals Panel (Panel) is established to make recommendations on appeals from charter schools applicants. Additionally, the Panel would hear appeals of a sponsor's decision to terminate or non-renew an existing charter. The recommendation of the Panel is not binding on the State Board of Education (Board). The Board's decision is not subject to chapter 120, F.S., and represents final action, with judicial review in the appropriate district court of appeal.

The Panel membership is revised to consist of member-appointments by the Senate President, House Speaker, Governor and the Commissioner of Education (COE) (in contrast to the existing structure of the Appeal Commission, which is appointed by the COE.)

⁸ s. 1002.33(7)(a)12., F.S.

⁹ s. 1002.33(22), F.S.

This bill adds administrative hearings, and ch. 120, F.S., process, to the non-renewals and termination process, at the charter school governing body's request. If requested, an administrative law judge will issue a recommended order, and the sponsor shall issue a final order. The order is then appealable to the appropriate district court of appeal. As in current law, the sponsor must assume operation of the school following an immediate termination of the charter. However, the bill adds that the sponsor is not obligated to assume operation of the school if the continued operation of the school would materially threaten the physical health, safety, or welfare of the students. Conversely, the bill authorizes attorney's fees and costs to the charter school if the sponsor fails to assume operation of the school and the charter school prevails on appeal.

High Performing Charter Schools and High Performing Charter School Systems

This bill establishes the designation of "high performing charter schools" provided that the following minimum standards exist and are maintained:

- For the last three years the school received an "A" or "B" school grade, received an unqualified opinion on each financial audit, and did not receive a financial audit that revealed a condition warranting a determination of financial emergency, except for charter schools-in-the-workplace, if the audit finds that money is available to cover the deficiency or it does not result in a deteriorating financial condition; and
- The school has operated for less than three years as part of a high performing charter school system. These schools are eligible for capital outlay funds in their first year without having to comply with statutory requirements operating and being governed by a board in-state at least three years, holding SACs accreditation, having financial stability, and other factors. Additionally, it appears that these schools would have immediate high-performing status.

Benefits available to high performing charter schools include flexibility to annually increase student enrollment by up to 25 percent above the authorized cap, add grade levels, offer voluntary prekindergarten, and be eligible for 15-year renewals. The initial term of other types of charters is fixed at five years. The bill does not reference the statutory requirement that charter school meet the class size requirements at the school level.¹⁰

Other benefits to high-performing schools are that they have to comply with training once and submit quarterly financial statements rather than the current monthly filing requirements for charter schools.

This bill establishes "high-performing charter school system" with the following attributes:

- Operates at least three high-performing charter schools in the state;
- Has received, among schools, a minimum average "B" grade during the last three years for all schools started by the system;
- Has not had a school with financial emergency status; and

¹⁰ s. 1002.33(16)(b)3., F.S.

- Has not had a school with an “F” grade for the last two years for any school that the system started.

While under the designation of a high-performing charter school system, the system is authorized to create new charter schools in any district in the state which substantially replicates one or more of the provider’s existing high-performing schools. A local school district is limited in its ability to deny these applications only if good cause is shown that the operator failed to meet specific statutory requirements, which are that it be nonsectarian; admit students under general statutory eligibility requirements; be accountable to its sponsor for performance; not charge tuition or fees; and comply with health, safety, civil rights law and antidiscrimination provisions. Financial conditions are not addressed. Initial charters run for a term of 15 years, with the first three years constituting the status of high-performing. This status makes the school immediately eligible for capital outlay funding.

It may be challenging for local school boards, the Department of Education and the Auditor General to keep pace with the changing status of a school or system that becomes high-performing and loses that status, regarding the accompanying change in requirements. For example, it is unclear what would happen to projects partially started with capital outlay funding for a new school that loses high-performing status in its first three years of operation. This is also the case for schools that don’t start as high-performing but accrue that status.

Other Charter Provisions

This bill expands enrollment preference for students associated with certain charter schools. Specifically, employees of a business partner or residents of a municipality for a charter school-in-the-workplace and residents of a municipality that operate a charter school-in-a-municipality

This bill expands the current prohibition on requiring resignations from teachers desiring to teach in charter schools to instructional personnel, school administrators and educational support employees. Sponsors are prohibited from requiring charter school governing board members to reside in the district, and must allow management to represent the charter school on the governing board if approved pursuant to the school’s governing documents.

This bill provides greater flexibility for formation of charter schools-in-the-workplace.

Regarding concurrency, this bill specifies that charter school facilities are exempt from all concurrency and other impact fees. Developers who donate land or other facilities are eligible for impact fee and concurrency credits.

This bill requires sponsors to provide transportation and lunch services to charter schools at-cost. Charter schools may not be required to provide transportation for students who live more than 4 miles away and would no longer be required to provide transportation in some circumstances. This provision may represent an indeterminate fiscal savings to charter schools but may have an effect on charter school enrollment by students with free or reduced price lunch status.

College Preparatory Boarding Academy Program

This bill establishes the College Preparatory Boarding Academy Pilot Program, a private nonprofit, to serve at-risk students through a residential remedial curriculum for middle through

high school students. Eligible students are students in the 5th or 6th grade, with family income at less than 200 percent of federal poverty guidelines, and have two of the following:

- A record of suspensions, office referrals, or chronic truancy;
- Referrals for academic intervention or a failure to achieve a proficient score on state assessments;
- The student's parent is a single parent;
- The student does not live with the custodial parent;
- The student received a referral from a school, teacher, counselor, dependency court circuit judge, or community-based care organization;
- The student's family receives a housing voucher or is public housing assistance-eligible;
- A member of the student's immediate family has been incarcerated;
- The student has been adjudicated dependent; or
- The student meets additional criteria established by the State Board of Education and the program operator.

The State Board of Education selects the private operator in consideration of the following:

- The entity will receive a public charter school for grades 6 through 12 or has a partnership with a sponsor to offer a school;
- The entity has success in operating a similar school; and
- The entity has the ability to finance and secure private funds for campus development.

This bill outlines the process for State Board of Education approval and contract terms and limitations, including an initial approved capacity of 80 students with a final cap of 400 students. Medicaid is authorized.

Office of Program Policy Analysis and Government Accountability (OPPAGA)

OPPAGA is required to conduct a study that compares charter school, with traditional public school, funding, with specific focus on capital improvement millage and the five percent administrative fee, and contains recommendations for improving accountability and equity.

It is unclear how FTEs will be accounted for regarding students who intend to enroll in charter schools out-of-district.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The provisions that authorize high-performing charter systems to replicate charter schools in school districts under a more limited good cause rebuttal, along with the provision that requires the State Board of Education to impose a model contract on a school district and charter school that fail to agree on a contract, may be challenged under Article IX, section 4 of the state constitution, which provides for district school boards to operate, control and supervise all public schools in the district. The 2006 Florida Legislature established the Florida Schools of Excellence Commission (Commission) as a state-level, independent entity with the purpose of authorizing, or denying, charter school applications.¹¹ The First District Court of Appeal struck down the provision which created the Commission as facially unconstitutional.¹² In so doing, the court ruled it violative of the school district's constitutional domain over the operation, control and supervision of all schools within the district.¹³

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Charter schools and charter operators designated as high-performing may enjoy a competitive advantage over those that are not due to their performance. Schools that are newly opened under the auspices of a high-performing charter school system will benefit from immediate capital outlay funding, rather than others that are required to wait three years.

The transportation revisions could have an effect on charter school enrollments.

C. Government Sector Impact:

The creation of the College-Preparatory Boarding Academy Pilot Program may have a fiscal effect, as the academy would be part of the state's public funding program. The impact is indeterminate at this time. The academy would admit students beginning in August 2012, with an initial enrollment of 80 students. The academy would grow up to a maximum capacity of 400 students. Proponents of the academy indicate that there would not be a fiscal impact in 2011-2012, an anticipated fiscal of approximately \$2 million, and \$10 million recurring in future years.¹⁴ Academy proponents have identified federal

¹¹ ch. 2006-302, L.O.F.; s. 1002.335, F.S.

¹² *Duval County School Board v State Board of Education*, 998 So.2d 641 (1st DCA 2008).

¹³ *Id.* at 643.

¹⁴ Email correspondence from Don Winstead, on March 21, 2011, on file with the committee.

funds such as Temporary Assistance for Needy Families (TANF), Social Services Block Grant (SSBG), and other social services funds to meet the fiscal needs.

The requirement for sponsors to provide student transportation and lunches at-cost, if requested, may adversely impact district school board sponsors who currently charge a fee for these services.

The transportation revisions could have a positive fiscal impact on charter schools.

VI. Technical Deficiencies:

While merging the Charter School Appeal Commission and Charter School Review Panel functions into the new Charter School Review and Appeals Panel (Panel), the bill inadvertently retains references to the Commissioner's role in convening the Panel, has duplicative efforts in providing notice of the Panel's recommendation to the State Board of Education, and other technical glitches.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Education Pre-K - 12 (Benacquisto) recommended the following:

Senate Amendment

Delete lines 441 - 444
and insert:
currently operating within the school district. Students who complete a middle school career and

Delete lines 529 - 545
and insert:
a. As valid data becomes available, the participation of the school's students in career and professional academies under s. 1003.4935;

b. As valid data becomes available, the students'



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13 attainment of national industry certification identified in the
14 Industry Certification Funding List pursuant to rules adopted by
15 the State Board of Education;

16 c. As valid data becomes available, the performance of the
17 school's students on statewide standardized end-of-course
18 assessments administered under s. 1008.22(3)(c)2.b. and c.; and

19 d. The growth or decline in the components listed in sub-
20 subparagraphs a.-c. from year to year.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Education Pre-K - 12 Committee

BILL: SB 1844
INTRODUCER: Senator Gaetz
SUBJECT: Middle School Career Academies
DATE: March 16, 2011 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carrouth	Matthews	ED	Pre-meeting
2.	_____	_____	BC	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill would expand the career and professional academy model (CAPE) established in 2007¹ by creating opportunities for middle school students to participate and earn rigorous industry certifications through a similar model in grades 6 through 8.

The bill provides incentives to implement career academies through coursework that integrates career-related content. The middle school grading formula would be revised to include attainment of identified industry certifications, student award of high school credits, and the success of the middle school in advancing struggling students to complete coursework and recover credits.

The bill creates a process for establishing a range of weighted funding values for industry certifications based upon the level of rigor associated with the certification, workforce demand for the occupational area, and entry-level earnings linked to the certification.

This bill substantially amends sections 1003.491, 1003.492, 1003.493, 1008.34, 1011.62, and 1012.39 and creates section 1003.4935 of the Florida Statutes.

II. Present Situation:

The Career and Professional Education (CAPE) Act was enacted by the Florida Legislature to attract and retain targeted, high-value industries and to develop a knowledge-based workforce.²

¹ ch. 2007-216, L.O.F., codified in ss. 1003.491-1003.493, F.S., and s. 1011.62(1)(p), F.S.

² *Id.*

The legislation has established significant partnerships among workforce and economic development agencies and local education communities and resulted in meaningful career and postsecondary opportunities for Florida's secondary students.³ Current law requires each district school board to develop, in collaboration with the local workforce board and the area postsecondary institutions, a five-year strategic plan to address and meet local and regional workforce demands.⁴ A focus of the plan was the requirement for at least one operational career and professional academy per school district beginning with the 2008-09 school year.⁵ As specified in statute, career and professional academies must integrate a rigorous academic curriculum with an industry-specific curriculum that leads to an industry certification⁶ in high-skill, high-wage, and high-demand occupations.⁷ Additional requirements of the act include opportunities for students to earn nationally recognized industry certifications, postsecondary credit and Bright Futures scholarships, and expanded offerings of integrated courses that combine academic content with technical skills.

For each student enrolled in a career and professional academy who graduates with a standard high school diploma and who earns a certification included on the "Industry Certification Funding List," the district of instruction may earn 0.3 full-time equivalent (FTE) student membership for the following year's funding calculation in the Florida Education Finance Program (FEFP).⁸ In 2009-10, 1,237 students generated 371.1 additional FTE in the K-12 funding formula. Because the funding is awarded retroactively, the data reported for 2008-09 is used for the 2009-10 FEFP calculation.

Profile of Career and Professional Academies

In the 2009-10 academic year, 838 career and professional academies were registered in Florida high schools, and 806 (96.2 percent) of these academies reported student enrollments in 2009-10.⁹

³ Presentation by the Department of Education, Okaloosa County School District, and St. John's County School District to the Senate Pre-K – 12 Appropriations Committee on March 15th, 2011. The superintendent of schools in St. Johns County testified that the CAPE model is the most important and effective legislation of his 24-year career. Available at <http://www.flsenate.gov/Committees/Show/BEA/>.

⁴ s. 1003.491(2), F.S.

⁵Section 1003.492(2), F.S., requires the DOE to adopt rules for implementing an industry certification process. Rule 6A-6.0573, F.A.C., provides for a collaborative two-staged process by Workforce Florida Inc. (WFI), and DOE to annually establish the Industry Certification Funding List, a subset of items included on the WFI Comprehensive Industry Certification List.

⁶ Industry certifications are based on assessment of skills by an independent, third-party certifying entity using predetermined standards for knowledge, skills and competencies. Successful completion of the assessment results in the award of a time-limited credential that is nationally recognized and applicable to an occupation included in the workforce system's targeted occupation list or otherwise determined to be an occupation that is critical, emerging or addresses a local need. See the *CAPE Enrollment and Performance Report for 2009-2010*, pg. 3, on file with the committee.

⁷ s. 1003.493(4), F.S.

⁸ Section 1011.62(1)(p), F.S. Certifications earned through dual enrollment are not eligible for additional FTE. The additional FTE may not exceed 0.3 per student (i.e., no repeat allocations for additional certifications).

⁹ All of Florida's 67 school districts registered at least one career and professional academy with the DOE.

2008-09 Academies Registered	2009-10 Academies Registered	2008-09 CAPE Academy Enrollment	2009-10 CAPE Academy Enrollment
490	838	53,324	102,430

The most prevalent career areas represented by academies registered in 2009-10 were A/V technology and communication, health sciences, and information technology (IT).

Performance of Career and Professional Academy Students

Among the 102,430 students enrolled in career and professional academies, 8,629 or 8.4 percent were reported as earning one or more approved industry certifications during the 2009-10 academic year. A total of 16,035 assessments were attempted by academy students, of which 9,564 were passed, resulting in a pass rate of 59.6 percent. Forty percent of industry certifications earned by career and professional academy students were awarded to 12th graders and among ninth graders, 1,138 certifications were earned, representing 11.9 percent of total certifications reported.¹⁰

2009-2010 Industry Certifications Earned by Grade Level

Grade Level	Certifications Earned	Percent
9	1,138	11.9%
10	1,827	19.1%
11	2,783	29.1%
12	3,816	39.9%
Total	9,564	100.0%

Highlights of Performance Comparisons

Among Non-Academy, Academy, and Industry Certified Academy Students, 2009-10¹¹

- Career and professional academy students in 2009-10 had an average cumulative GPA of 2.67 compared to 2.56 among the non-academy high school population.
- Academy students were less likely to be chronically absent than non-academy high school students. Among academy students, 19 percent were chronically absent compared to 23.3 percent among non-academy students. Chronic absenteeism was more likely among non-academy students across all four grade levels, but, as was the case with GPA, the difference diminished in the higher the grade levels.

¹⁰ The progression in the number of certifications as grade level increases is expected given the time and training required to earn industry certifications.

¹¹ DOE presentation to the Senate Budget Committee on Pre-K -12 Appropriations, March 15, 2011, available at <http://www.flsenate.gov/Committees/Show/BEA/>.

- Academy students were less likely to have been reported as having disciplinary action taken against them than non-academy high school students. Among academy students, 20.0 percent had at least one disciplinary action on record compared to 21.3 percent among non-academy students. In examining the data by grade level, 9th – 11th grade academy students had a lower percentage of disciplined students than their non-academy peers, but the balance shifts in 12th grade.
- Academy students were less likely to drop out than non-academy students, and academy seniors were more likely to graduate with a standard diploma than non-academy seniors. Among academy 12th graders, 89.5 percent graduated with a standard diploma compared to 78.6 percent among non-academy 12th graders. Among career and professional academy 12th graders who earned an industry certification, 97.4 percent graduated with a standard diploma compared to 88.3 percent among academy students who did not earn a certification.
- An important goal of career and professional academies is to prepare students for postsecondary education by preparing them for the academic and technical work and giving them opportunities to earn postsecondary credit while in high school. One indicator of readiness for success in postsecondary education is eligibility for the Florida Bright Futures Scholarship. Among the academy seniors in 2009-10, 28.3 percent were eligible for one of the three levels of the Bright Futures scholarship. In comparison, 27.9 percent of non-academy seniors were eligible for the Bright Futures scholarship. Academy seniors earning certifications were much more likely to be Bright Futures scholarship eligible than their peers.¹²

Performance Indicator	Non-CAPE	CAPE, No Certification	CAPE and Certification
Average GPA	2.56	2.60	3.00
Chronically Absent	16.7%	19.7%	11.4%
At Least One Disciplinary Action	21.3%	20.8%	11.0%
Dropout Rate	2.2%	1.2%	0.2%
12th Graders Earning Standard Diploma	78.6%	88.3%	97.4%
At Least One Accelerated Course	22.2%	22.0%	32.9%
Bright Futures Eligible Seniors	27.9%	25.9%	43.7%

¹² Among academy seniors who earned at least one industry certification, 43.7 percent were eligible for Bright Futures compared to 25.9 percent among academy seniors who did not earn a certification. See DOE presentation to the Senate Budget Committee on Pre-K -12 Appropriations, March 15, 2011, available at <http://www.flsenate.gov/Committees/Show/BEA/>

Factors Included in the Calculation of High School Grades

The 2008 Legislature enacted significant changes to the high school grading formula.¹³ Beginning with the 2009-10 school year, in addition to the statewide assessment results in grades 9, 10, and 11, the law requires an equal focus be placed on access to and performance in rigorous, accelerated coursework, college readiness,¹⁴ and graduation rates for all students including those who are academically at-risk.

In order to prepare students for success in high school, the state's middle schools must better prepare students for a more rigorous high school experience and encourage more middle school students to enroll and succeed in high school level courses. The success of Florida's high school CAPE academies suggests that this can effectively be accomplished through relevant and engaging career-related coursework.¹⁵

The Middle Grades – A Precursor to Disengagement at the High School Level

Students most likely to drop out before completing the ninth grade are those who have had attendance, discipline, and academic problems in the past, possibly from the beginning of their school careers. Research indicates that students who continue on to the tenth grade and beyond are more likely to drop out before graduation if they had an unsuccessful ninth grade year.¹⁶

Schools can help retain at-risk ninth graders through various strategies and practices. Most of these strategies can be implemented without requiring vast changes in the basic structure of the high school. The following components have been successfully implemented in school districts around the country, all of which ease the transition from middle school to ninth grade.

- Improving articulation between the earlier years of schooling and high school, including counseling efforts, curriculum planning, and visits among elementary, middle, and high school personnel.
- Engaging ninth grade students in coursework in which they are most likely to do well. This strategy also ensures success in subsequent challenging courses.
- Decreasing alienation by creating clusters (academies) of students who remain together for several classes and thus can more easily offer each other support.
- Creating smaller schools within schools that offer integrated coursework and opportunities for credit recovery and academic acceleration.
- Eliminating retention, through relevant coursework, before the ninth grade so students do not begin high school with waning motivation, low self-esteem, and the stigma of being

¹³ ch. 2008-235, L.O.F.

¹⁴ In 2007, 54 percent of high school graduates who enrolled in community college required remediation in at least one subject.

¹⁵ The Harvard Graduate School lists the 2007 CAPE Act as one of five *Models of 21st Century Career and Technical Education*. See Pathways to Prosperity, February 2011, available at http://www.gse.harvard.edu/blog/news_features_releases/2010/02/pathways-to-prosperity-seeks-to-redefine-american-education-system.html.

¹⁶ *The Ninth Grade--A Precarious Time for the Potential Dropout*. ERIC Digest No. 34, available at <http://www.ericdigests.org/pre-926/ninth.htm>. See also <http://www.edweek.org/rc/articles/2007/10/03/sow1003.h27.html>.

overage. Effective alternatives include allowing students in earlier grades to be engaged in relevant coursework with career and postsecondary opportunities in mind.¹⁷

Middle School Model

There is currently no formal model established for middle school career academies and little opportunity for students to earn rigorous industry certifications while in the middle grades.

Although the DOE does not currently collect data with regard to operational middle school career academies, the DOE estimates that at least 15 school districts are currently operating some version of the CAPE model at the middle school level.¹⁸

For example, the DOE reports that Palm Beach County school district has incorporated a middle school academy model into middle schools that “feed” to high schools with Medical Sciences Academies. The hallmark of the model is that students can earn high school credit in the 8th grade and students are prepared for entry into high school medical sciences programs or related fields of study. Each middle school academy has an advisory council and business partners representing community private medical practices, public and private schools, research facilities and institutions of higher learning. At the present time, middle school students may earn Basic Life Support (BLS) certifications. Students also receive training in HIPAA (Health Insurance Portability and Accountability Act) and HIV/AIDS and blood borne pathogens training in which they receive a certificate of completion. Once students transition to high school medical science academies, they may also earn increasingly higher level certifications or licensure related to the specific occupation.

The current middle school program includes Orientation to Health Occupations, a full-year course taken in 6th grade that introduces the students to health occupations and career options available in health care. Seventh graders are enrolled in Exploration of Health Occupation and Career Planning, a full-year course that employs problem solving and critical-thinking skills in hands-on laboratory activities, including dissections and advanced problem solving projects. Eighth graders begin actual high school course work by taking the Medical Skills and Services course, where students are required to create a medical internship handbook, compile a portfolio of their work, and complete a supervised clinical internship in an approved medical facility.¹⁹

Middle School Grades

Middle school grades are determined by the statewide assessment program without additional incentives to encourage more rigorous and engaging coursework.

III. Effect of Proposed Changes:

Middle School CAPE Academies

In an effort to engage students at an earlier age, prepare them for increasingly demanding coursework, and attain higher level industry certifications, the bill would expand CAPE opportunities to students in middle grades and establish funding for middle school students who

¹⁷*The Ninth Grade--A Precarious Time for the Potential Dropout. ERIC Digest No. 34*, available at: <http://www.ericdigests.org/pre-926/ninth.htm>. See also <http://www.edweek.org/rc/articles/2007/10/03/sow1003.h27.html>.

¹⁸ Information provided by the DOE Chancellor for Workforce Education, March 21, 2011, on file with the committee

¹⁹ Information provided by the DOE Chancellor for Workforce Education, March 18, 2011, on file with the committee.

earn industry certifications. Under the bill, the strategic five-year plan developed and approved by school districts, workforce boards and agencies, and postsecondary institutions must include plans to implement career and professional academies at the middle grades. Each district must have an operational middle grades CAPE academy beginning in the 2012-2013 school year.

Award of Funds for Attainment of Industry Certifications

Current law provides that high school students who earn identified industry certifications are eligible for retroactively awarded funding, provided that the student graduates from high school with a standard diploma. Consistent with these requirements, middle school students who earn industry certifications would generate the additional funding following graduation from high school with a standard diploma. Although there would be a considerable lapse in time before these students would generate bonus funding, these students will most likely be enrolled in higher level courses and be academically engaged, thus less likely to drop out. High school students who begin their career academy exposure in the middle grades would be prepared to earn additional and more demanding certifications at the high school level.

School districts that offer industry-certified career and professional academies in the middle grades would receive a prorated portion of the additional bonus weight in the FEFP for students who receive industry certification in middle school and who subsequently earn a standard high school diploma. Funds would be provided in the General Appropriations Act in the year following the student's graduation from high school and attainment of the industry certification. If the middle school student were to earn additional industry certifications at the high school level, the bonus weight associated with the highest industry certification would be prorated and shared with the appropriate middle school.

The bill also establishes weights for industry certifications based on the level of rigor for the certification, entry-level earnings, and workforce demand in the industry. The formula used to determine these weights would be established through rulemaking.²⁰ The bill also specifies that a secondary school must discontinue enrollment for the CAPE academy the following year if the passage rate falls below 50% on the academy-related industry certification.

Middle School Grades

The middle school grading formula would be revised to include student participation in middle school CAPE academies, student attainment of identified industry certifications, and award of high school credits. This provision would provide incentives for middle schools to offer high school courses and could result in an increased number of middle school students who earn high school credit while in middle school. It is likely that students engaged in rigorous and relevant academies at the middle grades would be more likely to succeed in high school, have reduced dropout rates, and have increased preparation for postsecondary work and demanding careers.

²⁰ The DOE and AWI are currently collaborating in establishing the weighting process for inclusion in rule. Factors would include the number of instructional hours, including work experience hours, required to earn the certification, award of college credit for academy courses based on statewide articulation agreements with postsecondary institutions, entry-level wages, growth rate in employment for each occupational category, and average annual openings for the primary occupation linked to the industry certification.

According to the DOE, some of the additional factors included in the bill for calculation of middle school grades may have unintended consequences such as grade inflation or the promotion of students who are not prepared for the next grade level.²¹

Other Provisions

Strategic Five-Year Plan

The bill requires that the strategic five-year plan developed by the school district, local workforce board, and local postsecondary institutions, be collaboratively reviewed, revised and approved every five years. The revised plans must now include strategies to implement CAPE academies at the middle grades and within Department of Juvenile Justice education facilities. Regional economic development agencies are also included to ensure partnership with the local chambers of commerce and other strategic economic development principals. All of Florida's geographic regions are served by local economic development agencies, either through an economic development council or a local chamber of commerce. These organizations are heavily involved in employer recruitment activities to attract jobs to their regions or counties. These organizations would be an asset in the identification of priority needs for Florida's career and professional academy programs.²²

Virtual Courses

The bill expands the requirement to include access to virtual courses for CAPE students through any virtual provider, contingent upon alignment of the course to state adopted curriculum standards. This provision would encourage CAPE academies to consider a broader range of virtual offerings, thus allowing students to complete additional content and matriculate more quickly.

Newly Proposed Courses

The bill expands current provisions in law that require the DOE to review and adopt newly proposed courses to be offered in the middle grades. This provision serves to encourage school districts to consider more relevant courses that integrate content from multiple academic areas and to offer student opportunities for applied learning.

Consolidation of CAPE Evaluation and Reporting of Outcomes

The bill repeals the requirement for the DOE to jointly develop with the local workforce boards an evaluation plan and assessment tool to measure CAPE program outcomes. The DOE annually collects, analyzes, and reports student achievement and performance data for CAPE students.²³ This provision consolidates the accountability provisions for the CAPE program, eliminates duplication of effort, and streamlines the process to focus specifically on student outcomes.

²¹ Specifically, if achievement of industry certification is the intended measure to be used for performance, this may need to be clarified. Also, if performance is intended to be based on promotions rates or the grade the student receives, this may result in social promotion of students who are unprepared for Grade 9 work or in grade inflation in order to increase the school grade. See the 2011 DOE Legislative Bill Analysis, March 18, 2011, on file with the committee.

²² Email correspondence from the DOE Chancellor for Workforce Education, March 16, 2011, on file with the committee.

²³ <http://www.fldoe.org/workforce/research.asp>

Non-degreed Teachers

The bill requires that qualifications be established for nondegreed teachers of career and technical education courses for occupational program clusters that are recognized in Florida.²⁴ The district may also establish alternative qualifications for those teachers who hold industry certification in the areas in which they teach. These provisions ensure instruction in CAPE academies from highly effective teachers with extensive background in the content areas in which they teach.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The regional workforce boards, economic development agencies, and postsecondary institutions would partner with local school districts to revise strategic plans to implement career and professional academies in earlier grades, thus preparing these students for more rigorous coursework in high school and postsecondary. The partnering local, regional, and state business communities would benefit from a more highly-skilled workforce.

C. Government Sector Impact:

The 2006-2007 SUCCEED, Florida! Career Paths Program provided start-up funds in some school districts for secondary career and professional academies.²⁵ Because these funds are no longer available, there may be additional costs for school districts to implement career and professional academies at the middle school level. It should be noted, however, that the CAPE model on which the 2007 legislation was established originated in Okaloosa County high schools without additional funds.

²⁴ <http://www.fldoe.org/workforce/dwdframe/>

²⁵ 2006-2007 Succeed, Florida Career Paths, \$7.66 million

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

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



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LEGISLATIVE ACTION

Senate	.	House
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The Committee on Education Pre-K - 12 (Montford) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (5) is added to section 1006.25, Florida Statutes, to read:

1006.25 School buses.—School buses shall be defined and meet specifications as follows:

(5) ADVERTISEMENTS.—

(a) Commercial advertisements may be placed on the exterior of a school bus according to district school board policies that require the following:



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13 1. The school district must be reimbursed by the advertiser
14 for all costs incurred by the school district and its
15 contractors for supporting the advertising, including, but not
16 limited to, retrofitting buses, storing advertising, attaching
17 advertising to the bus, and related maintenance.

18 2. At a minimum, a contract must prohibit advertising and
19 advertising images that:

20 a. Solicit the sale, or promote the use, of alcoholic
21 beverages or tobacco products.

22 b. Are discriminatory in nature or content.

23 c. Imply or declare endorsement of the product or service
24 by the school district.

25 d. Contain material that is sexual in nature.

26 e. Contain material that is not child and community
27 sensitive.

28 f. Contain material that is political in nature or relates
29 to a political activity, campaign, or candidate.

30 g. Are false, misleading, or deceptive.

31 h. Relate to an illegal activity or antisocial behavior.

32 i. Distract from the effectiveness of required safety
33 warning equipment.

34 3. The design, placement, and size of signage on the
35 exterior of a school bus acknowledging the advertiser must be
36 prescribed by the district school board and address the
37 following minimum standards:

38 a. Cost of the advertising.

39 b. Designation of individuals authorized to sell and
40 approve the advertising.

41 c. Specification of how the advertising will be attached,



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42 if not painted on the bus, including a prohibition against
43 signage that:

44 (I) Extends from the body of the bus so as to allow a
45 handhold or pose a danger to pedestrians.

46 (II) Covers any structural or sheet metal damage or
47 alteration.

48 (III) Interferes with the operation of any door, window,
49 required letting, lamp, reflector, or other device.

50 (IV) Is placed on a side emergency door or the back of the
51 bus.

52 (V) Interferes with school bus identification.

53 (VI) Is digital or electronic.

54 4. A school bus with attached advertising must meet the
55 school bus equipment standards under this section.

56 5. A school bus may not have more than two advertisements.

57 6. Each advertisement must be no larger than 2 feet high
58 and 6 feet long.

59 (b) A school bus that violates this subsection must be
60 withdrawn from use as a school bus until it meets the
61 requirements of this subsection.

62 (c)1. All revenue from a contract under this subsection
63 must be remitted to the respective school district, with 50
64 percent allocated for school district transportation, 40 percent
65 allocated for other programs as determined by the school
66 district, and 10 percent allocated for the school district
67 driver education programs, of which 30 percent must be allocated
68 for behind-the-wheel instruction.

69 2. However, if a school district does not offer driver
70 education in any of its schools, the 10 allocated for behind-



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71 the-wheel instruction may be allocated for other programs as
72 determined by the school district.

73 Section 2. This act shall take effect July 1, 2011.

74

75 ===== T I T L E A M E N D M E N T =====

76 And the title is amended as follows:

77 Delete everything before the enacting clause
78 and insert:

79 A bill to be entitled

80 An act relating to public school buses; amending s.
81 1006.25, F.S.; providing for district school board
82 policies that authorize commercial advertisements on
83 school buses; providing policy requirements relating
84 to reimbursement to the school district, prohibited
85 advertisements, and signage and equipment standards;
86 requiring a school bus to be withdrawn from use under
87 certain circumstances; providing for the remittance
88 and allocation of revenue; providing an effective
89 date.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Education Pre-K - 12 Committee

BILL: SB 1124

INTRODUCER: Senator Montford

SUBJECT: Public School Buses

DATE: March 22, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	deMarsh-Mathues	Matthews	ED	Pre-meeting
2.	_____	_____	TC	_____
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Under the bill, commercial advertisements would be permitted to be placed on the exterior of a school bus, according to district school board policies that delineate the content, placement, number, and cost of advertisements. If a bus does not comply with these requirements, it must be withdrawn from use until it does so.

The Commissioner of Education would hold harmless and indemnify a school district from liability arising from advertisements on its school buses.

Under the bill, 50 percent of the advertising revenue would be allocated to the school district's transportation program, with the remainder of the funds directed to other programs specified by the district.

This bill substantially amends section 1006.25 of the Florida Statutes.

II. Present Situation:

Exterior advertising on public school buses is currently prohibited in the Florida School Bus Specifications, adopted by reference in administrative rule under the authority in s. 1006.25, F.S.¹ According to the Department of Education (DOE), this specification requirement is based on the 2005 National School Transportation Specifications and Procedures to provide national

¹ Rule 6A-3.0291, F.A.C. According to the Department of Education (DOE), the 2010 specifications have not yet been adopted by the State Board of Education; however, the 2010 specification in this area have not changed. DOE draft bill analysis for HB 109, March 16, 2011.

uniformity of the familiar exterior yellow and black coloration of school buses and ensure safety.² The specifications limit, the coloration, lettering, identification, and markings that may be installed on public school bus exteriors, including the National School Bus Yellow paint, black trim, and white roof; retroreflective conspicuity striping; belt line lettering identifying the school district; and bus numbers.

States that permit this type of advertising include New Mexico³ and Arizona⁴. These states permit local officials to set policies and prohibit or limit various types of advertisements, such as those related to alcohol or tobacco products. Arizona law specifies the permissible location of the ads (e.g., in areas other than those that will impede the safe operation of the school bus).⁵

III. Effect of Proposed Changes:

Under the bill, commercial advertisements would be permitted to be placed on the exterior of a school bus, according to district school board policies that delineate the content, placement, number, and cost of advertisements. If a bus does not comply with these requirements, it must be withdrawn from use until it does so.

School board policy would delineate the types of objectionable advertising, including those that are discriminatory in nature, contain material that is not child- and community-sensitive, or relate to antisocial behavior. These policies would be incorporated into contracts with businesses. In making its determination as to what constitutes objectionable advertising, a school board would have to balance this with an advertiser's exercise of commercial speech.

Proponents note that school bus advertising provides a necessary source of revenue in challenging economic times. Opponents assert that advertising will compromise the distinctive characteristics of school buses, namely the uniform color of buses, which is associated with the presence of children. They further express concern that a motorist may be distracted by advertising and will result in driving hazards. In response, proponents cite the absence of empirical evidence that advertising distracts motorists. Opponents cite studies that confirm the effects of distraction on motor vehicle crashes.⁶

The Commissioner of Education would hold harmless and indemnify a school district from liability arising from advertisements on its school buses. The Commissioner is not a party to these school district contracts. Consequently, the rationale for assigning this responsibility to the Commissioner is unclear. Moreover, this provision would increase the litigation exposure on a state agency, which has no role in the school district's decision to permit advertising on a school bus. The liability exposure should reside with the school district.

² E-mail, DOE, January 5, 2011, on file with the committee. See www.NCSTOnline.org.

³ NMSA §22-28-1.

⁴ A.R.S. §15-342.

⁵ Based on responses to a January 2010 survey of all states, the DOE reported that 23 states (74 percent of the 31 respondents) prohibited exterior advertising on school buses: one state allowed it without restrictions; and, seven states (23 percent) allowed it with some restrictions. The DOE notes that this information includes the 2011 New Jersey legislation, which allows exterior school bus advertising, subject to specified limitations. DOE draft bill analysis, March 16, 2011.

⁶ *Statistics and Facts about Distracted Driving*, U.S. Department of Transportation. See <http://www.distraction.gov/stats-and-facts/>.

Under the bill, 50 percent of the advertising revenue would be allocated to the school district's transportation program. School districts would determine the expenditure of the remaining funds.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

In general, that a property is government-owned does not automatically open the property up to the public.⁷ Rather, the nature of the forum dictates the level of government control over that property.⁸ Courts distinguish among traditional public forums; designated or limited forums; and nonpublic forums.⁹ A traditional public forum is a physical space such as a public street or park that has traditionally been held in trust for public use, and is a place of open discourse and assembly.¹⁰ A designated public forum refers to public property the government has provided specifically for the purpose of expressive activity, such as university meeting facilities, school board meetings, and municipal theaters.¹¹ Courts have consistently applied strict scrutiny, or the highest level of review, to content-based government restrictions on speech that takes place in a traditional public forum.¹² To survive strict scrutiny, the state is required to show a governmental regulation is narrowly drawn to accomplish a compelling governmental interest, the regulation is reasonable, and the viewpoint neutral.¹³ If the regulation is content-neutral, and the government imposes restrictions in a time, place, and manner approach, mid-level scrutiny applies.¹⁴ If so, the state is required to demonstrate a significant, rather than compelling state interest.¹⁵ These same levels of scrutiny apply to a designated public forum, provided the character of the forum is maintained.¹⁶ Public property that is neither a traditional public forum, nor a limited purpose forum, is designated as a nonpublic forum, and subject to low-level scrutiny.¹⁷ Here, the state only needs to show the

⁷ *Uptown Pawn & Jewelry, Inc.*, 337 F.3d 1275, 1278 (11th Cir. 2003).

⁸ *Id.*

⁹ Michael A. Scherago, *Closing the Door on the Public Forum*, 26 LYLALR 241, 244-245 (Nov. 1992).

¹⁰ *Id.* at 244.

¹¹ *Id.* at 245.

¹² See *Ledford v. State*, 652 So.2d 1254 (2nd DCA 1995).

¹³ *Id.* at 1256.

¹⁴ Scherago, *supra* note 6, at 245.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 246.

restrictions are reasonable and not viewpoint discriminatory.¹⁸ Public buses, subways, and streetcars have been classified as nonpublic fora.¹⁹ Courts have been mixed, however, regarding whether the advertising space on buses constitutes public fora.²⁰

For example, in 1974, the U.S. Supreme Court held that interior advertising space on a city transit system does not constitute a public forum.²¹ Here, the city refused to allow advertising that was political in nature, basing its decision on the appearance of support of one political candidate over another. In upholding the city's action, the court distinguished between speech conveyed in a traditional public forum, where passersby are free to come and go, and speech that is forced upon a captive audience.²² In a concurring opinion, Justice Douglas stated more specifically, "...if we are to turn a bus or streetcar into either a newspaper or a park, we take great liberties with people who because of necessity become commuters and at the same time captive viewers or listeners."²³ The decision to designate a public bus as a nonpublic forum has subsequently been questioned.²⁴

In refusing to rule on whether the interiors of subways and trolley cars constitute a public forum, a 1994 court cited inconsistency and lack of clarity in its application to those places. Instead, the court proceeded directly to the issue of whether the Massachusetts Bay Transportation Authority's restriction was content neutral.²⁵ The First Circuit U.S. Court of Appeals affirmed the District Court's opinion, which struck down the Massachusetts Bay Transportation Authority's ("Authority") policy on restricting advertising in subways and trolley cars.²⁶ Here, where the Authority prohibited ads which used sexual innuendo to educate about Acquired Immune Deficiency Syndrome (AIDS) and condom use, but permitted movie ads with similar levels of sexual content, the court held that the Authority committed viewpoint discrimination.²⁷

While the court has recognized it is possible for a transit authority to define as a legitimate policy the rejection of ads harmful to children, the inquiry does not end upon a mere assertion of child protection.²⁸ Where a transit authority prohibited marijuana decriminalization ads but had previously accepted ads promoting the use of alcohol, the court held the authority had not adequately refuted viewpoint discrimination. Further, the

¹⁸ *Id.*

¹⁹ Cynthia R. Mabry, *Brother Can You Spare Some Change?—And Your Privacy Too?: Avoiding a Fatal Collision Between Public Interests and Beggars' First Amendment Rights*, 28 USFLR 309, 329 (Winter, 1994).

²⁰ *See, i.e., New York Magazine v. Metropolitan Transportation Authority*, 136 F.3d 123 (2d Cir. 1998) in which the court held that advertising space on buses were designated public forum; *Ridley v. Massachusetts Bay Transportation Authority*, 390 F.3d 65 (1st Cir. 2004) in which the court finds the opposite.

²¹ *Lehman v. City of Shaker Heights*, 94 S.Ct. 2714 (S.Ct. 1974).

²² *Id.* at 2715.

²³ *Id.* at 2719.

²⁴ Scherago, *supra* note 6, at 261.

²⁵ *Aids Action Committee of Massachusetts, Inc., v. Massachusetts Bay Transportation Authority*, 42 F.3d 1, 10 (1st Cir. 1994)

²⁶ *Id.* at 3.

²⁷ *Id.* at 12.

²⁸ *Ridley v. Massachusetts Bay Transportation Authority*, 390 F.3d 65, 85-86 (1st Cir. 2004).

court held the authority failed to show a sufficient link between the drug ads and a negative impact on juveniles.²⁹

The bill, as written, does not provide guidelines on sponsor language, and therefore, is not likely itself to be the subject to a court challenge. A greater potential for challenge exists when a school board adopts policies for acceptance/rejection of sponsors. It is unclear whether a court would interpret the listing of a sponsor's name and logo on the outside of school buses as forcing ideas on a captive audience, in this case the students riding on the bus, in the same vein as the impact of political advertising inside the bus or subway on passengers, as was the case in *Lehman*. Provided that a court would likely designate a school bus as a nonpublic forum, it appears that lower level scrutiny would apply to a review of restrictions on speech, such that the state would only be required to show a reasonable relationship between the restriction and the state's purpose. In this case, the state would probably assert the protection of children as the state interest. Case law, however, still requires restrictions on speech to be viewpoint neutral. This is particularly notable if a district school board rejects certain sponsors and permits others who are similarly situated.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The revenue that would accrue to businesses under contract with school districts for advertisements is indeterminate.

C. Government Sector Impact:

Businesses under contract with school districts must reimburse school districts for all costs associated with advertising, such as retrofitting buses and related maintenance. The amount of revenue that will accrue to school districts is indeterminate.

VI. Technical Deficiencies:

On line 58, the word "letting" should be changed to "lettering."

VII. Related Issues:

None.

²⁹ *Id.* at 88-89.

VIII. Additional Information:

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

None.

- B. **Amendments:**

None.

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Education Pre-K - 12 Committee

BILL: SB 1822

INTRODUCER: Senator Benacquisto

SUBJECT: School Choice

DATE: March 22, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	deMarsh-Mathues	Matthews	ED	Pre-meeting
2.	_____	_____	BC	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill revises the eligibility criteria for participation in the Opportunity Scholarship Program public school choice option to allow parents of students in failing schools the opportunity to send their children to another public school that is performing satisfactorily. Under the bill, a failing public school is a school that has received a “D” or an “F” grade and is designated as a low performing school. The bill also:

- Allows a parent of a student in a failing school to enroll and transport him or her to a higher performing school in another school district with available space;
- Provides that any student who is assigned to a failing school is eligible for the public school option;
- Allows a student to continue to attend a higher performing public school feeder pattern within the district until high school graduation; and
- Repeals the Opportunity Scholarship Program private school option.

This bill substantially amends sections 1002.38, 1001.42, and 1002.20 of the Florida Statutes.

II. Present Situation:

Opportunity Scholarship Program

The Legislature created the Opportunity Scholarship Program (OSP) in 1999 as part of a broad education reform package known as the A+ Plan.¹ The program was designed to provide parents of students in failing schools the opportunity to send their children to another public school that

¹ ch. 99-398, L.O.F.

is performing satisfactorily or to an eligible private school. For purposes of the OSP, a failing school is a school that has received an “F” grade for two years in a four-year period.² The law permitted an eligible private school—non-sectarian or sectarian—to participate in the program if the school met the requirements set forth in statute.³ Students who attended another public school or who received a scholarship could attend a private school through graduation, if the high school to which the student is assigned is a “D” or “F” school, or if the chosen private school educated students through the twelfth grade.⁴

Legal Challenge to the OSP – Bush v. Holmes

The State Constitution provides, in pertinent part, that “No revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution.”⁵ Article IX, s. 1 of the State Constitution requires “[a]dequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools...”

On January 5, 2006, the Florida Supreme Court issued an opinion finding that the Opportunity Scholarship Program, which allowed a student attending certain failing public schools to attend a private school, sectarian or nonsectarian, chosen by the parent with the financial assistance of the state, violated Art. IX, s. 1(a) of the State Constitution, which mandates an education through a uniform system of free public schools.⁶

The Supreme Court’s opinion invalidating the OSP provides that the ruling applied prospectively at the end of the 2005-2006 school year to avoid disruption of the students who were using the scholarships.⁷ The opinion did not affect the public school choice provisions of the law.

Public School Participation

The parents of students in failing schools may send their child to another public school in the district that is performing satisfactorily, meaning not less than a “C” grade. In this instance, the district is responsible for transportation.⁸ Alternatively, parents may send their child to a higher performing school in an adjacent school district that has space available.⁹ The parents are responsible for transportation to the school. The receiving district reports the student for funding under the Florida Education Finance Program (FEFP).

A student may participate if he or she:

- Spent the prior school year in attendance at a failing public school;

² s. 1002.38(1), F.S.

³ s. 1002.38(4), F.S., provides eligibility requirements.

⁴ s. 1002.38(2)(b) and (3)(a), F.S.

⁵ Art. I, s. 3, State Constitution.

⁶ *Bush v. Holmes*, 919 So. 2d 392 (Fla. 2006).

⁷ *Id.* at 413.

⁸ s. 1002.38(3)(a) and (e), F.S.

⁹ s. 1002.38(3)(b), F.S.

- Was in attendance elsewhere in the public school system and has been assigned to a failing public school for the next school year; or
- Is entering kindergarten or first grade and has been assigned to a failing public school.

A student is eligible for the public school option until he or she graduates from high school.¹⁰

For 2005-2006, 1,688 students chose to participate in the public school choice aspect of the program.¹¹ The following reflects the number of schools that received an “F” grade for two years in a four-year period and the participation of students in the program for 2006-2007 through 2009-2010:¹²

	OSP Participation in Public School Option			2009-2010 ¹³
	2006-2007	2007-2008	2008-2009	
# Failing Schools	11 in 5 districts	21 in 8 districts	23 in 11 districts	19 in 9 districts
#OSP Students	1,315	1,305	1,280	1,431

For the 2010-2011 school year, 16,966 students in 24 failing schools in 14 districts were eligible for the OSP public school choice option.¹⁴

Differentiated Accountability

Differentiated accountability is the system used by Florida to meet conditions for participation in the federal Elementary and Secondary Education Act¹⁵ that requires states to hold public schools and school districts accountable for making adequate yearly progress toward meeting state proficiency goals. Schools are categorized based upon the school’s grade¹⁶ and the level and rate of change in student performance in reading and mathematics, disaggregated into student subgroups.¹⁷

The law requires the Department of Education (DOE) to provide the most intensive intervention strategies to the lowest performing schools, which are defined as schools that:¹⁸

- Have received a grade of “F” in the most recent school year and in four of the last six years; or
- Are currently graded “D” or “F” and meet at least three of the following four criteria:
 - When compared to measurements taken five years previously, the percentage of students who are not proficient in reading has increased.

¹⁰ s. 1002.38(3)(a)2., F.S. See also: *Opportunity Scholarship Program Frequently Asked Questions*, DOE, available at <http://www.floridaschoolchoice.org/Information/osp/faqs.asp>.

¹¹ See http://www.floridaschoolchoice.org/Information/OSP/files/Fast_Facts_OSP.pdf.

¹² E-mail, DOE March 19, 2011, on file with the committee.

¹³ There were approximately 5,600 students eligible in 2009-2010.

¹⁴ E-mail, DOE, March 19, 2011, on file with the committee.

¹⁵ 20 U.S.C. ss. 6301 et seq.

¹⁶ s. 1008.34, F.S., requires school grades: “A,” making excellent progress, “B,” making above average progress, “C,” making satisfactory progress, “D,” making less than satisfactory progress, or “F,” failing to make adequate progress.

¹⁷ ch. 2009-144, codified in s. 1008.33, F.S. Six categories, beginning with the highest performing, comprise the differentiated accountability system: Schools Not Required to Participate in Differentiated Accountability Strategies, Prevent I, Correct I, Prevent II, Correct II, and Intervene. See Rule 6A-1.099811, F.A.C.

¹⁸ s. 1008.33(4)(b), F.S.

- When compared to measurements taken five years previously, the percentage of students who are not proficient in mathematics has increased.
- At least 65 percent of the school's students are not proficient in reading.
- At least 65 percent of the school's students are not proficient in mathematics.

In 2010, there were 983 schools in the lowest performing categories: 22 schools in the Intervene category and 961 schools in the Correct II category.¹⁹

III. Effect of Proposed Changes:

The bill revises the definition of a failing school to mean a school that receives a "D" or an "F" grade and that is in one of the two lowest performing categories in one year. Under the bill, a parent may request a scholarship for a student to attend a higher performing public school. The term "scholarship" currently applies to the private school option.

A parent would be able to enroll his or her child in a higher performing school in any district with available space. If a parent chooses another district, the receiving district must accept the student and report him or her for funding. The parent is still responsible for transportation.

Any student who is assigned to a failing school is eligible for the public school option. Currently, eligibility is limited to students entering kindergarten or first grade who are assigned to a failing school.

A student would have the opportunity to continue to attend a higher performing public school feeder pattern within the district until he or she graduates from high school. A feeder pattern generally refers to elementary, middle and high schools that share the same student populations. Under the bill, a student could remain in the feeder pattern of the school chosen under the OSP.

The bill repeals the provisions related to the OSP private school option to comport with existing case law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁹ 2010-2011 *Education Fact Sheets*, Differentiated Accountability, Florida House of Representatives, See http://www.myfloridahouse.gov/FileStores/Web/HouseContent/Approved/Web%20Site/education_fact_sheets/2011/documents/2010-11%20Differentiated%20Accountability.3.pdf.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

A parent who chooses to enroll his or her child in a higher performing school in another school district is responsible for providing transportation.

C. Government Sector Impact:

Under the revised criteria in the bill, 108,697 students in 145 schools would be eligible for the OSP public school choice option.²⁰ The number of students who will attend a higher performing school within a district is unknown. The district would be responsible for the student's transportation. Current law allow districts to use transportation categorical funds or public school choice incentive funds for this purpose.²¹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

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

None.

B. Amendments:

None.

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

²⁰ E-mail, DOE, March 21, 2011, on file with the committee.

²¹ s. 1002.38(3)(e), F.S.