

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

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

MEETING DATE: Thursday, April 14, 2011
TIME: 9:15 —10:45 a.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
1	CS/SB 276 Governmental Oversight and Accountability / Bennett (Compare H 135)	Procurement; Requires that the Chief Financial Officer review and conduct an analysis of the procurement process for the design, build, and maintenance of state buildings and facilities. Requires that the Chief Financial Officer submit a report to the Legislature by a specified date. Authorizes a governmental agency or school board to reopen negotiations with a selected firm following termination of negotiations with other firms.	GO 02/08/2011 Fav/CS ED 04/14/2011 BC
2	SB 508 Bogdanoff (Compare CS/H 733)	Tax on Sales, Use, and Other Transactions; Establishes an annual 3-day sales tax holiday within which sales taxes are not collected on certain clothing, computers, and school supplies. Provides for the adoption of rules.	ED 04/14/2011 BC RC
3	CS/SB 578 Children, Families, and Elder Affairs / Ring (Similar H 697, S 1262)	Disability Awareness; Requires district school boards to provide disability history and awareness instruction in all K-12 public schools during the first week in October. Requires certified individuals in disability awareness or teachers who specialize in exceptional student education to provide such instruction. Requires the Governor's Commission on Disabilities to initiate a study on training in disability awareness to be conducted by a private nonprofit entity. Requires the commission to promote such training in all public entities in the state. Requires the commission to adopt rules, etc.	CF 03/22/2011 Fav/CS ED 04/14/2011 BC

COMMITTEE MEETING EXPANDED AGENDA

Education Pre-K - 12

Thursday, April 14, 2011, 9:15 —10:45 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 700 Siplin (Similar H 309)	Education; Authorizes district school boards to adopt resolutions that allow prayers of invocation or benediction at secondary school events. Provides legislative intent. Provides for severability.	
		ED 03/30/2011 Temporarily Postponed ED 04/05/2011 Temporarily Postponed ED 04/14/2011 JU RC	
5	SB 778 Diaz de la Portilla (Compare CS/CS/H 307)	District School Board Membership; Requires that district school boards consist of nine members in counties where the population exceeds a certain number. Provides for single-member and at-large districts. Provides for the election of a chair and vice chair of the school board.	
		ED 04/14/2011 EE RC	
6	SB 788 Diaz de la Portilla (Identical H 417)	Public School Educational Instruction; Requires district school boards to designate one month of the school year to celebrate the Founding Fathers of the United States of America and the principles inherent in the country's founding documents. Specifies the focus of instruction during the designated month. Provides that instruction may be integrated into the existing school curriculum.	
		ED 04/14/2011 BC	
7	SB 922 Flores (Identical H 729)	Florida Education Finance Program; Requires that the Department of Education enter into a contract with an entity located outside the state to conduct a study and review of the Florida Education Finance Program and recommend any improvements that may be necessary. Requires that the department submit a report to the Legislature and the Governor by a specified date, etc.	
		ED 04/14/2011 RC BC	

COMMITTEE MEETING EXPANDED AGENDA

Education Pre-K - 12

Thursday, April 14, 2011, 9:15 —10:45 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	SB 1062 Hill (Similar H 375)	Veterans' Day; Requires school districts to observe Veterans' Day. Prohibits holding classes on that day and provides an exception. Requires the date of the Veterans' Day observance to correspond to the federal holiday.	MS 03/17/2011 Favorable ED 04/14/2011 CA
9	CS/SB 1430 Regulated Industries / Altman (Compare CS/H 891)	Regulation of Smoking; Authorizes a district school board to adopt rules prohibiting any person from smoking tobacco on or in any district-owned or district-leased facility or property during a specified time of the day. Provides an exception to the state preemption of the regulation of smoking in the state.	RI 03/16/2011 Fav/CS ED 04/14/2011 JU
10	SB 1550 Negrón (Identical H 1225)	Education Savings Account Program; Specifies criteria for students who are eligible to participate in the program. Identifies certain students who may not participate in the program. Provides that a parent may direct a financial institution trustee of his or her child's account to use the funds for specified costs of attending a private school or participating in a dual enrollment program or to make a contribution to the child's college savings plan or a payment to a contract under the Stanley G. Tate Florida Prepaid College Program, etc.	ED 04/14/2011 HE BC
11	SB 2036 Braynon (Similar H 1377, H 1461)	Uniform Traffic Control; Authorizes school districts to deploy school bus traffic infraction detectors under certain circumstances. Provides for use of school bus traffic infraction detectors to enforce specified provisions requiring a person driving a vehicle to stop when approaching a school bus displaying a stop signal. Authorizes the Department of Highway Safety and Motor Vehicles, a county, or a municipality to authorize a traffic infraction enforcement officer to issue and enforce a citation for a violation of such provisions, etc.	TR 04/05/2011 Favorable ED 04/14/2011 BC

COMMITTEE MEETING EXPANDED AGENDA

Education Pre-K - 12

Thursday, April 14, 2011, 9:15 —10:45 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
12	SB 1656 Wise (Compare CS/H 1329)	McKay Scholarships/Students With Disabilities ; Makes John M. McKay Scholarship available to students with disabilities who have a 504 accommodation plan issued under s. 504 of the federal Rehabilitation Act or a Tier 3 Response to Intervention plan developed by the public school of attendance and consistent with rules of the State Board of Education. Allows a parent to request and receive a scholarship for a student to enroll and attend a private school if the student has a 504 accommodation plan. Provides for scholarship amounts when a student is eligible for scholarship funds, etc.	ED 04/14/2011 BC
13	SB 2172 Education Pre-K - 12	District School Board Members; Removes provisions relating to base salary and additional compensation for a district school board member. Prohibits district school board members from receiving more than a \$100 stipend per school board meeting. Provides that the stipend does not constitute compensation for retirement purposes. Provides reimbursement for travel expenses. Prohibits district school board members from receiving any compensation while serving. Provides for application, etc.	ED 04/14/2011 BC



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LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment

Delete line 31
and insert:
exercise room, two posh robing rooms, dozens of large flat-

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: CS/SB 276

INTRODUCER: Committee on Governmental Oversight and Accountability and Senator Bennett

SUBJECT: Procurement

DATE: April 6, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	Roberts	GO	Fav/CS
2.	Brown	Matthews	ED	Pre-meeting
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

Legislative intent provides that in response to the significant cost and space overruns involved in the building of the First District Court of Appeals Courthouse in Tallahassee, Florida, this bill would require oversight by the Chief Financial Officer (CFO) in reviewing the process by which agencies procure building services. The CFO would report recommendations to the Legislature for amending law or rules to increase transparency and accountability in the state's design-build process.

This bill amends the Consultants' Competitive Negotiation Act (CCNA), which specifies how state agencies and political subdivisions procure services of design professionals, to allow agencies to reopen negotiations with any selected firm after terminating negotiations with another selected firm.

This bill substantially amends section 287.055 of the Florida Statutes, and creates an undesignated section of law.

II. Present Situation:

The Consultants' Competitive Negotiation Act

In 1972, Congress passed the Brooks Act (Public Law 92-582), which codified Qualifications-Based Selection (QBS) as the federal procurement method for design professional services. The QBS process entails first soliciting statements of qualifications from licensed architectural and engineering providers, selecting the most qualified respondent, and then negotiating a fair and reasonable price. The vast majority of states currently require a QBS process when selecting the services of design professionals.

Florida's Consultants' Competitive Negotiation Act (CCNA), was enacted by the Legislature in 1973,¹ to specify the procedures to be followed when procuring the services of architects and engineers. The CCNA did not prohibit discussion of compensation in the initial vendor selection phase until 1988, when the Legislature enacted a provision requiring that consideration of compensation occur only during the selection phase.²

Currently, the CCNA in s. 287.055, F.S., specifies the process to be followed when state and local government agencies procure the professional services of an architect, professional engineer, landscape architect, or registered surveyor and mapper. The CCNA requires that state agencies publicly announce, in a consistent and uniform manner, each occasion when professional services must be purchased for one of the following:

- A project, when the basic construction cost is estimated by the agency to exceed \$325,000.
- A planning or study activity, when the fee for professional services exceeds \$35,000.

The public notice must provide a general description of the project and describe how the interested consultants may apply for consideration.

The CCNA provides a two-phase selection process.³ In the first phase, the "competitive selection," the agency evaluates the qualifications and past performance of no fewer than three bidders. The agency selects the bidders, ranked in order of preference, it considers most highly qualified to perform the required services. The CCNA requires consideration of several factors in determining the most highly qualified bidders, including willingness to meet time and budget requirements, past performance, location, recent, current, and projected firm workloads, volume of work previously awarded to the firm, and whether the firm is certified as a minority business.⁴

The CCNA prohibits the agency from requesting, accepting, and considering, during the selection process, proposals for the compensation to be paid. Section 287.055(2)(d), F.S., defines

¹ Chapter 73-19, L.O.F.

² Chapter 88-108, L.O.F.

³ Section 287.055(4) and (5), F.S.

⁴ The following is a full listing of the factors that s. 287.055(4)(b), F.S., requires agencies to consider: the ability of professional personnel; whether a firm is a certified minority business enterprise; past performance; willingness to meet time and budget requirements; location; recent, current, and projected workloads of the firms; and, the volume of work previously awarded to each firm by the agency, with the object of effecting an equitable distribution of contracts among qualified firms, provided such distribution does not violate the principle of selection of the most highly qualified firms.

the term “compensation” to mean “the amount paid by the agency for professional services,” regardless of whether stated as compensation or as other types of rates.

In the second phase, the “competitive negotiation,” the agency then negotiates compensation with the most qualified of the three selected firms. If a satisfactory contract cannot be negotiated, the agency must then negotiate with the second most qualified firm. The agency must negotiate with the third most qualified firm if the negotiation with the second most qualified firm fails to produce a satisfactory contract. If a satisfactory contract cannot be negotiated with any of the three selected, the agency must begin the selection process again.

Financial and Operational Management of the Construction of State Buildings

Various provisions in ch. 216, F.S., specify budget provisions related to state construction of buildings. Section 215.0158, F.S., requires a yearly assessment of facility needs, s. 216.043, F.S., provides the requirements for budgets for fixed capital outlay projects, and s. 216.182, F.S., specifies that the Executive Office of the Governor has the authority to approve the program plans of fixed capital outlay projects.

The duties of the Department of Management Services (DMS) related to the management of state construction projects are specified in ch. 255, F.S. Section 255.29, F.S., specifies the procedures for determining the qualifications of bidders for construction contracts, and awarding the bids. Section 255.30, F.S., allows for the delegation of supervisory authority of construction projects, and s. 255.31, F.S., provides the authority to DMS to manage construction projects for state and local governments. Section 255.32, F.S., specifies the procedures for state construction management contracting.

III. Effect of Proposed Changes:

Legislative findings are provided that detail the significant cost and space overruns involved in the recent building of the First District Court of Appeals in Tallahassee, Florida, commonly referred to by critics as the “Taj Mahal”.

The bill requires the Chief Financial Officer to review the process by which agencies procure services for building and maintaining state buildings, and report to the Legislature by October 1, 2011, recommendations for increasing transparency and accountability in the state’s design-build process through statutory and rule changes.

The bill changes a provision in s. 287.055(5)(b), F.S., specifying the order in which agencies must negotiate with selected vendors. Agencies would no longer be required to undertake negotiations with, for example, the third most qualified firm, if negotiations with the second most qualified firm were terminated. Agencies could reopen negotiations with any selected firm upon terminating negotiations with another selected firm.

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:

Indeterminate.

C. Government Sector Impact:

Agencies may be able to negotiate lower costs in contracts for design professional services.

VI. Technical Deficiencies:

On line 31, the bill references two posh “robbing” rooms. This should read “robing” rooms.

VII. Related Issues:

The preamble was drafted for an amendment that has become section 1 of the bill. As the result of adopting amendments and the subsequent committee substitute, the preamble applies to section 2 of the bill. To the extent that a preamble may be used to provide legislative intent in interpreting a statute, the Legislature may wish to consider whether the preamble should be applicable to section 2 of the bill.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Governmental Oversight and Accountability on February 8, 2011:

Removed from the bill a provision that would have allowed for the consideration of cost in the competitive selection process. The result is that consideration of cost is prohibited in the selection process, which is how the law currently stands.

Added a requirement that the Chief Financial Officer review the process by which agencies procure services for building and maintaining state buildings, and report to the

Legislature on any recommendations for increasing transparency and accountability in the state's design-build process.

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 (Benacquisto) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. (1) The tax levied under chapter 212, Florida Statutes, may not be collected during the period from 12:01 a.m. on August 12, 2011, through 11:59 p.m. on August 14, 2011, on the sale of:

(a) Clothing, wallets, or bags, including handbags, backpacks, fanny packs, and diaper bags, but excluding briefcases, suitcases, and other garment bags, having a sales price of \$75 or less per item. As used in this paragraph, the



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13 term "clothing" means:

14 1. Any article of wearing apparel intended to be worn on or
15 about the human body, excluding watches, watchbands, jewelry,
16 umbrellas, or handkerchiefs; and

17 2. All footwear, excluding skis, swim fins, roller blades,
18 and skates.

19 (b) School supplies having a sales price of \$15 or less per
20 item. As used in this paragraph, the term "school supplies"
21 means pens, pencils, erasers, crayons, notebooks, notebook
22 filler paper, legal pads, binders, lunch boxes, construction
23 paper, markers, folders, poster board, composition books, poster
24 paper, scissors, cellophane tape, glue or paste, rulers,
25 computer disks, protractors, compasses, and calculators.

26 (2) The tax exemptions in this section do not apply to
27 sales within a theme park or entertainment complex as defined in
28 s. 509.013(9), Florida Statutes, a public lodging establishment
29 as defined in s. 509.013(4), Florida Statutes, or an airport as
30 defined in s. 330.27(2), Florida Statutes.

31 (3) The Department of Revenue may, and all conditions are
32 deemed met to, adopt emergency rules pursuant to ss. 120.536(1)
33 and 120.54, Florida Statutes, to administer this section.

34 Section 2. For the 2010-2011 fiscal year, the sum of
35 \$218,905 in nonrecurring funds is appropriated from the General
36 Revenue Fund to the Department of Revenue for purposes of
37 administering section 1. Funds remaining unexpended or
38 unencumbered from this appropriation as of June 30, 2011, shall
39 revert and be reappropriated for the same purpose in the 2011-
40 2012 fiscal year.

41 Section 3. This act shall take effect upon becoming a law.



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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to the tax on sales, use, and other
transactions; specifying a period during this year
when the sale of clothing, wallets, bags, and school
supplies are exempt from the tax; providing
definitions; providing exceptions; authorizing the
Department of Revenue to adopt emergency rules;
providing an appropriation; providing an effective
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 508

INTRODUCER: Senator Bogdanoff

SUBJECT: Tax on Sales, Use, and Other Transactions

DATE: April 5, 2011

REVISED: _____

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

I. Summary:

This bill authorizes a sales tax holiday for specific clothing, school supplies and computers and accessories, and provides exclusions.

Purchases made at certain locations do not qualify for the sales tax exemption.

The sales tax holiday is not limited to this year, and therefore, would be recurring and permanent, rather than a one-time holiday.

This bill substantially amends section 212.08 of the Florida Statutes.

II. Present Situation:

Sales Tax

State sales tax is applied to most purchases of tangible personal property at a rate of 6 percent in Florida.¹ Tax attaches to retail sales.²

Sales tax exemptions are provided in s. 212.08, F.S., and apply to a range of specific items, including most food that is not considered prepared food, certain medical supplies, farm equipment, specific industrial machinery and equipment, and kindergarten through grade 12 school books and school lunches.

¹ s. 212.05(1), F.S.

² s. 212.07(1), F.S.

Sales Tax Holidays

The Legislature has approved sales tax holidays for a number of years, notably from 2005 through 2007, and then again in 2010, and has not adopted them for others (2008 and 2009). The holiday is generally made available for the benefit of families making back-to-school purchases, and the holiday is typically offered just prior to the start of a new school year.

III. Effect of Proposed Changes:

This bill creates a sales tax holiday that would apply to purchase of the following items:

- Clothing, wallets and bags, including handbags, backpacks, fanny packs and diaper bags that cost \$50 or less. Clothing is defined as wearing apparel, including shoes, but excluding jewelry, skis, swim fins, roller blades and skates, and handkerchiefs;
- School supplies that cost \$10 or less, including writing implements, erasers, paper, lunch boxes, scissors, tape, glue, rulers, computer disks, protractors, compasses, and calculators;
- A single purchase of a computer, software and school computer supplies that retails for \$750 or less. This includes storage media, printers, and printer accessories but excludes computer furniture, and systems, devices, and software not designed for educational purposes, such as video games.

Purchases made within a public lodging establishment, a theme park or entertainment complex, or within an airport, are not eligible for the exemption.

The time frame for the sales tax holiday runs from Friday through Sunday, from August 12th through August 14th, 2011.

This bill authorizes, but does not require, the Department of Revenue (DOR) to adopt rules to implement these provisions; however, it appears that providing a sales tax exemption will require the DOR to adopt rules or at least guidelines, for the purpose of notifying retailers of exactly the type of items included in the sales tax holiday.

This sales tax holiday is provided on a recurring, rather than a one-time, temporary basis.

Although intent may be otherwise, according to the Department of Revenue:

- As clothing is not restricted to that intended to be worn on the human body, pet and doll clothing could potentially be included;
- The potential exists for retailers to break a purchase of computer equipment down into multiple invoices to meet the \$750 threshold; and
- The exemption applying to computers could capture smartphones and many other electronic devices with computer chips.

The DOR additionally expresses a concern with the inability to go through the formal rulemaking process to have a rule in place given the stated dates, and to have adequate time to draft, print, and distribute notification to dealers. The DOR may have to resort to emergency rulemaking, and therefore, requests a later timeframe.

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:

Private retailers who sell these types of items will likely experience increased sales related to the sales tax holiday. Consumers will benefit from having the ability to purchase included items tax-free during the term of the sales tax holiday.

C. Government Sector Impact:

The state will lose revenue based upon the sales tax holiday. According to the Office of Economic and Demographic Research, at the latest revenue estimating conference, after adoption of the middle estimates across the board for all three categories, the total impact on state revenue in millions would be:

Item	2011-12	2012-13	2013-14	2014-15
Clothing and Shoes, School Supplies and Computers	29.6	30.3	30.8	31.7

These estimates are likely conservative, and may be higher if the definition of computers is expanded to include, i.e., smartphones. Regarding computers, the middle estimate assumes that eligible items consist of property commonly known as computers and accessories.³

Although it makes it permissive for the Department of Revenue (DOR) to adopt rules, the DOR would incur an associated fiscal impact regarding implementation of this bill. The

³ Analysis, Revenue Estimating Conference, April 8, 2011.

DOR indicates that the agency will incur a cost of \$218,905 to print and mail a Taxpayer Information Publication (TIP).

The DOR additionally anticipates a substantial negative impact in regulatory costs as follows:

...the Department will likely be required to revise forms and to promulgate a new permanent rule. Taxpayers who sell items covered by the exemption will bear annual costs to reprogram their point of sale terminals and accounting systems to accommodate the tax-period exemption. This will include programming to cover the tax-exemption period and a reversion back to the collection of tax after the period expires. It is estimated that there are 554,000 taxpayers that would participate....accounting and programming changes....would likely increase the regulatory costs on those taxpayers....It is estimated that...regulatory costs may exceed \$1 million in the aggregate within 5 years of implementation....⁴

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill provides that the sales tax holiday would be in effect from Friday, August 12, 2011 at 12:01 a.m. through Sunday, August 14, 2011, at 11:59 p.m., but then it also says that it begins on Friday and ends three days later, when it technically ends two days later.

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.

⁴ Bill Analysis, Department of Revenue, March 4, 2011.



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LEGISLATIVE ACTION

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 1003.4205, Florida Statutes, is amended to read:

1003.4205 Disability history and awareness instruction.—

(1) Each district school board shall ~~may~~ provide disability history and awareness instruction in all K-12 public schools in the district during the first week ~~2 weeks~~ in October each year. The district school board shall designate this week ~~these 2 weeks~~ as "Disability History and Awareness Week ~~Weeks~~."



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13 (2) (a) During this 1-week ~~2-week~~ period, students shall ~~may~~
14 be provided intensive instruction to expand their knowledge,
15 understanding, and awareness of individuals with disabilities,
16 the history of disability, and the disability rights movement.
17 Disability history must ~~may~~ include the events and timelines of
18 the development and evolution of services to, and the civil
19 rights of, individuals with disabilities. Disability history
20 must ~~may~~ also include the contributions of specific individuals
21 with disabilities, including the contributions of acknowledged
22 national leaders.

23 (b) Beginning with the 2012-2013 school year, the
24 instruction shall ~~may~~ be integrated into the existing school
25 curriculum in ways including, but not limited to, supplementing
26 lesson plans, holding school assemblies, or providing other
27 school-related activities. The instruction may be delivered by
28 individual presenters who have disabilities or teachers who are
29 currently employed at the school and who specialize in
30 exceptional student education ~~qualified school personnel or by~~
31 ~~knowledgeable guest speakers, with a particular focus on~~
32 ~~including individuals with disabilities.~~

33 (3) The goals of disability history and awareness
34 instruction include:

35 (a) Better treatment for individuals who have ~~with~~
36 disabilities, especially for youth in school, and increased
37 attention to preventing the bullying or harassment of students
38 who have ~~with~~ disabilities.

39 (b) Encouragement to individuals who have ~~with~~ disabilities
40 to develop increased self-esteem, resulting in more individuals
41 who have ~~with~~ disabilities gaining pride in being an individual



858138

42 with a disability, obtaining postsecondary education, entering
43 the workforce, and contributing to their communities.

44 (c) Reaffirmation of the local, state, and federal
45 commitment to the full inclusion in society of, and the equal
46 opportunity for, all individuals who have ~~with~~ disabilities.

47 Section 2. This act shall take effect upon becoming a law.

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

50 And the title is amended as follows:

51 Delete everything before the enacting clause
52 and insert:

53 A bill to be entitled
54 An act relating to disability awareness; amending s.
55 1003.4205, F.S.; requiring district school boards to
56 provide disability history and awareness instruction
57 in all K-12 public schools during the first week in
58 October; providing for individual presenters who have
59 disabilities or teachers who specialize in exceptional
60 student education and who are currently employed at
61 the school to provide the disability history and
62 awareness instruction; providing an effective 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: CS/SB 578

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Ring

SUBJECT: Disability Awareness

DATE: April 7, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Walsh	CF	Fav/CS
2.	Carrouth	Matthews	ED	Pre-meeting
3.			BC	
4.				
5.				
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Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill requires that district school boards provide disability history awareness and instruction during the first week in October in all K-12 public schools. The instruction must be provided by individuals who have a disability or by teachers who specialize in exceptional student education. Beginning with the 2012-2013 school year, the instruction must be provided by individuals who are certified to provide instruction in disability awareness or by teachers currently employed at the school site who specialize in exceptional student education.

The bill requires the Governor’s Commission on Disabilities (commission) to initiate a study in collaboration with other state agencies to establish training standards and curriculum for disability awareness. Beginning July 1, 2012, the commission would oversee a statewide program for providers of training and certification of instructors in disability awareness. The bill establishes an application or renewal fee for both providers of disability awareness training and the actual certified instructors.

This bill amends section 1003.4205, and creates an unnumbered section of the Florida Statutes.

II. Present Situation:

Disability History and Awareness

According to a U.S. Census Bureau report, one in five United States residents, or approximately 54 million Americans, reported some level of disability in 2005.¹ Approximately 13 percent of children age 6 to 14 have a disability,² and as of 2007, 95 percent of students age 6 to 21 were taught in a general education classroom.³ According to the Museum for DisABILITY History, students:

benefit from learning about the story of people with disabilities, including how they used to be viewed and treated, how conditions have changed over time and how individuals with disabilities are currently actively involved in self-advocacy and in their communities. Given the context of disability history, students will be equipped with the tools needed to engage in critical thinking and will be more likely to view individuals with disabilities as people deserving of dignity and respect just like everyone else.⁴

On this premise, disability advocates began a campaign to help create understanding and to celebrate the history of individuals with disabilities, and in 2006, West Virginia passed the first Disability History Week bill.⁵ Fourteen other states, including Florida, have since passed similar legislation.⁶

In 2008, the Florida Legislature created s. 1003.4205, F.S.,⁷ which authorizes each district school board to provide disability history and awareness instruction in all K-12 public schools during the first two weeks in October. During “Disability History and Awareness Weeks,” students may be provided with instruction to expand their knowledge, understanding, and awareness of individuals with disabilities and the history of disability and the disability rights movement. The instruction of these things can be integrated into the existing school curriculum and may be taught by qualified school personnel or knowledgeable guest speakers.

The Bureau of Exceptional Education and Student Services, within the Department of Education (DOE), developed the Disability History and Awareness: A Resource Guide (guide) in order to help school districts promote Disability History and Awareness Weeks.⁸ The guide includes, among other things:

¹ Disabled World, *New Statistics 54.4 Million Americans with a Disability* (Dec. 20, 2008), available at: <http://www.disabled-world.com/disability/statistics/us-disability-stats.php> (last visited Mar. 17, 2011).

² *Id.*

³ National Center for Education Statistics, *Fast Facts*, available at: <http://nces.ed.gov/fastfacts/display.asp?id=59> (last visited Mar. 17, 2011).

⁴ Museum of DisABILITY History, *Disability History Week: Importance*, available at: <http://disabilityhistoryweek.org/pages/importance/> (last visited Mar. 17, 2011).

⁵ Museum of DisABILITY History, *Disability History Week: National Disability History Week Initiative*, available at: <http://www.disabilityhistoryweek.org/blogs/read/9> (last visited Mar. 17, 2011).

⁶ *Id.*

⁷ Ch. 2008-156, s. 1, L.O.F.

⁸ Bureau of Exceptional Education and Student Services, Department of Education, *Disability History and Awareness: A Resource Guide* (2010), available at: <http://www.fldoe.org/ese/pdf/DHA-Resource2010.pdf> (last visited April 8, 2011).

- Promotional ideas to help schools promote disability history and awareness;
- Flyers recognizing the contributions of various individuals with disabilities;
- Disability etiquette documents;
- Documents concerning “people first” language;
- A guide to differentiated instruction;
- A copy of “A Legislative History of Florida’s Exceptional Student Education Program”; and
- A list of websites that contain a variety of games, activities, and lesson plans that can be integrated into a curriculum for students.⁹

In 2010, s. 1012.582, F.S., was created and directed the Commissioner of Education (commissioner) to develop recommendations to incorporate instruction regarding autism spectrum disorder, Down syndrome, and other developmental disabilities into continuing education for instructional personnel.¹⁰ The commissioner was instructed to address:

- Early identification of, and intervention for, students who have autism spectrum disorder, Down syndrome, or other developmental disabilities;
- Curriculum planning and curricular and instructional modifications, adaptations, and specialized strategies and techniques;
- The use of available state and local resources;
- The use of positive behavioral supports to deescalate problem behaviors; and
- Appropriate use of manual physical restraint and seclusion techniques.¹¹

The statute required DOE to incorporate the course curricula recommended by the commission in the 2010-2011 school year.

Governor’s Commission on Disabilities

The Governor’s Commission on Disabilities (commission) was created by Governor Crist on July 26, 2007, by Executive Order 07-148 to “advance public policy for Floridians with disabilities and to provide a forum for advocates representing Floridians with disabilities to develop and voice unified concerns and recommendations.”¹² The commission was scheduled to sunset on July 26, 2008, unless its existence was extended by the Governor. Governor Crist maintained the commission by Executive Order 08-193, which authorized the commission to continue to work in the areas identified in its July 2008 Report to the Governor.¹³ The Governor appoints the members of the commission and those members serve a one-year term.¹⁴ The commission is located, for administrative purposes only, within the Department of Management

⁹ *Id.* at 1.

¹⁰ Ch. 2010-224, s. 6, L.O.F.

¹¹ Section 1012.582(1), F.S.

¹² Office of the Governor, State of Florida, *Executive Order Number 07-148* (July 26, 2007), available at: <http://fldisabilityinfo.com/LinkClick.aspx?fileticket=ylozTVSuCyo%3d&tabid=40> (last visited April 7, 2011).

¹³ Office of the Governor, State of Florida, *Executive Order Number 08-193* (Sept. 11, 2008), available at: <http://fldisabilityinfo.com/LinkClick.aspx?fileticket=PHh2VvO7jjE%3d&tabid=40> (last visited April 7, 2011).

¹⁴ *Executive Order Number 07-148*, *supra* note 12.

Services.¹⁵ Although the most recent executive order authorizing the existence of the commission was in 2008, it appears that the commission has continued its work to identify barriers that persons with disabilities face, and to provide recommendations to overcome those barriers.¹⁶

III. Effect of Proposed Changes:

This bill amends s. 1003.4205, F.S., to require that district school boards provide disability history awareness and instruction in all K-12 public schools during the first week in October, which is to be known as “Disability History and Awareness Week.” This instruction is currently an optional activity which may be provided anytime during the first two weeks of October.

The bill requires that the instruction be provided by individuals with a disability or by teachers currently employed at the school site who specialize in exceptional student education, beginning in the 2012-2013 school year.

The bill requires the Governor’s Commission on Disabilities to initiate a study in collaboration with other state agencies to establish training standards and curriculum for disability awareness. The commission would then be tasked to encourage public engagement in promoting equal opportunities for persons with disabilities and awareness of the history of the disability rights movement. Under s. 20.03(10), F.S., a “commission” means a body created by specific statutory enactment within a department, the office of the Governor, or the Executive Office of the Governor that exercises limited quasi-legislative or quasi-judicial powers. The commission under this bill was created by executive order. Moreover, the commission appears to be more of a regulatory body with licensing authority. The commission is authorized to adopt rules to implement the licensing scheme. These functions appear to be more of an executive exercise of power.

Essentially, the bill establishes a licensing scheme for trainers of instructors in disability awareness and the certification of instructors in disability awareness. The licenses would be renewed every three years and a fee would be paid to the commission up to \$200 for trainers and \$100 for instructors.

Because the Department of Education has developed a Disability History and Awareness Resource Guide¹⁷ which concentrates on the tasks required of the commission under the bill, it may be beneficial to use or adapt the work already completed in this area.

The bill takes effect upon becoming a law.

¹⁵ *Id.*

¹⁶ See Governor’s Commission on Disabilities, *2009 Report* (June 2009), available at: <http://fdisabilityinfo.com/LinkClick.aspx?fileticket=ZPVM9H8Yewg%3d&tabid=40> (last visited April 8, 2011), and Governor’s Commission on Disabilities, *2010 Governor’s Report* (July 2010), available at: <http://fdisabilityinfo.com/LinkClick.aspx?fileticket=bS1I2Q2vNWI%3d&tabid=40> (last visited April 8, 2011).

¹⁷ Bureau of Exceptional Education and Student Services, Department of Education, *Disability History and Awareness: A Resource Guide* (2010), available at: <http://www.fldoe.org/ese/pdf/DHA-Resource2010.pdf> (last visited April 8, 2011).

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:

Individuals interested in becoming trainers of instructors in disability awareness or certified instructors in disability awareness would incur licensing fees upon attaining the status of an approved provider or certified instructor and renewal fees every three years.

C. Government Sector Impact:

The bill requires the Governor's Commission on Disabilities to establish standards and a curriculum to promote disability awareness. The associated costs are unknown at this time, but could be eliminated altogether if the commission were to use educational materials and training previously developed by the Department of Education.

School district may avoid the cost of selecting certified instructors by using instructional personnel certified in exceptional student education; however, there may be some operational costs to the districts when these teachers are not teaching exceptional education students.

VI. Technical Deficiencies:

The commission was created by Governor Crist on July 26, 2007, by Executive Order 07-148. The commission was scheduled to sunset on July 26, 2008, unless its existence was extended by the Governor. Governor Crist issued Executive Order 08-193 in 2008 maintaining the commission, but there has not been another executive order authorizing the existence of the commission since. Accordingly, the status of the commission is currently unknown.

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.)

CS by Children, Families, and Elder Affairs on March 22, 2011:

The committee substitute changes the date the study by the private nonprofit entity must be submitted to the Governor’s Commission on Disabilities from July 1, 2011 to July 1, 2012.

- 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 700

INTRODUCER: Senator Siplin

SUBJECT: Education

DATE: March 24, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Matthews	ED	Pre-meeting
2.			JU	
3.			RC	
4.				
5.				
6.				

I. Summary:

This bill provides, on a permissive basis, authority for district school boards to adopt resolutions regarding student delivery of inspirational messages, including prayers, at secondary school level gatherings, such as at commencement.

If adopted, language is required to be included in the resolution, such as that the decision to use a prayer is at the option of student government; only students can deliver prayers; prayers are nonsectarian and nonproselytizing; and school personnel is precluded from participating in or influencing students in decisions to use prayers.

This bill creates an undesignated section of law in the Florida Statutes.

II. Present Situation:

On August 27, 2008, the American Civil Liberties Union filed a lawsuit in the United States District Court for the Northern District of Florida against the Santa Rosa County School District, alleging that prayers in school were state-sponsored and violative of the Establishment Clause and the no-aid provision of the state constitution.¹ On May 6, 2009, both parties entered a consent decree and the court issued an order which provided, in part, for permanent injunction against school officials from:

- Promoting, advancing, endorsing, or causing prayers in conjunction with school events;
- Planning, organizing, promoting, or sponsoring religious services;

¹ *Does v. School Board for Santa Rosa County, Florida* (Case Number 3:08-cv-361/MCR/EMT)

- Holding school events at a religious venue when an alternative venue is reasonably suitable that is not a religious venue; and
- Permitting school officials to promote personal religious beliefs.

Subsequent to the issuance of the consent decree, a contempt order was issued by the court against two school officials for violation of the decree, with possible punishment of jail time and fines.² On September 17, 2009, the court found the school officials not guilty.³ The consent decree remains, but has been recently challenged in U.S. District Court by plaintiff teachers and other staff, alleging violations of their First Amendment rights.⁴ On March 21, 2011, the court issued an order which grants, in part, a preliminary injunction enjoining the school board from enforcing school policies restricting employee participation in private religious service, including baccalaureate. The final hearing in the case is expected mid-summer.

The 2010 Legislature passed a bill which prohibits district school boards and administrative and instructional personnel from taking affirmative action, including entering into agreements that infringe First Amendment rights of personnel or students, unless waived in writing.⁵

III. Effect of Proposed Changes:

This bill authorizes, but does not require, district school boards to adopt resolutions regarding the delivery of inspirational messages, including prayers of invocation or benediction, at secondary school commencement exercises or other noncompulsory student assemblies.

If adopted, the resolution must include language that provides:

- The use of a prayer of invocation or benediction is at the discretion of the student government;
- Students will deliver all prayers;
- All prayers will be nonsectarian and nonproselytizing in nature; and
- School personnel may not participate in, or otherwise influence any student in determining whether to use prayers.

This bill identifies as its purpose the provision of the solemnization and memorialization of secondary school events and ceremonies, rather than to advance or endorse any religion or religious belief.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

² *Florida School Officials Get Jail Time*, www.cnn.com/2009/CRIME/09/17/florida.school.prayer (September 17, 2009); Last checked March 23, 2011.

³ *Lay, Freeman Not Guilty in School Prayer Case*; <http://www.northescambia.com/?p=10943>; Last checked March 23, 2011.

⁴ *Mary E. Allen v. School Board for Santa Rosa County, Florida* (N.D. U.S.D.C. 2011) (Case Number 3:10-cv-00142-MCR-CJK).

⁵ ch. 2010-214, L.O.F.; s. 1003.4505, F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The First Amendment to the Federal Constitution provides, in part:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof....

This provision is typically referred to as the Establishment Clause.

Section 3, Article I, of the State Constitution provides:

There shall be no law respecting the establishment of religion or prohibiting or penalizing the free exercise thereof....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.

In 1962, the U.S. Supreme Court indicated that evidence of direct government compulsion is not required in an Establishment Clause case (as would generally be the case for Free Exercise claims.) In Engel v. Vitale, the court found impermissible daily prayer in schools, regardless of whether students were specifically and individually required to participate, on the basis that prayer in elementary and secondary schools carries particular risk of indirect coercion.⁶

In 1971, the U.S. Supreme Court established the seminal test to apply to these cases, in Lemon v. Kurtzman, which requires that the following be demonstrated for constitutionality:

- The statute must contain a secular purpose;
- The statute's principal or primary effect is one that neither advances nor inhibits religion; and
- The statute must not foster excessive government entanglement with religion.⁷

The last prong remains the critical focus of the test.⁸

⁶ *Engel v. Vitale*, 370 U.S. 421, 441-442 (1962).

⁷ 403 U.S. 602, 612-13 (1971).

⁸ John P. Cronan, *A Political Process Argument for the Constitutionality of Student-led, Student-initiated Prayer*, 18 YLLPR 503, 510 (2000).

In 1992, however, the Supreme Court did not apply the Lemon test to a case involving endorsement of nonsectarian prayer and emphasized, instead, indicia of whether government actions constituted a pervasive degree of involvement, commonly referred to as the Coercion Test.⁹ Here, that school officials decided themselves to have prayer at commencement, selected clergy, and influenced speech content by providing a pamphlet to the clergy with guidelines for nonsectarian prayer, the court determined, rose to the level of impermissible pervasive activity.¹⁰ Although asserted that attendance was voluntary, the very monumental nature of a graduation made student participation mandatory.

In Santa Fe Independent School District v. Doe, the U.S. Supreme Court ruled that school district policy which authorized student-led, student-initiated invocations at football games did not constitute private speech.¹¹ In this case, the policy authorized student elections to determine whether invocations should be provided at games, and if so, who should deliver the invocation.¹² The District Court limited the policy to nonsectarian, nonproselytizing prayer. In finding the lower court's modified policy unconstitutional, the Supreme Court applied a hybrid Lemon/Lee test and determined that a policy that expressly authorizes prayer at all promotes religion, constitutes unlawful coercion, and is therefore facially unconstitutional:

Indeed, the only type of message expressly endorsed in the policy is an "invocation," a term which primarily describes an appeal for divine assistance.... Through its election scheme, the District has established a government mechanism that turns the school into a forum for religious debate.... It further empowers the student body majority.... to subject students of minority views to constitutionally improper messages.¹³

In 2001, in Adler v. State, the Eleventh Circuit Court of Appeals reviewed a Duval County school district policy that permitted a graduating student, elected by her class, to give a message unrestricted by the school,¹⁴ which specifically provided:

1. The use of a brief opening and/or closing message, not to exceed two minutes, at high school graduation exercises shall rest within the discretion of the graduating senior class;
2. The opening and/or closing message shall be given by a student volunteer, in the graduating senior class, chosen by the graduating senior class as a whole;
3. If the graduating senior class chooses to use an opening and/or closing message, the content of that message shall be prepared by the student

⁹ *Lee v. Weisman*, 505 U.S. 577, 578 (1992).

¹⁰ *Id.* at 578, 587.

¹¹ 530 U.S. 290 (2000).

¹² *Id.* at 297.

¹³ *Id.* at 291, 316.

¹⁴ 250 F.3d 1330 (11th Cir. 2001).

volunteer and...not be monitored or...reviewed by Duval County School Board, its officers or employees;
The purpose of these guidelines is to allow students to direct their own graduation message without monitoring or review by school officials.¹⁵

Here, the court held that as this policy was neutral on-its-face and did not involve any degree of state control, it was facially constitutional.¹⁶

Although it is difficult to gauge how this bill would be implemented in practice, it can be said that a Duval County-type policy, which authorizes a student message to be delivered at graduation but does not mention prayer, and prohibits school review of content, presents the strongest case for constitutionality. At the other end of the continuum, a school district policy which allows students to decide if they want a student-led prayer to be delivered at a school event similar to Santa Fe may be constitutionally suspect. Less certain outcomes exist for other factual combinations. That this bill references only the secondary, rather than the K-12 setting, is likely inconsequential.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill authorizes, but does not require school boards to draft policies addressing inspirational messages. Therefore, any fiscal impact related to policy drafting and adoption is expected to be insignificant.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

¹⁵ *Id.* at 1332.

¹⁶ *Id.* at 1333.

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.



530934

LEGISLATIVE ACTION

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 1001.3615, Florida Statutes, is created to read:

1001.3615 Election of district school board members in counties in which the population exceeds 2 million.-

(1) Notwithstanding ss. 1001.36, 1001.361, and 1001.362, in a county in which the population exceeds 2 million people, the district school board shall consist of nine members. Seven of the nine members shall reside one in each of seven residence



530934

13 areas, the areas together covering the entire district and as
14 nearly equal in population as practicable, according to the most
15 recent decennial census, and each shall be elected only by the
16 qualified electors who reside in the same residence area as the
17 member. Two of the nine members shall be elected from the county
18 at large. Members shall be elected in a nonpartisan election as
19 provided in chapter 105.

20 (2) Notwithstanding s. 1001.371, the school board members
21 elected at large shall serve as the chair and vice chair of the
22 school board. The ballot for the office of chair shall state:
23 "Chair of the School Board" followed by a list of candidates who
24 have qualified for that office. The ballot for the office of
25 vice chair shall state: "Vice Chair of the School Board"
26 followed by a list of candidates who have qualified for that
27 office. The candidate who receives the highest number of votes
28 in the general election shall be elected to the office for which
29 the candidate has qualified.

30 (3) All members shall be elected for 4-year terms, but the
31 terms shall be staggered so that, alternately, one more or one
32 less than half of the members elected from residence areas and,
33 if applicable, one of the members elected at large from the
34 entire district are elected every 2 years. Any member may be
35 elected to an initial term of less than 4 years if necessary to
36 achieve or maintain such system of staggered terms.

37 (4) (a) In odd-numbered years, the district school board may
38 change the boundaries of the residence areas at any meeting of
39 the district school board.

40 (b) The changes in boundaries shall be shown by resolution
41 spread upon the minutes of the district school board, shall be



530934

42 recorded in the office of the clerk of the circuit court, and
43 shall be published at least once in a newspaper published in the
44 district within 30 days after the adoption of the resolution,
45 or, if there is no newspaper published in the district, shall be
46 posted at the county courthouse door for 4 weeks after the
47 adoption of the resolution. A certified copy of the resolution
48 shall be transmitted to the Department of State.

49 Section 2. This act shall take effect upon becoming a law.

50

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

52 And the title is amended as follows:

53 Delete everything before the enacting clause
54 and insert:

55 A bill to be entitled

56 An act relating to district school board membership;
57 creating s. 1001.3615, F.S.; requiring that district
58 school boards consist of nine members in counties
59 where the population exceeds a certain number;
60 providing for single-member and at-large districts;
61 requiring nonpartisan elections; providing for the
62 election of a chair and vice chair of the school
63 board; providing for 4-year terms of office and
64 staggered terms of members; permitting changes in the
65 boundaries of school board member residence areas and
66 providing the procedure for publication of those
67 changes; providing an effective 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 778

INTRODUCER: Senator Diaz de la Portilla

SUBJECT: District School Board Membership

DATE: April 6, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Matthews	ED	Pre-meeting
2.			RE	
3.			RC	
4.				
5.				
6.				

I. Summary:

This bill specifies the organization of district school boards in counties with a population of more than 2,000,000 residents. These district school boards would be structured with a nine member board, of which seven members are elected on a single-member basis and the remaining two elected at-large. The at-large members would serve as chair and vice-chair.

This bill creates section 1001.3615 of the Florida Statutes.

II. Present Situation:

Constitution

Article IX, section 4 of the state constitution provides for 5 or more member district school boards selected by vote of the electors and requires staggered four-year terms, as provided by law.

Statutory Authority

Electors are eligible to vote for one candidate from each district school board member residence area.¹ Districts are divided into at least five district school board member residence areas with alignment, as closely as possible, of equal population. For school districts composed of seven members, the district may be divided into five residence areas with two members elected at large, or may be divided into seven residence areas.² Section 1001.35, F.S., requires district school board members to be elected at the general election for four-year terms.

¹ s. 1001.361, F.S.

² s. 1001.36(1), F.S.

County Population in Florida

Based on the 2010 federal decennial census, the top five counties by population in Florida are:

County	Population
Miami-Dade	2,496,435
Broward	1,748,066
Palm Beach	1,320,134
Hillsborough	1,229,226
Orlando	1,145,956

Therefore, of these, only Miami-Dade county currently has a population exceeding 2,000,000.³

III. Effect of Proposed Changes:

This bill specifies the structure of the district school board for counties with a population of greater than 2,000,000 residents. These district school boards would be organized by a nine member board, of which seven members are elected on a single-member basis and the remaining two are elected at-large. The at-large members would serve as chair and vice-chair, as selected by the electors on the ballot.

Although it is unspecified, it appears that this bill would apply to elections of district school board members to be held at the next general election following July 1, 2011 and the election of school board members would provide for staggered, four-year terms, as constitutionally required.

Currently, the bill would only apply to Miami-Dade county, as reflected in the 2010 federal decennial census. It is unclear what source would be used for county population other than the decennial census so that the determination for counties to qualify would only be made on a ten-year basis.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

³ <http://2010.census.gov/2010census/>

D. Other Constitutional Issues:

This bill may be challenged as constitutionally deficient, as a prohibited general bill of local application. Article III, section 11, of the state constitution provides:

There shall be no special law or general law of local application pertaining to...election....In the enactment of general laws on other subjects, political subdivisions or other governmental entities may be classified only on a basis reasonably related to the subject of the law.⁴

Case law generally considers as suspect bills which contain limitations or classifications based on city or county population. This is especially the case where the population is fixed in law, such as being based on a certain date.⁵ Where such an anchoring date is provided, regardless of whether counties included at that point in time experience population decline below the threshold amount, they will always remain within the qualifying population and this, courts generally conclude, amounts to arbitrary classification.⁶ Therefore, a court would examine whether a statute is based upon proper distinctions unique to a particular class, or whether the law targets specific counties for inclusion so that the statute is, essentially, written for them.⁷

Several population classification statutes written for the purpose of authorizing a tourist, or resort tax for the purpose of benefitting the tourist industry have been upheld on the basis that the classification bore a reasonable relationship to the subject, which in this case would be a tourist tax narrowly drawn to high-tourism economy counties.⁸

This bill provides for application to any counties that have a population of 2,000,000 or more. Although it would only currently have application to one county, Miami-Dade county, other counties potentially have the opportunity to “grow into” the application, and Miami-Dade county could lose population and “grow out of” its application.

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

None.

⁴ Art. III, s. 11(a) and (b) of the state constitution.

⁵ See, i.e., *Fort v. Dekle*, 138 Fla. 871 (Fla. 1939), where the court invalidated a statute that applied to counties having a population of 150,000 or more based on the state census of 1935, fixing its application to three counties; *City of Miami v. McGrath*, 824 So.2d 143 (Fla. 2002), where the court struck down a law applied to cities that were under financial emergency status and with populations of 300,000 or more by a certain date, also potentially qualifying just three cities.

⁶ *City of Miami*, supra note 3, at 148-149.

⁷ *Department of Business Regulation v. Classic Mile, Inc.*, 541 So.2d 1155 (Fla. 1989), cited in *City of Miami*, supra note 3, at 148.

⁸ *Department of Legal Affairs v. Sanford-Orlando Kennel Club, Inc.*, 434 So.2d 879 (Fla. 1983); *Golden Nugget Group v. Metropolitan Dade County*, 464 So.2d 535 (Fla. 1985); and *State v. City of Miami Beach*, 234 So.2d 103 (Fla. 1970).

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

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.

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 788

INTRODUCER: Senator Diaz de la Portilla

SUBJECT: Educational Instruction

DATE: April 6, 2011

REVISED: _____

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

I. Summary:

The bill requires school districts to designate one month of the school year to celebrate the Founding Fathers of the United States. Districts may integrate this instruction into existing school curriculum or through school-related activities.

This bill amends section 1003.44 of the Florida Statutes.

II. Present Situation:

State adopted curriculum standards in the content area of social studies emphasize student understanding of the history of the United States, our form of government, and the ideals on which our country was founded.¹ Instructional benchmarks that specifically address topics included in the bill are incorporated into the standards beginning at grade 2 and continuing through high school.²

Additionally, current law requires instructional content to include, among other civics-related topics, the history and content of the Declaration of Independence, the Constitution of the United

¹ <http://www.floridastandards.org/Standards/FLStandardSearch.aspx>

² For example, at grade 2, students are expected to recognize symbols, individuals, events, and documents that represent the United States; at grade 5, students are expected to explain the significance of historical documents including key political concepts, origins of these concepts, and their role in American independence; at grade 8, students are expected to examine the structure, content and consequences of the Declaration of Independence; at grades 9-12, students are expected to explain how the Declaration of Independence reflected the political principles of popular sovereignty, social contract, natural rights, and individual rights; and at grades 9-12, students are expected to evaluate the ideals and principles of the founding documents (Declaration of Independence, Articles of Confederation, Federalist Papers) that shaped American democracy.

States, an understanding of our republican form of government, United States history from the period of discovery to the present, and an appreciation of our founding fathers and the sacrifices of our veterans.³

Topics outlined in the bill are also addressed in the school district requirement to designate the last week of September as *Celebrate Freedom Week*⁴ which includes an in-depth study of the Declaration of Independence.

Finally, required patriotic programs are also included in current law to encourage school districts to adopt rules to foster greater respect for our government and democracy.⁵

III. Effect of Proposed Changes:

The bill requires school districts to designate one month of the school year to celebrate the Founding Fathers of the United States. Districts may integrate this instruction into existing school curriculum or through school-related activities.

Because the topics required in the bill are currently covered in the K-12 state adopted curriculum standards, as well as in other provisions of law, additionally requiring school districts to designate a month to address this subject matter is duplicative.

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:

None.

³ s. 1003.42, F.S.

⁴ s. 1003.421, F.S.

⁵ s. 1003.44, F.S.

C. Government Sector Impact:

None.

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.

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 922

INTRODUCER: Senator Flores

SUBJECT: Florida Education Finance Program

DATE: April 8, 2011

REVISED: _____

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

I. Summary:

This bill requires the Department of Education (DOE) to enter into a contract with an out-of-state entity to review the current funding distribution formula provided in the Florida Education Finance Program (FEFP) and to submit a report to the Legislature and the Governor by January 1, 2012.

For the 2011-2012 fiscal year, \$100,000 in nonrecurring funds would be appropriated from general revenue to fund this study.

This bill creates an undesignated section of the Florida Statutes.

II. Present Situation:

FEFP and FPLI

Currently, school districts are funded through both local and state dollars. Local dollars are provided through ad valorem, or property tax, collections.

State dollars are allocated to school districts through the Florida Education Finance Program (FEFP).¹ The calculation of the FEFP is adjusted by a variable known as a district cost differential (DCD), as provided in the Florida Price Level Index for School Personnel (FPLI).² The index is explained as follows:

¹ s. 1011.62, F.S.

² The FPLI is published annually by the Bureau of Economic and Business Research at the University of Florida in Gainesville. The latest FPLI can be viewed at: <http://www.bibr.ufl.edu/category/subject-index/publications/florida-price-level-index-fpli>. Last checked April 5, 2011.

The index uses extensive data on wages, occupational location, and the prices of goods and services to estimate the relative wage level needed to maintain a given standard of living for occupations comparable to school personnel across Florida's counties.³

The generated FPLI represents the costs of hiring equally qualified personnel across all school districts. Calculated annually for all 67 districts, the FPLI reaches back three years with the final number representing an average of those years.⁴ Therefore, the DCD slightly shifts every year, based on prior years captured. For example, 2009-2010 FEFP calculations included the average of years 2006, 2007, and 2008. The final sum is the cost differential for that district for that year.

The legitimacy of the FPLI as an accurate measure of relative wages was challenged in the case of The School Board of Miami-Dade County v. James E. King, Jr.⁵ In this case, four school boards alleged that the 2004-2005 General Appropriations Act violated Section 1, Article 9 of the State Constitution. In addition to the Department of Education, the State Board of Education, and the Florida Legislature being named as defendants, various school boards joined the case as defendants. The plaintiff school boards argued that the use of the recently amended FPLI in the FEFP violated the state's constitutional obligation to adequately provide for a uniform system of free public schools. At issue in the case was the finding of a 2003 FPLI report, which recommended that the wage index be added to the FPLI as a factor in calculating personnel costs.⁶ The Legislature adopted the recommendations contained in the report, which resulted in the General Appropriations Act providing increases in funding to some counties, at the expense of concurrent decreases in other counties.⁷ The District Court of Appeal decided this case on other grounds ("We consider the holding in this case to be that no private cause of action exists for the enforcement of Article IX, section I, against *individual school boards*..."), and the court did not invalidate the use of the FPLI.⁸ The Florida Supreme Court subsequently denied review of the case.⁹

Procurement Law

Chapter 287, F.S., subjects state agencies to state procurement and competitive bid law. A contractual service is defined to include "research and development studies or reports on the findings of consultants engaged thereunder" by independent contractors.¹⁰

III. Effect of Proposed Changes:

This bill would require the DOE to contract with an out-of-state entity to study the FEFP, with an analysis on the current funding distribution formula and recommended improvements to ensure

³ James F. Dewey, David A. Denslow and Eve Irwin, *2010 Florida Price Level Index*, pg. 2, Bureau of Economic and Business Research, University of Florida (2011).

⁴ s. 1011.62(2), F.S.

⁵ 940 So.2d 593 (Fla. 1st DCA 2006).

⁶ *Id.* at 596.

⁷ *Id.* Leon, Duval, Gadsden, and Nassau counties received the largest increases in funding (up to 5.4 percent) and Monroe, Miami-Dade, and Broward counties incurred the biggest decreases (up to 7.6 percent).

⁸ *Id.* at 603.

⁹ 954 So.2d 1156 (Table).

¹⁰ s. 287.012(8), F.S.

equity among school districts, in light of school district characteristics and student demographics. No guidelines are provided regarding the commissioning of this study.

The DOE is required to provide a report to the Governor and Legislature by January 1, 2012.

From general revenue, \$100,000 is provided in nonrecurring funds to be used solely to pay the entity conducting the study. Unexpended funds would be reappropriated for the 2012-2013 fiscal year. It is unclear why the funds would be reappropriated when the report due date is captured in the first fiscal year of the appropriation.

The bill does not specify whether the entity conducting the study would provide this service as an independent contractor. In the event that the DOE does commission a study for compensation with an independent contractor, as a qualifying state agency, it appears that the DOE would be subject to state purchasing requirements regarding the competitive bid process.

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:

None.

C. Government Sector Impact:

The DOE would be required to expend resources in generating the report to be provided to the Governor and Legislature and in assisting the consultant with research data.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The DOE indicates that the 1979 Legislature passed a law which provided for the DOE to conduct or contract for a study to develop a Cost of Education Index and provided funding in the amount of \$200,000. In its request for proposals, the DOE stated as the purpose:

...to determine whether there is a set of variables or factors relating to the cost of public school education which, when combined into an index, would guarantee, to a greater degree than the Florida Price Level Index, each student in Florida's public schools the availability of program and services appropriate to education needs which are substantially equal to those available to any similar student notwithstanding geographic differences and varying local economic factors.¹¹

The DOE contracted with SRI International to develop the index and prepare a report. SRI provided the report in 1981, but its recommendations were not implemented.

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.

¹¹ Bill Analysis, Department of Education, April 6, 2011 (pg. 4).

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 1062

INTRODUCER: Senator Hill

SUBJECT: Veterans' Day

DATE: April 6, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Yune	Carter	MS	Favorable
2.	Carrouth	Matthews	ED	Pre-meeting
3.			CA	
4.				
5.				
6.				

I. Summary:

This bill requires each school district to observe November 11 of each year as the Veterans Day holiday. Classes may not be held on that day for any reason except for a declared state of emergency.

This bill creates an undesignated section of the Florida Statutes.

II. Present Situation:

Veteran's Day

World War I officially ended when the Treaty of Versailles was signed on June 28, 1919. However, fighting ceased seven months prior to the signing of the treaty when an armistice between the Allied nations and Germany went into effect on the eleventh hour of the eleventh day of the eleventh month.¹ For that reason, November 11, 1918, is generally regarded as the end of WWI.

In November 1919, President Wilson proclaimed November 11 as the first commemoration of Armistice Day. The original concept for the celebration was for a day observed with parades and public meetings and a brief suspension of business beginning at 11:00am.² Then, an act (52 Stat. 351; 5 U.S. Code, Sec 87a) approved May 13, 1938, made the 11th of November in each year a legal holiday which was officially called "Armistice Day".³

¹ United States Department of Veterans Affairs, <http://www.va.gov/opa/vetsday/vetdayhistory.asp>.

² *Id.*

³ *Id.*

After World War II and the Korean War, the 83rd Congress amended the Act of 1938 by striking out the word “Armistice” and inserted in its place the word “Veterans.” With the approval of this legislation (Public Law 380) on June 1, 1954, November 11th became a federal holiday to honor American veterans of all wars.⁴ Similar to other federal holidays, many Americans have the day off from school or work for Veterans’ Day.⁵ Non-essential federal government offices are closed. However, because the 10th Amendment reserves holiday creation policy to governments of the several states, federal law cannot compel states, municipalities, or other local governments to observe or recognize federal holidays.⁶ Moreover, private employers are not required to observe federal or state holidays although many businesses do close in observance of federal or state holidays.⁷

Presently, s. 110.117, F.S., provides nine paid holidays to be observed by all state branches and agencies:

- New Year’s Day– January 1
- Martin Luther King’s Jr. Birthday – third Monday in January
- Memorial Day – last Monday in May
- Independence Day – July 4
- Labor Day – first Monday in September
- Veterans’ Day – November 11
- Thanksgiving Day – fourth Thursday in November
- Friday after Thanksgiving Day
- Christmas Day – December 25

Veteran’s Day in Florida

Though all Florida state agencies are closed on the holidays provided in s. 110.117, F.S., not all schools are closed on these days. Only two holidays, Labor Day and Martin Luther King Jr.’s Birthday, are universally observed throughout Florida schools.⁸ Section 1001.42(4)(g), F.S., requires district school boards to designate school holidays and vacation periods as part of their yearly calendar. As a result, the decision to observe Veterans’ Day is determined by individual district school boards. According to the Florida Department of Education 2010-2011 Data Report, 42 of 67 school districts chose to observe Veterans’ Day during the current school year.⁹

III. Effect of Proposed Changes:

This bill requires all school districts to observe November 11, Veterans’ Day, as a holiday each year. This bill would remove a school boards’ discretion to decide whether or not to hold classes on Veterans Day. School district calendars may have to be extended by one day to meet the

⁴ *Id.*

⁵ U.S. Office of Personnel Management; <http://www.opm.gov/oca/worksch/index.asp>.

⁶ United States Constitution 10th Amendment: The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

⁷ The Fair Labor Standards Act (FLSA), United States Department of Labor.

⁸ Florida Department of Education Data Report for 2010-2011, available at: www.fldoe.org/eias/eiaspubs/word/calendar.doc.

⁹ *Id.*

minimum school term of 180 days required by s. 1003.02, F.S.¹⁰ School districts will not be able to hold classes on Veterans' Day, except for declared state emergencies. In addition, this bill provides that if November 11 falls on a weekend, then the holiday will be observed immediately before or after the weekend to correspond to the date that Veterans' Day is observed as a federal holiday.

This bill has an effective date of July 1, 2011.

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:

This bill may require parents, whose employers do not observe Veterans' Day, to incur additional child care costs. Due to the many variables that may dictate child care costs, it is difficult to estimate the additional costs that may arise.

C. Government Sector Impact:

According to the Florida Department of Education, s. 1003.02(g)(1), F.S., requires district school boards to provide for the operation of all public schools as free schools for a term of at least 180 days or the equivalent on an hourly basis as specified by rules of the State Board of Education. School operating budgets are based on this fixed minimum instructional term. The addition of an additional non-instructional calendar day within a nine-month school calendar should not impact district fixed costs. The fiscal impact to school districts is considered negligible.

VI. Technical Deficiencies:

None.

¹⁰ Department of Education legislative bill analysis, dated February 7, 2011, on file with the committee.

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.



392312

LEGISLATIVE ACTION

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 386.209, Florida Statutes, is amended to read:

386.209 Regulation of smoking preempted to state.—This part expressly preempts regulation of smoking to the state and supersedes any municipal or county ordinance on the subject; however, school districts may further restrict smoking by persons on school district property.

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



392312

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

And the title is amended as follows:

 Delete everything before the enacting clause
and insert:

 A bill to be entitled

An act relating to the regulation of smoking; amending
s. 386.209, F.S.; authorizing school districts to
restrict smoking on school district property;
providing an effective 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: CS/SB 1430

INTRODUCER: Regulated Industries Committee and Senator Altman

SUBJECT: Regulation of Smoking

DATE: April 12, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Fav/CS
2.	Harkey	Matthews	ED	Pre-meeting
3.	_____	_____	JU	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:	
A. COMMITTEE SUBSTITUTE.....	<input checked="" type="checkbox"/> Statement of Substantial Changes
B. AMENDMENTS.....	<input type="checkbox"/> Technical amendments were recommended
	<input type="checkbox"/> Amendments were recommended
	<input type="checkbox"/> Significant amendments were recommended

I. Summary:

The bill authorizes district school boards to adopt rules prohibiting any person from smoking tobacco on, or in, any district-owned or district-leased facility or property between the hours of 6 a.m. and midnight.

This bill amends sections 386.209 and 386.212, Florida Statutes.

II. Present Situation:

Smoking Prohibited Near School Property

Since 1996, s. 386.212(1), F.S., has prohibited smoking by any person under 18 years of age in, on, or within 1,000 feet of the real property comprising a public or private elementary, middle, or secondary school between the hours of 6 a.m. and midnight. The prohibition does not apply to any person occupying a moving vehicle or within a private residence.

Section 386.212(2), F.S., authorizes law enforcement officers to issue citations in the form as prescribed by a county or municipality to any person violating the provisions of s. 386.212, F.S., and prescribes the information that must be included in the citation.

The issuance of a citation under s. 386.212(2), F.S., constitutes a civil infraction punishable by a maximum civil penalty not to exceed \$25, or 50 hours of community service or, where available, successful completion of a school-approved anti-tobacco “alternative to suspension” program.¹

A person who fails to comply with the directions on the citation will be deemed to have waived his or her right to contest the citation, and an order to show cause may be issued by the court.²

After the voters approved an amendment to the Florida Constitution in 2002³ to prohibit smoking in the workplace, section 386.212, F.S., was incorporated into the Florida Clean Indoor Air Act (act) in part II of ch. 386, F.S.⁴ The legislative purpose of the act, which regulates tobacco smoking in Florida, is to protect people from the health hazards of secondhand tobacco smoke and to implement the Florida health initiative in s. 20, Art. X of the State Constitution.⁵

Currently, smoking inside a school or other enclosed school board workplace is prohibited by the Clean Indoor Air Act. Persons under the age of 18 years are prohibited from smoking on property within 1,000 feet of a school between the hours of 6:00 a.m. and 12:00 a.m. Smoking by a person over the age of 18 years is not prohibited on school grounds, and smoking by a person of any age is not prohibited on other school property outside an enclosed workspace.

Florida’s Clean Indoor Air Act

Section 386.204, F.S., prohibits smoking in an enclosed indoor workplace, unless the act provides an exception. The act adopts and implements the amendment’s definitions and adopts the amendment’s exceptions for private residences whenever they are not being used for certain

¹ Section 386.212(3), F.S.

² Section 386.212(4), F.S.

³ On November 5, 2002, the voters of Florida approved Amendment 6 to the State Constitution, which prohibits tobacco smoking in enclosed indoor workplaces. Codified as s. 20, Art. X, Florida Constitution, the amendment defines an “enclosed indoor workplace,” in part, as “any place where one or more persons engages in work, and which place is predominantly or totally bounded on all sides and above by physical barriers ... without regard to whether work is occurring at any given time.” The amendment defines “work” as “any persons providing any employment or employment-type service for or at the request of another individual or individuals or any public or private entity, whether for compensation or not, whether full or part-time, whether legally or not.” The amendment provides limited exceptions for private residences “whenever they are not being used commercially to provide child care, adult care, or health care, or any combination thereof”; retail tobacco shops; designated smoking guest rooms at hotels and other public lodging establishments; and stand-alone bars. The constitutional amendment directs the Legislature to implement the “amendment in a manner consistent with its broad purpose and stated terms.” The amendment requires that the implementing legislation have an effective date of no later than July 1, 2003, and requires that the implementing legislation must also provide civil penalties for violations; provide for administrative enforcement; and require and authorize agency rules for implementation and enforcement. The amendment further provides that the Legislature may enact legislation more restrictive of tobacco smoking than that provided in the Florida Constitution.

⁴ The Legislature implemented the smoking ban by enacting ch. 2003-398, L.O.F., effective July 1, 2003, which amended pt. II of ch. 386, F.S., and created s. 561.695, F.S., of the Beverage Law. The act, as amended, implements the constitutional amendment’s prohibition.

⁵ Section 386.202, F.S.

commercial purposes;⁶ stand-alone bars;⁷ designated smoking rooms in hotels and other public lodging establishments;⁸ and retail tobacco shops, including businesses that manufacture, import or distribute tobacco products and tobacco loose leaf dealers.⁹

Section 386.207, F.S., provides for enforcement of the act by the Department of Health (DOH) and the Department of Business and Professional Regulation (DBPR) within each department's specific areas of regulatory authority. Sections 386.207(1) and 386.2125, F.S., grant rulemaking authority to the DOH and the DBPR and require that the departments consult with the State Fire Marshal during the rulemaking process.

Section 386.207(3), F.S., provides penalties for violations of the act by proprietors or persons in charge of an enclosed indoor workplace.¹⁰ The penalty for a first violation is a fine of not less than \$250 and not more than \$750. The act provides fines for subsequent violations in the amount of not less than \$500 and not more than \$2,000. Penalties for individuals who violate the act are provided in s. 386.208, F.S., which provides for a fine in the amount of not more than \$100 for a first violation and not more than \$500 for a subsequent violation. The penalty range for an individual violation is identical to the penalties for violations of the act before the implementation of the constitutional smoking prohibition.

Regulation of Smoking Preempted to State

Section 386.209, F.S., provides that the act expressly preempts regulation of smoking to the state and supersedes any municipal or county ordinance on the subject.

Regarding the issue of preemption, a recent Florida Attorney General Opinion concluded that the act precludes school districts from adopting tobacco-free campus policies which prohibit smoking outdoors on school grounds.¹¹ The Attorney General reasoned that s. 386.209, F.S., represents a clear expression of the legislative intent that the act preempts the field of smoking regulation. The Attorney General also noted that the prohibition against smoking near school property in s. 386.212, F.S., presented a clear expression of the legislative intent to preempt the regulation of smoking in any public places and, specifically, smoking on school property.

III. Effect of Proposed Changes:

The bill amends s. 386.212, F.S., to authorize district school boards to adopt rules prohibiting any person from smoking tobacco on, or in, any other district-owned or district-leased facility or property between the hours of 6 a.m. and midnight.

⁶ Section 386.2045(1), F.S. *See also* definition of the term "private residence" in s. 386.203(1), F.S.

⁷ Section 386.2045(4), F.S. *See also* definition of the term "stand-alone bar" in s. 386.203(11), F.S.

⁸ Section 386.2045(3), F.S. *See also* definition of the term "designated smoking guest room" in s. 386.203(4), F.S.

⁹ Section 386.2045(2), F.S. *See also* definition of the term "retail tobacco shop" in s. 386.203(8), F.S.

¹⁰ The applicable penalties for violations by designated stand-alone bars are set forth in s. 561.695(8), F.S.

¹¹ Fla. AGO 2010-53 (December 29, 2010), readable at:

<http://www.myfloridalegal.com/ago.nsf/printview/1FA4896BFF72350B85257808007B1925>. *See also*, Fla. AGO 2005-63 (November 21, 2005), readable at:

<http://www.myfloridalegal.com/ago.nsf/printview/876AC6F6B95DBF69852570C00075B510> which opined that a municipality is preempted from regulating smoking in a public park other than as prescribed by the Legislature.

Any rules adopted by district school boards under the authority provided in this bill, would not be subject to the citation provisions in s. 386.212(2), F.S. The civil penalty provisions in s. 386.212(3), F.S., and the failure to comply with a citation provision in s. 386.212(4), F.S., would also not apply to violations of any rule adopted by a school district board pursuant to the authority in this bill. Enforcement of any such rule would be limited to ordering the person who is violating the board's rule to cease from smoking or to leave the property. However, the citation provisions of s. 386.212(2), F.S., apply to any violation of s. 386.212, F.S., and placing an authorization within that section for school board rules that would not be subject to the penalties for violation of that section could be somewhat confusing.

The bill amends s. 386.209, F.S., to incorporate the exception provided in s. 386.212, F.S.

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:

None.

C. Government Sector Impact:

None.

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.)

CS by Regulated Industries on March 16, 2011:

The committee substitute amends s. 386.209, F.S., to incorporate the exception provided in s. 386.212, F.S.

- B. **Amendments:**

None.

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 1550

INTRODUCER: Senator Negrón

SUBJECT: Education Savings Account Program

DATE: April 11, 2011 REVISED: _____

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

I. Summary:

The bill creates the Education Savings Account Program in which the parent would direct the state to deposit funds, equivalent to 40 percent of the amount funded under the Florida Education Finance Program, in an account with a financial institution to be used for certain educational purposes for an eligible student. These purposes include the following:

- Payment of tuition and fees for the student to attend a private school or private virtual school;
- Payment to a private tutor or private tutoring program for supplemental educational services;
- Payment of tuition, fees, or books for dual enrollment at an eligible public or private postsecondary education institution; or
- Contribution to the student’s college savings plan or to purchase of a Florida Prepaid College Program plan.

A student is eligible under the program, if the student resides in the state and:

- Is eligible to enter kindergarten or first grade;
- Is the sibling of a student who participates in the program and who resides in the same household;
- Was counted as a full-time equivalent student during the previous state fiscal year under the FEFP; or
- Attends a home education program or private school.

This bill creates section 1002.385 of the Florida Statutes.

II. Present Situation:

Scholarship Programs

Under the Florida Tax Credit Scholarship Program (FTC program), tax credit scholarships were created to encourage private, voluntary contributions from corporate donors to nonprofit scholarship-funding organizations.¹ A corporation can receive a dollar for dollar tax credit against its state corporate income tax, insurance premium tax, severance taxes on oil and gas production, self-accrued sales tax liabilities of direct pay permit holders, and alcoholic beverage tax on beer, wine, and spirits for donations to private nonprofit scholarship-funding organizations.

Current law sets forth the requirements for parental placement of a student with disabilities in an eligible private school or another public school, using a John M. McKay Scholarships for Students with Disabilities Program.² To be eligible for a McKay scholarship to attend a private school, a K-12 student with a disability³ must have an individual education plan (IEP) and have spent the prior school year in attendance at a Florida public school.⁴

Private schools participating in the FTC program and the McKay program must provide documentation of financial stability and comply with federal antidiscrimination law and all state laws regulating private schools.⁵ To be eligible for participation in the FTC program, a private school must demonstrate fiscal soundness and accountability.⁶

Supplemental Educational Services in Title I Schools

Federal law requires districts with schools that have not met state performance goals for three consecutive years to offer their low-income students supplemental educational services (SES), such as tutoring, if these schools receive Title I funds.⁷ Services are provided outside of the regular school day by a state-approved provider, with responsibility for implementation shared by states and districts. The Florida DOE is responsible for monitoring and evaluating the effectiveness of provider services.⁸

The responsibilities for school districts providing SES services include entering into a contract with each approved provider and notifying eligible families regarding the availability of services,

¹ ss. 1002.395(1) and 1002.421, F.S. In 2010, the program was transferred from s. 220.187, F.S., to s. 1002.395, F.S., by ch. 2010-24, L.O.F.

² s. 1002.39, F.S.

³ s. 1002.39(1), F.S.

⁴ s. 1002.39(2), F.S. There are two exceptions to the requirement for prior year in attendance.

⁵ ss. 1002.39(8), 1002.395(8) and 1002.421, F.S.

⁶ s. 1002.421, F.S.

⁷ 20 U.S.C. § 6316, codified in s. 1008.331, F.S., by ch. 2006-301, L.O.F.

⁸ 20 U.S.C.A. § 6316(e)(4), s. 1008.331(5)(b), F.S., and Rule 6A-1.0391, F.A.C. The DOE is required to evaluate each state-approved provider and assign a service designation of excellent, satisfactory, or unsatisfactory for the prior school year. The State Board of Education rules specify the threshold requirements for assigning the service designations; however, the service designations must be based primarily on student learning gains. By July 1 of each year, the DOE must report the service designation to the SES providers, the school districts, parents, and the public. This is the first year for evaluating providers. The service designations have not been released for 2009-2010, pending the appeal of six providers. E-mail, DOE, April 8, 2011, on file with the committee.

tutor qualifications, and evidence of effectiveness as determined by the DOE's evaluation of the academic proficiency of each SES provider.⁹ There were 293 approved SES providers (private tutoring companies) for 2009-2010.¹⁰

Dual Enrollment

The dual enrollment program allows high school students to simultaneously earn credit toward a high school diploma and college or vocational credit toward a career certificate, an associate degree or a baccalaureate degree. Dual enrollment courses may be taken during or after school or during the summer, and may be offered at a high school or college site. The DOE must approve any course for inclusion in the dual enrollment program that is contained within the statewide course numbering system¹¹.

In the Florida Education Finance Program, the following types of private postsecondary institutions may be included in the dual enrollment program:

An independent college or university which is located and chartered in Florida, is not for profit, is accredited by the Commission on Colleges of the Southern Association of Colleges and Schools or the Accrediting Council for Independent Colleges and Schools, and confers degrees as defined in s. 1005.02, F.S.¹²

In order to participate in dual enrollment, students must:¹³

- Be a student in a Florida public or nonpublic secondary school, or in a home education program.
- Have a 3.0 unweighted grade point average to enroll in college credit courses, or a 2.0 unweighted grade point average to enroll in career certificate courses.
- Pass the appropriate section of the college placement examination.
- Meet any additional admissions criteria set by the postsecondary institution.

Of the students participating in dual enrollment for the second semester of 2009-2010, 110 students were enrolled in a private institution, 1,150 were enrolled in a state university, and 26,555 were enrolled in a Florida College system institution.¹⁴

Instructional materials for dual enrollment courses must be made available to students from Florida public high schools free of charge.¹⁵ Dual enrollment students from private high schools

⁹ Rule 6A-1.039, F.A.C., requires that districts and parents develop a student learning plan that includes specific student achievement goals, an explanation of how progress will be measured, a timetable for improving achievement, and how parents and teachers will be informed about student progress.

¹⁰ E-mail, DOE, April 8, 2011, on file with the committee. Currently, providers are annually approved by the DOE. They may annually contract with each individual district to provide services. For FY 2009-2010, \$157,272,411.20 was allocated for SES services.

¹¹ s. 1007.271(11), F.S.

¹² s. 1011.62(1)(i), F.S.

¹³ s. 1007.271(3), F.S.

¹⁴ E-mail, DOE, April 8, 2011 and April 11, 2011, on file with the committee.

¹⁵ s. 1007.271(14), F.S.

and home education students must pay for instructional materials unless the institution they attend elects to furnish the materials to them.

The Stanley G. Tate Florida Prepaid College Program

The Stanley G. Tate Florida Prepaid College Program allows purchasers to buy prepaid contracts to pay the registration fees, local fees, tuition differential fees and dormitory expenses of beneficiaries at Florida community colleges and state universities, in advance of enrollment.¹⁶ Beneficiaries of prepaid contracts are permitted to transfer the benefits of their contracts to any of the following institutions that qualify as an “eligible educational institution” under s. 529 of the Internal Revenue Code:

- An independent college or university located and chartered in Florida, that confers degrees and is accredited by the Southern Association of Colleges and Schools or the Accrediting Council for Independent Colleges and Schools and that confers degrees;
- Any out-of-state college or university that confers degrees, is not-for-profit, and is accredited by a regional accrediting association; and
- An applied technology diploma program or career certificate program operated by a Florida community college or a career center operated by a district school board.¹⁷

The value of the prepaid contract benefits that may be transferred to one of those educational institutions may not exceed the redemption value of the prepaid contract, that is, the value of the tuition or benefits at a Florida community college or university or the actual cost of fees or housing, whichever is less.

529 Plans (Qualified Tuition Program)

Section 529 of the Internal Revenue Code, exempts the contributor and the beneficiary of a qualified tuition program from the payment of federal income tax on the funds contributed to or disbursed from the program.¹⁸ These programs, popularly known as 529 plans, are established by a state or eligible education institutions. There are two types of 529 plans: college savings plans and prepaid tuition plans. The Florida Prepaid College Plan is a prepaid tuition 529 plan. Under the federal law, an “eligible educational institution” is a postsecondary educational institution eligible to participate in federal student financial aid programs under the federal Higher Education Act of 1965, such as the Pell Grant Program and federal student loan programs. Thus, the federal law would permit a beneficiary of a 529 plan to transfer the benefits of the plan to a broader range of institutions than would Florida’s prepaid program.

III. Effect of Proposed Changes:

The bill creates the Education Savings Account Program in which the parent would direct the state to deposit funds, equivalent to 40 percent of the amount funded under the Florida Education Finance Program, in an account with a financial institution to be used for certain educational purposes for an eligible student.

¹⁶ s. 1009.98, F.S.

¹⁷ *Id.*

¹⁸ 26 U.S.C. § 529(c) (2006)

Eligible Students

Under the program, a student who resides in the state is eligible for the program if he or she:

- Is eligible to enter kindergarten or the first grade;
- Was counted as a full-time equivalent student during the previous state fiscal year for purposes of state per-student funding;
- Is the sibling of a student who participates in the program and who resides in the same household;
- Attends a home education program or a private school and was randomly selected to participate in the program.

A student is ineligible to participate if he or she:

- Is enrolled in a school operating for the purpose of providing educational services to youth in a commitment program for the Department of Juvenile Justice;
- Participates in a virtual school, correspondence school, or distance learning program that receives state funding for the student's participation;
- Is enrolled in the Florida School for the Deaf and the Blind; or
- Is receiving an educational scholarship pursuant to chapter 1002, F.S.

Education Options

A parent is responsible for annually applying to the DOE for his or her child to participate in the program.

The parent must select the following purposes for program funds:

- Payment of tuition and fees for the student to attend a private school or private virtual school;
- Payment to a private tutor or private tutoring program for supplemental educational services;
- Payment of tuition, fees, or books for dual enrollment at an eligible public or private postsecondary education institution; or
- Contribution to the student's college savings plan or to purchase of a Florida Prepaid College Program plan.

A parent may also choose to simultaneously enroll the child in a dual enrollment program through a public postsecondary institution or an eligible private postsecondary institution. The bill limits the private dual enrollment option to an institution that is a member of the Independent Colleges and Universities of Florida (ICUF).¹⁹ For dual enrollment, the parent must register the child or apply for admission and notify the district when the child is withdrawn from school to attend the postsecondary institution. The child must attend the institution and comply with institutional policy.

¹⁹ In s. 1011.62(1)(i), F.S., the FEFP, private postsecondary institutions that may participate in dual enrollment are independent colleges or universities which are located and chartered in Florida, are not for profit, are accredited by the Commission on Colleges of the Southern Association of Colleges and Schools or the Accrediting Council for Independent Colleges and Schools, and confer degrees, as defined in s. 1005.02, F.S. Twenty-nine ICUF member schools are eligible to participate in dual enrollment. There are four additional private postsecondary institutions that are approved to offer dual enrollment, but are not members of ICUF. They would be ineligible to participate in the program.

Likewise, a parent must comply with all policies of the eligible provider, school, institution, or program. A parent is responsible for all costs of the authorized educational option that are in excess of the program funds. A parent also assumes the obligation for any outstanding balance owed when a child returns to a public school.

A parent that chooses a private school must apply to the school, notify the school district when the child is withdrawn from public school, and ensure that the child takes the assessments administered by the school. The student is responsible for meeting the attendance requirements and complying with school policy.

A parent may transfer account funds to another financial institution. Although it appears that the parent selects the eligible financial institution (see lines 225-226 and 244-252), the bill does not explicitly require him or her to do so.

Term of Education Savings Account

A student remains eligible for the program until he or she graduates from high school and as long as the student does not enroll in a public school, charter school, or a virtual instruction program that receives state funding as a result of the student's participation. However, a student would remain eligible if he or she is enrolled in the Florida Virtual School.

Eligible Private Schools and Institutions

The following schools and institutions, whether sectarian or nonsectarian, that comply with applicable DOE rules are eligible to participate in the program:

- A private school that is accredited by the Southern Association of Colleges and Schools or is eligible to participate in the FTC Program or the John M. McKay Scholarships for Students with Disabilities Program;²⁰
- A private virtual school that is approved by the DOE to participate in the school district virtual instruction program;²¹
- A state postsecondary institution; and
- An eligible private postsecondary institution.

Additionally, a private tutor or private tutoring program is eligible to participate in the program if the private tutor or private tutoring program is qualified under s. 1002.43, F.S.,²² complies with applicable DOE rules, and is an SES provider.

Eligible private schools, including private virtual schools, would administer nationally norm-referenced tests to students participating in the program and report the results to an independent research organization that analyzes the test scores.

²⁰ ss. 1002.395 and 1002.39, F.S., respectively.

²¹ s. 1002.45, F.S.

²² Under s. 1002.43, F.S., students may attend a private tutoring program if the tutor holds a valid Florida teaching certificate for the subjects or grades taught, keeps records, meets reporting requirements, and requires students to be in actual attendance for the minimum length of time specified in law.

Under the bill, students in private tutoring programs that are SES providers are not required to be assessed or included in the research. Pursuant to current administrative rule, SES providers are required to administer a valid and reliable assessment instrument to students that they serve and to make all student data, including learning gains, available to the DOE or district upon request.²³

Commissioner of Education

Under the bill, the Commissioner would deny, suspend, or revoke participation of any private school, tutor, or private tutoring program for failure to meet the requirements in s. 1002.385, F.S. However, if the noncompliance is correctable, the commissioner may issue a notice of noncompliance for correction. The bill also provides for an adversely affected private school to request an administrative hearing.

The Commissioner would be permitted to order a financial institution to suspend payment of funds to an account if there is an imminent threat to health, safety, or welfare of students or fraudulent activity on the part of a private school. A private school would be permitted to request a hearing on the suspension of payments.

DOE Inspector General

The bill also authorizes the release of personally identifiable student records to facilitate investigations of fraud, consistent with the Family Educational Rights and Privacy Act.²⁴

Department of Education

The bill requires the DOE to establish an enrollment period and procedures, annually verify the eligibility of schools, educational institutions, tutors and tutoring programs, and notify participating financial institutions of eligible education providers and students approved to participate.

The DOE would also reconcile the list of participating students with public school enrollment to avoid duplicate payment, conduct investigations of any written complaints of a violation under the program, if the complaint is signed by the complainant and is legally sufficient, conduct random site visits to participating private education providers, and annually report to the Governor and Legislature on the implementation of the program.

While the bill requires private schools to certify compliance with the program's requirements, the requirements are less stringent than those for the current scholarship programs and private virtual instruction providers. Additionally, the bill does not require private tutors, private tutoring programs, or postsecondary institutions to certify compliance.

Private schools participating in the McKay and FTC programs must meet the accountability requirements in s. 1002.39, F.S., and s. 1002.395, F.S., respectively. Moreover, they must meet the requirements in s. 1002.421, F.S., relating to state school choice scholarship programs.

Private providers participating in the school district virtual instruction (VIP) program must meet

²³ Rule 6A-1.0391, F.S. Miami-Dade County Public Schools recently raised concerns that the current pre- and post-assessments cannot provide districts or parents with statistically reliable data that demonstrates the extent to which children benefit from the tutoring they receive. Correspondence to the Commissioner of Education, December 17, 2010, on file with the committee.

²⁴ 20 U.S.C. 1232g(b)(1)(D) and 34 C.F.R. § 99.31

the accountability requirements in s. 1002.45, F.S. Other private schools must provide information to the DOE (e.g., type of institution, administrative officers, enrollment by grade, number of graduates, and number of days in session) and meet requirements that include owner background screening, student attendance, and records retention.²⁵

Chief Financial Officer

Under the bill, the CFO responsibilities would include approving applications for account trustees (financial institutions), providing a list of participating financial institutions to the DOE, conducting random audits of participating financial institutions, revoking the eligibility of financial institutions that fail to meet the required criteria, and making quarterly payments into accounts.

Financial institutions

To participate in the program, a financial institution²⁶ would apply to the CFO for initial approval and annual renewal. The institution serves as the trustee for the account. The transaction fee is limited to no more than three percent per account. Quarterly payments are made directly to the private education providers and may not exceed the state quarterly payment to the institution, less the institution's fee, and the reported tuition and fee schedule, or in the case of a public postsecondary institution, the full cost of books, tuition, and fees. The payments to the college savings plan or the prepaid program may not exceed the state quarterly payment to the institution, less the institution's fee.

On a quarterly basis, the financial institution would also be responsible for notifying the DOE of those students who have education savings accounts. An institution that wishes to withdraw from the program must provide notice to the CFO and parents. The CFO must randomly select another institution and transfer each account to that institution, if a parent fails to make a timely selection.

Education Savings Account

The program would be funded in the General Appropriations Act (GAA). The total annual payment for each student's account is based on a percentage of the base student allocation under the Florida Education Finance Program (FEFP) and the appropriate cost factor, district cost differential, and per-student share of categorical funds, including funds for instructional materials.

For each quarter, the Legislative Budget Commission would be permitted to transfer excess funds appropriated for the program to the FEFP.

For the 2011-2012 school year, enrollment is limited to the number of students specified in the GAA. Additionally, enrollment is limited to students who are entering kindergarten or first grade and those who were counted as a full-time equivalent student during 2010-2011. If the number of eligible applicants exceeds the number specified in the GAA, the DOE would randomly select students to participate. Thereafter, the DOE would randomly select home school and private

²⁵ s. 1002.42, F.S.

²⁶ s. 655.005(5)(h), F.S.

school students who did not participate in the program during the previous school year. The bill specifies how the number of available spaces would be determined.

Cooperative Agreement and Rules

Under the bill, the DFS and the DOE would develop a cooperative agreement to administer the program. The State Board of Education and the CFO must adopt rules to implement the program.

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 of this bill may be constitutionally challenged. In 2004, petitioners filed suit against the Opportunity Scholarship Program (OSP), which authorized students attending failing public schools the option to transfer, accompanied by a transfer of public monies, to another public school or to a private sectarian or nonsectarian school.²⁷ The First District Court of Appeals struck down the program as unconstitutional based on the “no aid” provision of the state constitution, which provides, in part:

No revenue of the state...shall ever be taken...directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution.²⁸

The Florida Supreme Court, upon review, affirmed the District Court of Appeal holding but decided the case on different grounds.²⁹ The court specifically invalidated the OSP on the basis that it violated the uniformity provision, rather than the no aid provision, of the state constitution. The uniformity provision reads:

The education of children is a fundamental value....It is...a paramount duty of the state to make adequate provision for the education of all children....Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education....³⁰

²⁷ *Bush v. Holmes*, 886 So.2d 340 (Fla. 1st DCA 2004).

²⁸ Art. I, sec. 3, of the state constitution.

²⁹ *Bush v. Holmes*, 919 So.2d 392 (Fla. 2006).

³⁰ Art. IX, sec. 1.(a), of the state constitution.

In its analysis, the court considered significant that in contrast to private school/teacher standards and qualifications, state law requires public school teachers to hold bachelor's degrees and be certified, and the public school curriculum must strictly comply with the Sunshine State Standards provided in law and through the DOE. Notably, the OSP required background screening of all teachers and accountability of all qualifying provider schools pursuant to the state assessment model provided in s. 1008.22, F.S.³¹ Still, the court, held, it failed to meet the uniform mandate required under the state constitution:

It diverts public dollars into separate private systems parallel to and in competition with the free public schools that are the sole means set out in the Constitution for the state to provide for the education of Florida's children. This diversion not only reduces money available to the free schools, but also funds private schools that are not "uniform"...through the OSP the state is fostering plural, nonuniform systems of education....³²

To the extent that this bill authorizes the use of funds from the state treasury to fund private K-12 education, a court may find these provisions constitutionally infirm. There is not a concomitant uniformity requirement for postsecondary education in the constitution.

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 private school may choose to have the child participate in statewide assessments. The parent is responsible for transportation to the designated test site.

Parents are permitted to donate account funds that were not spent at the time of high school graduation or when a student withdraws from the program. A private school or institution may benefit from the donation.

Financial institutions are permitted to impose fees of up to three percent of each payment out of a savings account.

C. Government Sector Impact:

State Fiscal

The amount deposited into a participating student's account is equal to 40 percent of the base student allocation under the FEFP, multiplied by the appropriate cost factor,

³¹ *Holmes*, supra note 3, at 401.

³² *Id.* at 398.

multiplied by the district cost differential, plus the per-student share of the instructional materials funds and other categorical funds. Using FY 2010-2011 FEFP data,³³ the amount per student would be approximately \$3100.00. This program appears to be funded solely through state funds. Accordingly, this would be a fiscal to the state, in an amount indeterminate at this time.

The bill defines an eligible student to include: students eligible to enter kindergarten or first grade; siblings of program participants; students who attended the prior year in a public school; and students attending a home education program or a private school. The inclusion of students eligible to enter kindergarten or first grade would be a fiscal. The amount of the state fiscal is indeterminate and would be mitigated to a certain extent if a student would have enrolled in a public school, absent the program. The authorization to include students attending a home education program or private school would be a fiscal. The amount of the state fiscal is indeterminate. The cost would be mitigated to a certain extent beginning in 2012-2013 by a cap on program participation by these students to an amount equal to the number of students who enrolled in the program and attended a public school in the prior year under the FEFP. In FY 2011-2012, the cost is mitigated to a certain extent by limiting eligible students to students who attended a public school in the prior year and students eligible to kindergarten or the first grade.

Department of Financial Services

According to the DFS, this will be a major emergency project for the agency, requiring an estimated \$168,541 in recurring costs and 3 FTE and \$761,694 in non-recurring costs for FY 2011-2012, of which \$750,000 is for staff augmentation for computer application development.³⁴ The DFS also notes that counties could be substantially affected by the financial institution fees and the diversion of state education funds to private schools.³⁵

Department of Education

The bill requires the DOE to maintain nationally norm-referenced tests that private schools must administer to students participating in the program. The DOE currently maintains a list of assessments for schools that participate in the FTC program.³⁶ The bill also requires the DOE to select an independent research organization to receive and analyze norm-referenced assessment scores of private school students, as reported by private schools. This is essentially the same requirement that is currently in place for the FTC program. Under an annual contract with the DOE, an independent researcher currently receives \$120,000 to analyze and report on the assessment scores of students participating in the FTC Program. The bill requires similar research for this program for private schools. The DOE provided the following estimates to implement the provisions in the bill for the Web application development and hardware:³⁷

³³ 2010-2011 FEFP, 3rd calculation.

³⁴ E-Mail, DFS, April 6, 2011, on file with the committee.

³⁵ *Id.*

³⁶ According to the DOE, there are 21 norm-referenced tests for the 2010-2011 school year. E-mail, DOE, April 11, 2011.

See http://www.floridaschoolchoice.org/information/ctc/files/norm_CTC.pdf.

³⁷ E-mail, DOE, April 1, 2011, on file with the committee.

Web Application Development Annual Cost Estimates					
Count	Staffing Description	Rate	Weeks	Man Hours	Total
1	Sys Project Analyst	\$90.00	52	2080	\$187,200.00
1	Quality Assurance & Testing	\$85.00	52	2080	\$176,800.00
					\$364,000.00
Web Application Hardware Annual Cost Estimate					
Virtual Servers	Description	Operational Cost	Total		
4	Load Balanced Virtual Web Servers	\$2,880.00	\$11,520.00		
			\$11,520.00	Total	\$11,520.00
					\$375,520.00

This estimate is based on the assumption that the initial module of the application that will go live on July 1, 2011, will only include the student registration form. Further functionality would be added over the next year as needed. Depending on the number of students in the program, additional personnel needed would include: a program director, a payment specialist, three regional managers, a complaint specialist, and a staff assistant.

Other

Parents are permitted to donate account funds that were not spent at the time of high school graduation or when a student withdraws from the program. A school district, private school, private virtual provider, or postsecondary institution may benefit from the donation.

VI. Technical Deficiencies:

On lines 296, 310, 323, and 335, the references to the registration and application process are inconsistent. Throughout the bill, the terms “state postsecondary institution” and “public postsecondary institution” are used interchangeably. The term “public postsecondary institution” should be used to comport with chapter 1004, F.S. Lines 327-331 relating to private tutors and tutoring programs appear to duplicate lines 323-326. On lines 368-369, the reference to the Tax Credit Scholarship Program should be changed to the Florida Tax Credit Scholarship Program. Lines 371 and 384 should reference rules of the State Board of Education, rather than the DOE. The bill allows a parent to direct the trustee to donate any unspent funds in the account to any ‘institution’ that is specified in subsection (4)(a)1.-5. of the bill. This provision should reference private schools, private virtual schools, private tutors, private tutoring programs, or public or private postsecondary institutions.

In the title, on line 10, the phrase “receiving private tutoring, participating in a private tutoring program,” should be added after the word “school.” On line 63, the reference to learning gains should specify that this relates to private school students (*see* lines 448-457). On lines 55-57, delete the words “private tutors, private tutoring programs, and postsecondary institutions” to comport with lines 435-438.

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.

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 Transportation Committee

BILL: SB 2036

INTRODUCER: Senator Braynon

SUBJECT: Uniform Traffic Control

DATE: April 12, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Spalla</u>	<u>TR</u>	Favorable
2.	<u>deMarsh-Mathues</u>	<u>Matthews</u>	<u>ED</u>	Pre-meeting
3.	_____	_____	<u>BC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill creates the “School Bus Safety Program,” authorizing a Florida school district to deploy school bus infraction detectors on its school buses for enforcing s. 316.172(1)(a) or s. 316.172(1)(b), F.S., when a driver fails to stop upon approaching any school bus which displays a stop signal. A school district deploying school bus traffic infraction detectors must coordinate the issuance of traffic citations with the Florida Highway Patrol, local sheriff’s office, local police department, local school board, if applicable, or any other entity having the authority and jurisdiction to enforce traffic laws. In addition, the bill authorizes the Department of Highway Safety and Motor Vehicles (DHSMV or department), to use images from school bus traffic infraction detectors on any state road under the original jurisdiction of the Florida Department of Transportation (FDOT), when permitted by the FDOT.

The bill provides for the issuance of citations to registered owners of motor vehicles and affirmative defenses available to vehicle owners. The bill provides a \$265 penalty for any violations of ss. 316.172(1)(a) or 316.172(1)(b), F.S., regardless of the method of enforcement. If the penalty is paid within 30 days of notification, the total penalty is \$265. However, if the penalty is not paid within 30 days of notification and a traffic citation is issued, the total penalty is \$265, plus court costs and fees of up to \$98, depending on the county where the offense occurs.

This bill substantially amends sections 316.003, 316.008, 316.640, 316.650, 318.14, 318.18, and 322.27, creates ss. 316.0084, 316.07457, 316.0777, and 321.51 of the Florida Statutes, and creates an undesignated section of law.

II. Present Situation:

National statistics have consistently demonstrated that school buses constitute one of the safest forms of transportation. The National Research Council concluded that children are at far more risk traveling to and from school by bike, walking, or in private passenger vehicles, especially if a teen-age driver is involved, than in school buses.¹ According to the National Highway Traffic Safety Administration, approximately 450,000 public school buses travel approximately 4.3 billion miles to transport 23.5 million children to and from school and school-related activities.² On average, 20 school-age children die each year in school bus-related crashes or incidents. Of these 20, five of the children are injured inside the bus, five are struck by other vehicles, and ten are struck by the school bus itself.³ According to the Florida Department of Education (DOE), from the 1999-2000 to the 2009-2010 school years there have been four pedestrian students struck by a vehicle illegally passing a stopped school bus.⁴ These statistics indicate that there may be an opportunity to improve even this very safe form of travel.⁵ Public health and traffic safety officials have examined the risks associated with school bus stops and noted the importance of carefully selecting bus stop locations.⁶

Current law requires district school boards to establish school bus stops, or provide by district school board rule for establishing school bus stops, as needed at the most reasonably safe locations available.⁷ Where unusual traffic hazards exist at school bus stops on roads maintained by the state outside of municipalities, the FDOT must place signs at the bus stops warning drivers of the location of the stops. The FDOT must place these signs in concurrence and cooperation with and upon request of the district school board. According to the FDOT, there are federal guidelines rather than requirements for states to use in placing “school bus ahead” signs.⁸

Documentation of stop locations and the specific procedures for ensuring stop safety are determined by the school district.⁹ Districts have safety professionals who review new stop locations or existing locations when there is an indication of a hazard.¹⁰ Some districts routinely review all stop locations. The DOE also notes that all school bus operators are trained and instructed to report hazards at stops.

According to the DOE, in 2009-2010, school districts reported that there were 293,126 public school bus stops in Florida.¹¹ There were 14,988 public school buses in daily service in 2009-

¹ *The Relative Risks of School Travel: A National Perspective and Guidance for Local Community Risk Assessment.* Transportation Research Board, 2002.

² See <http://www.nhtsa.gov/staticfiles/nti/buses/pdf/SelectingSchoolBusStopLocations.pdf>.

³ *Id.*

⁴ DOE, Florida Public School Bus Transportation-related Fatalities Multi-Year Summary (Updated 10/13/10).

⁵ *Id.*

⁶ Schieber RA, Vegega ME Reducing childhood pedestrian injuries: summary of a multidisciplinary conference. *Injury Prevention*, 2002; 8:13-110. See http://www.cdc.gov/ncipc/pub-res/childhood_pedestrian/child_pedestrian.htm.

⁷ s. 1006.22(12)(c), F.S.

⁸ *Manual on Uniform Traffic Control Devices*, U.S. Department of Transportation, Federal Highway Administration, <http://mutcd.fhwa.dot.gov/pdfs/2009/mutcd2009edition.pdf>.

⁹ s. 1006.22(12)(c), F.S.

¹⁰ DOE, April 4, 2011, on file with the Education Pre-K – 12 committee.

¹¹ *Id.*

2010, equating to an average of 40 stops per day per bus (20 physical locations, morning and afternoon).¹²

Failure to Stop for a School Bus

A person commits a moving violation if he or she is driving a vehicle and fails to stop when approaching any school bus while the bus is displaying a stop signal.¹³ A violation of this offense is punishable as provided in ch. 318, F.S. Currently, there is a minimum \$100 civil penalty and an additional \$65 civil penalty for a driver who has been found guilty by the court for failing to stop for a school bus.¹⁴ The DHSMV must suspend the driver's license of any person who commits a second or subsequent violation of this section within a 5-year period for not less than 90 days and not more than six months.

Section 316.172(1)(b), F.S., provides that a person commits a moving violation if the person passes a school bus on the side children enter and exit while the bus is displaying a stop signal. A violation of this offense is punishable as provided in ch. 318, F.S., and requires a mandatory hearing. Section 318.18(5)(b), F.S., assesses a minimum \$200 civil penalty and an additional \$65 civil penalty for a violation of s. 316.172(1)(b), F.S. In addition, the DHSMV must suspend the driver's license of any person who commits a violation of this section for not less than 180 days and not more than one year for a second or subsequent offense within a five year period.

According to the DHSMV, in 2009, there were 3,533 citations for failure to stop for a school bus (s. 316.172(1)(a), F.S.) and 295 citations for passing a stopped school bus (s. 316.172(1)(b), F.S.). This data is based on law enforcement citations. Reports of illegal "pass-by" of the school bus by bus operators or other non-law enforcement witnesses can be used for information and analysis, but not to find the offending motorist in violation of the law or impose consequences.¹⁵ In 2000, a Florida study by the Center for Urban Transportation Research found that there were 10,719 reported instances of motorists illegally passing school buses on the day of the survey.¹⁶ There were 14,108 public school buses in daily service at that time.¹⁷

Driver Improvement Courses

Section 322.0261, F.S., requires the DHSMV to identify any operator who was convicted of or who plead nolo contendere to a first violation of failure to stop for or pass a stopped school bus displaying a stop signal and require that operator, in addition to other applicable penalties, to attend a DHSMV-approved driver improvement course in order to maintain driving privileges. If the operator fails to complete the course within 90 days after receiving notice from the DHSMV, the operator's driver license is canceled by the DHSMV until the course is successfully completed. In determining whether to approve a driver improvement course, the DHSMV considers course content designed to promote safety, driver awareness, crash avoidance techniques, and other factors or criteria to improve driver performance from a safety viewpoint.

¹² *Id.*

¹³ s. 316.172(1)(a), F.S.

¹⁴ s. 318.18(5)(a)(c), F.S.

¹⁵ DOE, 2011 Bill Analysis: SB 2036, March 29, 2011, on file with the Transportation Committee.

¹⁶ *Id.*

¹⁷ *Id.*

Trauma Centers

A verified trauma center (center) is a hospital with an established trauma program which includes health care practitioners who specialize in the treatment of emergency conditions and facilities appropriate to treat those patients.¹⁸ Part II of Chapter 395, F.S., provides for a tiered system of center verification within the 19 trauma service areas established in s. 395.402, F.S. The Florida Department of Health (DOH) selects hospitals for center designation through an application process. Standards for designation are based on national guidelines established by the American College of Surgeons.¹⁹ Standards for designation as a pediatric center are developed in conjunction with Children's Medical Services.²⁰ Florida's centers treat over 40,000 patients annually.²¹

There are three types of centers:

- Level I centers which have formal trauma care research and education programs, provide support to Level II and pediatric centers and general hospitals, and participate in an inclusive system of trauma care.²²
- Level II centers which serve as a resource for general hospitals and participate in an inclusive system of trauma care.²³
- Pediatric centers which must be in substantial compliance with DOH rules relating to pediatric trauma center operation.²⁴

There are a total of 21 verified centers in Florida: seven Level I centers; eight Level II centers, four Level II and Pediatric centers, and two Pediatric only centers.²⁵ A center may have more than one designation, for example, St. Mary's Medical Center in West Palm Beach carries both a Level II and a Pediatric center designation. Additionally, one provisional center exists in Ft. Pierce, Florida.

Centers are partially funded by traffic infraction fines deposited into the Administrative Trust Fund (Trust Fund) within the DOH. Currently, as provided in s. 318.18(5)(c), F.S., the Department of Revenue (DOR) deposits \$65 of the \$165 or \$265 traffic citation fine for failure to stop for a school bus or passing a school bus, respectively, assessed by law enforcement officers, into the DOH Emergency Medical Services Trust Fund for distribution to trauma centers. The DOH distributes these funds on a quarterly basis to centers based on a distribution methodology, as provided in s. 395.4036, F.S. The distribution methodology requires:

¹⁸ DOH, *The Costs of Trauma Center Readiness*, July 17, 2002, on file with the Transportation Committee.

¹⁹ s. 395.401(2), F.S. Section 395.4025, F.S., delineates the DOH verified trauma center designation process. Detailed DOH standards for designation are found in *Trauma Center Standards, Department of Health, Pamphlet 150-9, January 2008*, see <http://www.doh.state.fl.us/DEMO/Trauma/PDFs/TraumaCntrStandards-DOHPamphlet150-9Jan2008.pdf> (last visited April 3, 2011).

²⁰ *Id.*

²¹ DOH, Division of Emergency Medical Operations, Office of Trauma, see <http://www.doh.state.fl.us/DEMO/Trauma/index.html> (last visited April 3, 2011).

²² s. 395.4001(6), F.S.

²³ s. 395.4001(7), F.S.

²⁴ s. 395.4001(9), F.S.

²⁵ DOH, Division of Emergency Medical Operations, Office of Trauma, see <http://www.doh.state.fl.us/DEMO/Trauma/PDFs/TextEquivforTraumaCentersMap.doc> (last visited April 3, 2011).

- Thirty percent to Level II trauma centers operated by a public hospital governed by an elected board of directors as of December 31, 2008.²⁶
- Thirty-five percent to centers based on a center's trauma caseload for the most recent calendar year for which data is available. The determination of caseload volume for distribution of funds is based on DOH's Trauma Registry data.²⁷
- Thirty-five percent to centers based on the severity of a center's caseload. Severity determination is made by DOH according to the International Classification Injury Severity Scores.²⁸

Verified trauma centers are either subject to audit under s. 215.97, F.S., the Florida Single Audit Act, or, if not subject to audit requirements, must annually attest to DOH that proceeds from distributions under s. 395.4036, F.S., were used in compliance with that section.²⁹ Currently, traffic fine revenues do not directly fund any other type of health care facility or entity.

III. Effect of Proposed Changes:

School Bus Safety Program

Generally, this bill creates the "School Bus Safety Program" and provides a definition of the term "school bus traffic infraction detector." The bill authorizes the use of cameras to enforce the requirements of s. 316.172(1)(a) and s. 316.172(1)(b), F.S., for failing to stop for a school bus when so directed.

Section 1. Amends s. 316.003, F.S., to provide a definition of the term "school bus traffic infraction detector." Specifically, a "school bus traffic infraction detector" is defined as a vehicle sensor installed to work in conjunction with a school bus and a camera or cameras synchronized to automatically record two or more sequenced photographic or electronic images or streaming video of a motor vehicle at the time the vehicle passes a school bus in violation of s. 316.172(1)(a) or s. 316.172(1)(b), F.S. Any notification under s. 316.0084(1)(b), F.S., or traffic citation issued by the use of a school bus traffic infraction detector must include a photograph, video feed, or other recorded image showing both the license tag of the offending vehicle and the school bus stop signal being violated.

Section 2. Amends s. 316.008, F.S., to authorize a Florida school district to deploy school bus infraction detectors on its school buses for enforcing s. 316.172(1)(a), or s. 316.172(1)(b), F.S., when a driver fails to stop upon approaching any school bus which displays a stop signal. A school district would coordinate the issuance of traffic citations with the Florida Highway Patrol, local sheriff's office, local police department, local school board, if applicable, or any other entity having the authority and jurisdiction to enforce the traffic laws and within the particular school district, as provided in ss. 316.006 and 316.640, F.S.

²⁶ s. 395.4036(1)(b)1., F.S.

²⁷ s. 395.4036(1)(b)2., F.S.

²⁸ s. 395.4036(1)(b)3., F.S. The International Classification Injury Severity Score (ICISS) is a mathematical ratio used to predict and score patient survival from severe injuries. Rule 64J-2.019, F.A.C., provides for classifications of trauma patients based on the ICISS scoring system.

²⁹ s. 395.4036(3), F.S.

Section 3. Creates s. 316.0084, F.S., to provide:

Notifications and Citations

If a traffic infraction detector identifies a person violating ss. 316.172(1)(a) or 316.172(1)(b), F.S., the visual information is captured and reviewed by a traffic infraction enforcement officer. The bill provides that a notification must be issued to the registered owner of the vehicle by first class mail within 10 days of the alleged infraction. The notice must be accompanied by a photograph or other recorded image of the violation, and must include a statement of the vehicle owner's right to review images or video of the violation, and the time, place, and Internet location where the evidence may be reviewed.

If the registered owner of the vehicle does not submit payment within 30 days of receipt of the notification described above, the traffic infraction enforcement officer must issue a traffic citation to the owner. A citation must be mailed by certified mail and must be issued no later than 45 days after the violation. The citation must also include the photograph and statements described above regarding a review of the photographic or video evidence. The report of an officer and images provided by a traffic infraction detector are admissible in court to provide a rebuttable presumption that the vehicle was used in a violation.

Affirmative Defenses

The registered owner of the motor vehicle is responsible for payment of the fine unless the owner can establish that the vehicle:

- Passed the bus at the direction of a law enforcement officer;
- Was, at the time of the violation, in the care, custody, or control of another person; or
- Received a Uniform Traffic Citation (UTC) for the alleged violation issued by a law enforcement officer.

To establish any of these affirmative defenses, the owner of the vehicle must furnish an affidavit to the appropriate governmental entity that provides detailed information supporting an exemption as provided above, including relevant documents such as a police report (if the car had been reported stolen) or a copy of the UTC, if issued. If the owner submits an affidavit that another driver was behind the wheel, the affidavit must contain the name, address, date of birth, and if known, the driver's license number, of the driver. A traffic citation may be issued to this person, and the affidavit from the registered owner may be used as evidence in a further proceeding regarding that person's alleged violation of ss. 316.172(1)(a) or 316.172(1)(b), F.S. Submission of a false affidavit is a second degree misdemeanor.

If a vehicle is leased, the owner of the leased vehicle is not responsible for paying the citation, nor is the owner required to submit an affidavit, if the motor vehicle is registered in the name of the lessee.

Fines

The bill increases the penalty for a violation of s. 316.172(1)(a), F.S., when a driver has failed to stop for a school bus when so directed, from \$100 to \$200. The fine for a violation of s. 316.172(1)(b), F.S., remains at \$200. The additional \$65 civil penalty still applies for either violation. Therefore, violations of both s. 316.172(1)(a), or s. 316.172(1)(b), F.S., results in a

penalty of \$265, regardless of whether the citation is issued by a law enforcement officer or a traffic infraction enforcement officer through the use of a school bus traffic infraction detector.

For violations detected through the use of a traffic infraction detector, the total penalty is \$265, if the penalty is paid within 30 days of notification. However, if the penalty is not paid within 30 days of notification and a traffic citation is issued, the total penalty is \$265, plus court costs and fees of up to \$98, depending on the county where the offense occurs.

Oversight and Accountability

Beginning in 2013, each school district that operates a traffic infraction detector is required to submit an annual report to the DHSMV. Thereafter, the DHSMV must submit a summary report and recommendations to the Governor and the Legislature.

Section 4. Creates s. 316.07457, F.S., to provide that the detectors deployed by a school district must meet requirements established by the DHSMV and must be tested at regular intervals according to specifications prescribed by the DHSMV. The DHSMV must establish the specifications by December 31, 2011.

Section 5. Creates s. 316.0777, F.S., to allow the placement and installation of school bus traffic infraction detectors on school buses when permitted by the DHSMV.

Section 6. Amends s. 316.640, F.S., to authorize traffic infraction enforcement officers to issue uniform traffic citations for violations of ss. 316.172(1)(a) and 316.172(1)(b), F.S., when a driver fails to stop upon approaching any school bus which displays a stop signal and when identified by school bus traffic infraction detectors.

Section 7. Amends s. 316.650, F.S., to specify that procedures relating to issuance of traffic citations under s. 316.0084, F.S., shall be identical to existing procedures for other specified sections of law. Specifically, this section requires a traffic infraction enforcement officer to provide by electronic transmission a replica of the citation data (when issued under s. 316.0084, F.S.) to the court having jurisdiction over the alleged offense or its traffic violations bureau within five business days after the issuance date of the citation to the violator.

Section 8. Amends s. 318.14, F.S., to provide an exception from provisions requiring a person cited for an infraction for failing to stop upon approaching any school bus which displays a stop signal (when issued under s. 316.084, F.S., which should be corrected to reference s. 316.0084, F.S.) to sign and accept a citation indicating a promise to appear.

Section 9. Amends s. 318.18(5), F.S., to increase the penalty for a violation of s. 316.172(1)(a), F.S., when a driver has failed to stop for a school bus when so directed, from \$100 to \$200. The fine for a violation of s. 316.172(1)(b), F.S., remains at \$200. The additional \$65 civil penalty still applies for either violation. Therefore, violations of both s. 316.172(1)(a), F.S., or s. 316.172(1)(b), F.S., result in a penalty of \$265.

For violations detected through the use of a traffic infraction detector, the total penalty is \$265, if the penalty is paid within 30 days of notification. However, if the penalty is not paid within 30

days of notification and a traffic citation is issued, the total penalty is \$265, plus court costs and fees of up to \$98, depending on the county where the offense occurs.

This section changes the distribution of penalties if the citation is issued by a law enforcement officer for violations of ss. 316.172(1)(a) or 316.172(1)(b), F.S.

The bill provides that if a person presents documentation from the appropriate governmental entity that the citation was issued in error, the clerk of the court may dismiss the case, and may not charge for such service.

Section 10. Creates s. 321.51, F.S., to authorize the DHSMV to use school bus traffic infraction detectors on any state road under the original jurisdiction of the FDOT, when permitted by the FDOT.

The purpose for, and meaning of section 10 of the bill is unclear. As written, this section grants the FDOT the power to allow (and by inference, to disallow) the use of images from school bus infraction detectors by the DHSMV to enforce s. 316.172(1)(a), F.S., or s. 316.172(1)(b), F.S., on state roads under the jurisdiction of the FDOT. It is not clear whether such permission is necessary for other entities (e.g., local sheriff's office, local police department, or local school board) to enforce these statutes or whether such permission is only necessary for enforcement activities that take place on state roads.

Section 11. Amends s. 322.27(3), F.S., to provide that violations of ss. 316.172(1)(a) or s. 316.172(1)(b), F.S., when a driver has failed to stop upon approaching a school bus displaying a stop signal, which are enforced by traffic infraction enforcement officers may not result in points assessed against the operator's driver's license, and may not be used for the purpose of setting motor vehicle insurance rates.

Section 12. Provides a severability clause.

Section 13. Provides an effective date of July 1, 2011.

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 bill increases the fine from \$100 to \$200 for a violation of s. 316.172(1)(a), F.S.

According to the DHSMV, in 2009, there were 3,533 citations for failure to stop for a school bus (s. 316.172(1)(a), F.S.) and 295 citations for passing a stopped school bus (s. 316.172(1)(b), F.S.). This data is based on law enforcement citations. As the use of school bus traffic infraction detection devices and the penalties for violations are made known, the frequency of these violations may decrease, improving the safety of school bus passengers.

To the extent that school districts choose to permit the use of traffic infraction detectors there may be a fiscal impact to the private sector. Traffic infraction detectors will increase the scope of a local government's enforcement of violations for failing to stop for a school bus and passing a stopped school bus; therefore, increasing the possibility of a motor vehicle owner receiving a citation for these violations. The fine for the violation is \$265.

C. Government Sector Impact:

Section 318.18(5), F.S., changes the distribution of penalties if the citation is issued by a law enforcement officer for violations of ss. 316.172(1)(a) or 316.172(1)(b), F.S.

Regardless of whether the citation is issued by a law enforcement officer or a traffic infraction enforcement officer through the use of a school bus traffic infraction detector, the \$265 penalty is distributed as follows:

- \$170 to the school district in which the violation occurred;
- \$65 to the DOH's Emergency Medical Services Trust Fund;
- \$15 to the DHSMV; and
- \$15 to the county or municipality issuing the notice or citation or the DHSMV if the department issued the notice or citation.

The bill increases the penalty for failing to stop for a school bus or passing a stopped school bus. To the extent the department and school districts choose to permit the use of school bus traffic infraction detectors, there will be a fiscal impact for the cost of the installation and maintenance of the devices, the amount of which will vary depending on the negotiated agreement with any private vendor providing the equipment.

There may be an increase in fine revenue for the school districts and local governments choosing to permit the use of traffic infraction detectors, the amount of which is indeterminate and reliant on driver awareness and future behavior.

The bill requires the DHSMV to adopt rules implementing specifications for installation, placement, and testing of school bus traffic infraction detectors.

VI. Technical Deficiencies:

According to DOE, all aspects of current Florida school bus equipment specifications are adopted by the State Board of Education (SBE) under the authority of s. 1006.25, F.S., and Rule 6A-3.0291, FAC.³⁰ The DOE notes that the bill sponsor may wish to consider delegating the authority for adopting specifications relating to installation, placement, functioning, inspection, and testing of the school bus traffic crash infraction detectors to the SBE rather than to the DHSMV.³¹

Section 8 of the bill should reference s. 316.0084, F.S., instead of s. 316.084, F.S.

Lines 131-137 require penalties assessed and collected by the DHSMV, a county, or a municipality, less the amount to be retained by the county or municipality, to be remitted to the Department of Revenue (DOR) weekly by electronic funds transfer. However, lines 141-148 also provides that specified portions of the funds are to be remitted to the school district and the DHSMV. The DOR recommends that the bill clarify that the funds are remitted to the DOR for payment to the school district and for deposit into a designated fund of the DHSMV.³²

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.

³⁰ DOE, 2011 Bill Analysis: SB 2036, March 29, 2011, on file with the Transportation Committee.

³¹ *Id.*

³² DOR, 2011 Bill Analysis: SB 2036, March 24, 2011, on file with the Transportation Committee.



106856

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (1), paragraph (a) of subsection (2), subsection (3), paragraphs (a) and (e) of subsection (5), and paragraph (a) of subsection (10) of section 1002.39, Florida Statutes, are amended to read:

1002.39 The John M. McKay Scholarships for Students with Disabilities Program.—There is established a program that is separate and distinct from the Opportunity Scholarship Program and is named the John M. McKay Scholarships for Students with



106856

13 Disabilities Program.

14 (1) THE JOHN M. MCKAY SCHOLARSHIPS FOR STUDENTS WITH
15 DISABILITIES PROGRAM.—The John M. McKay Scholarships for
16 Students with Disabilities Program is established to provide the
17 option to attend a public school other than the one to which
18 assigned, or to provide a scholarship to a private school of
19 choice, for students with disabilities for whom:

20 (a) An individual educational plan has been written in
21 accordance with rules of the State Board of Education; or

22 (b) A 504 accommodation plan has been issued under s. 504
23 of the Rehabilitation Act of 1973.

24
25 Students with disabilities include K-12 students who are
26 documented as having an intellectual disability; a speech
27 impairment; a language impairment; a hearing impairment,
28 including deafness; a visual impairment, including blindness; a
29 dual sensory impairment; an orthopedic impairment; an other
30 health impairment; an emotional or behavioral disability; a
31 specific learning disability, including, but not limited to,
32 dyslexia, dyscalculia, or developmental aphasia; a traumatic
33 brain injury; a developmental delay; or autism spectrum
34 disorder.

35 (2) JOHN M. MCKAY SCHOLARSHIP ELIGIBILITY.—The parent of a
36 student with a disability may request and receive from the state
37 a John M. McKay Scholarship for the child to enroll in and
38 attend a private school in accordance with this section if:

39 (a) The student has:

40 1. Received specialized instructional services under the
41 Voluntary Prekindergarten Education Program pursuant to s.



106856

42 1002.66 during the previous school year and the student has a
43 current individual educational plan developed by the local
44 school board in accordance with rules of the State Board of
45 Education for the John M. McKay Scholarships for Students with
46 Disabilities Program or a 504 accommodation plan has been issued
47 under s. 504 of the Rehabilitation Act of 1973;

48 2. Spent the prior school year in attendance at a Florida
49 public school or the Florida School for the Deaf and the Blind.
50 For purposes of this subparagraph, prior school year in
51 attendance means that the student was enrolled and reported by:

52 a. A school district for funding during the preceding
53 October and February Florida Education Finance Program surveys
54 in kindergarten through grade 12, which includes time spent in a
55 Department of Juvenile Justice commitment program if funded
56 under the Florida Education Finance Program;

57 b. The Florida School for the Deaf and the Blind during the
58 preceding October and February student membership surveys in
59 kindergarten through grade 12; or

60 c. A school district for funding during the preceding
61 October and February Florida Education Finance Program surveys,
62 was at least 4 years of age when so enrolled and reported, and
63 was eligible for services under s. 1003.21(1)(e); or

64 3. Been enrolled and reported by a school district for
65 funding, during the October and February Florida Education
66 Finance Program surveys, in any of the 5 years prior to the
67 2010-2011 fiscal year; has a current individualized educational
68 plan developed by the district school board in accordance with
69 rules of the State Board of Education for the John M. McKay
70 Scholarship Program no later than June 30, 2011; and receives a



106856

71 first-time John M. McKay scholarship for the 2011-2012 school
72 year. Upon request of the parent, the local school district
73 shall complete a matrix of services as required in subparagraph
74 (5)(b)1. for a student requesting a current individualized
75 educational plan in accordance with the provisions of this
76 subparagraph.

77
78 However, a dependent child of a member of the United States
79 Armed Forces who transfers to a school in this state from out of
80 state or from a foreign country due to a parent's permanent
81 change of station orders is exempt from this paragraph but must
82 meet all other eligibility requirements to participate in the
83 program.

84 (3) JOHN M. MCKAY SCHOLARSHIP PROHIBITIONS.—A student is
85 not eligible for a John M. McKay Scholarship ~~while he or she is:~~

86 (a) While he or she is enrolled in a school operating for
87 the purpose of providing educational services to youth in
88 Department of Juvenile Justice commitment programs;

89 (b) While he or she is receiving a Florida tax credit
90 scholarship under s. 1002.395;

91 (c) While he or she is receiving an educational scholarship
92 pursuant to this chapter;

93 (d) While he or she is participating in a home education
94 program as defined in s. 1002.01(1);

95 (e) While he or she is participating in a private tutoring
96 program pursuant to s. 1002.43;

97 (f) While he or she is participating in a virtual school,
98 correspondence school, or distance learning program that
99 receives state funding pursuant to the student's participation



106856

100 unless the participation is limited to no more than two courses
101 per school year;

102 (g) While he or she is enrolled in the Florida School for
103 the Deaf and the Blind; ~~or~~

104 (h) While he or she is not having regular and direct
105 contact with his or her private school teachers at the school's
106 physical location; or

107 (i) If he or she has been issued a temporary 504
108 accommodation plan under s. 504 of the Rehabilitation Act of
109 1973 which is valid for 6 months or less.

110 (5) SCHOOL DISTRICT OBLIGATIONS; PARENTAL OPTIONS.—

111 (a)1. By April 1 of each year and within 10 days after an
112 individual education plan meeting or a 504 accommodation plan is
113 issued under s. 504 of the Rehabilitation Act of 1973, a school
114 district shall notify the parent of the student of all options
115 available pursuant to this section, inform the parent of the
116 availability of the department's telephone hotline and Internet
117 website for additional information on John M. McKay
118 Scholarships, and offer that student's parent an opportunity to
119 enroll the student in another public school in ~~within~~ the
120 district.

121 2. The parent is not required to accept the offer of
122 enrolling in another public school in lieu of requesting a John
123 M. McKay Scholarship to a private school. However, if the parent
124 chooses the public school option, the student may continue
125 attending a public school chosen by the parent until the student
126 graduates from high school.

127 3. If the parent chooses a public school consistent with
128 the district school board's choice plan under s. 1002.31, the



106856

129 school district shall provide transportation to the public
130 school selected by the parent. The parent is responsible to
131 provide transportation to a public school chosen that is not
132 consistent with the district school board's choice plan under s.
133 1002.31.

134 (e) The parent of a student may choose, as an alternative,
135 to enroll the student in and transport the student to a public
136 school in an adjacent school district which has available space
137 and has a program with the services agreed to in the student's
138 individual education plan or 504 accommodation plan already in
139 place, and that school district shall accept the student and
140 report the student for purposes of the district's funding
141 pursuant to the Florida Education Finance Program.

142 (10) JOHN M. MCKAY SCHOLARSHIP FUNDING AND PAYMENT.—

143 (a)1. The maximum scholarship granted for an eligible
144 student with disabilities shall be equivalent to the base
145 student allocation in the Florida Education Finance Program
146 multiplied by the appropriate cost factor for the educational
147 program that would have been provided for the student in the
148 district school to which he or she was assigned, multiplied by
149 the district cost differential.

150 2. In addition, a share of the guaranteed allocation for
151 exceptional students shall be determined and added to the amount
152 in subparagraph 1. The calculation shall be based on the
153 methodology and the data used to calculate the guaranteed
154 allocation for exceptional students for each district in chapter
155 2000-166, Laws of Florida. Except as provided in subparagraphs
156 3. and 4., the calculation shall be based on the student's
157 grade, matrix level of services, and the difference between the



106856

158 2000-2001 basic program and the appropriate level of services
159 cost factor, multiplied by the 2000-2001 base student allocation
160 and the 2000-2001 district cost differential for the sending
161 district. The calculated amount shall include the per-student
162 share of supplemental academic instruction funds, instructional
163 materials funds, technology funds, and other categorical funds
164 as provided in the General Appropriations Act.

165 3. The scholarship amount for a student who is eligible
166 under sub-subparagraph (2)(a)2.b. shall be calculated as
167 provided in subparagraphs 1. and 2. However, the calculation
168 shall be based on the school district in which the parent
169 resides at the time of the scholarship request.

170 4. Until the school district completes the matrix required
171 by paragraph (5)(b), the calculation shall be based on the
172 matrix that assigns the student to support level I of service as
173 it existed prior to the 2000-2001 school year. When the school
174 district completes the matrix, the amount of the payment shall
175 be adjusted as needed.

176 5. The scholarship amount for a student eligible under s.
177 504 of the Rehabilitation Act of 1973 shall be based on the
178 program cost factor the student currently generates through the
179 Florida Education Finance Program.

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

181
182 ===== T I T L E A M E N D M E N T =====

183 And the title is amended as follows:

184 Delete everything before the enacting clause
185 and insert:

186 A bill to be entitled



106856

187 An act relating to the John M. McKay Scholarships for
188 Students with Disabilities Program; amending s.
189 1002.39, F.S.; making scholarships available to
190 students with disabilities who have a 504
191 accommodation plan issued under s. 504 of the federal
192 Rehabilitation Act; allowing a parent to request and
193 receive a scholarship for a student to enroll in and
194 attend a private school if the student has a 504
195 accommodation plan; providing that students with
196 certain temporary 504 accommodation plans are
197 ineligible for a scholarship; requiring that the
198 school district notify a parent of available options
199 within 10 days after a 504 accommodation plan is
200 issued; providing that a parent may choose to enroll
201 the student in a public school in an adjacent district
202 under certain conditions; providing for scholarship
203 amounts; providing an effective 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 1656

INTRODUCER: Senator Wise

SUBJECT: McKay Scholarships/Students With Disabilities

DATE: April 12, 2011

REVISED: _____

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

I. Summary:

The bill allows a student with a disability to be eligible for a John M. McKay Scholarship for Students with Disabilities if he or she has a 504 Accommodation Plan or a Tier 3 Response to Intervention plan. The bill provides that the scholarship amount for a student eligible under a 504 plan or Tier I plan would be based on the matrix that assigns the student to support level I of services as it existed prior to the 2000-2001 school year.

This bill substantially amends section 1002.39 of the Florida Statutes.

II. Present Situation:

John M. McKay Scholarships for Students with Disabilities Program

Current law sets forth the requirements for parental placement of a student with disabilities in an eligible private school or another public school, using a John M. McKay Scholarships for Students with Disabilities Program.¹ To be eligible for a McKay scholarship to attend a private school, a K-12 student with a disability² must have an individual education plan (IEP) and have spent the prior school year in attendance at a Florida public school.³

¹ s. 1002.39, F.S.

² s. 1002.39(1), F.S. Students with disabilities include K-12 students who are documented as having an intellectual disability; a speech impairment; a language impairment; a hearing impairment, including deafness; a visual impairment, including blindness; a dual sensory impairment; an orthopedic impairment; an other health impairment; an emotional or behavioral disability; a specific learning disability, including, but not limited to, dyslexia, dyscalculia, or developmental aphasia; a traumatic brain injury; a developmental delay; or autism spectrum disorder.

³ s. 1002.39(2), F.S. There are two exceptions to the requirement for prior year in attendance.

A student is ineligible to receive a McKay scholarship if he or she is enrolled in a Department of Juvenile Justice commitment program or enrolled in the Florida School for the Deaf and the Blind; receives a Florida Tax Credit Scholarship;⁴ receives an Opportunity Scholarship;⁵ participates in a home education program; participates in a private tutoring program; participates in a virtual school, correspondence school, or distance learning program that receives state funding unless the student's participation is limited to no more than two courses per school year; or does not have regular and direct contact with their private school teachers at the school's physical location.⁶

The scholarship amount is based in part on a matrix of services. A matrix of services is developed for students with disabilities who are funded at the highest level of need, support levels 4 and 5, based on needs identified in a student's IEP. Consistent with the services identified through the IEP, a matrix of services is used to determine which one of two cost factors would apply to each eligible exceptional education student and the support level needed.⁷ If a matrix of services has not yet been assigned, the scholarship amount must be based on the matrix that assigns the student to support level I of service as it existed prior to the 2000-2001 school year until the school district completes the matrix for that student.⁸

For FY 2009-2010, there were 985 participating schools and 21,054 scholarship recipients, with a total of \$72,885,767 in scholarship awards.⁹

504 Accommodation Plans

The Rehabilitation Act of 1973 (Rehabilitation Act) defines the term individual with a disability to include individuals who have a physical or mental impairment that substantially limits one or more major life activities of the individual; who have a record of such impairment; or who are regarded as having such an impairment.¹⁰ Section 504 of the Rehabilitation Act specifies that "[n]o otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."¹¹ The Rehabilitation Act provides individuals with disabilities the opportunity to participate in any activity receiving federal funding, including public education.¹²

A 504 Accommodation Plan is developed by a team of parents, teachers, and other staff members for a student identified as an individual with a disability under the Rehabilitation Act.

⁴ s. 1002.395, F.S.

⁵ s. 1002.38, F.S.

⁶ s. 1002.39(3), F.S.

⁷ The matrix document contains checklists of services in each of the five domains (curriculum and learning environment; social/emotional behavior; independent functioning; health care; and communication) and a special considerations section. The sum of these domain ratings and any special considerations points corresponds to one of the two cost factors.

⁸ s. 1002.39(10)(a)4., F.S.

⁹ DOE, *John M. McKay Scholarships for Students with Disabilities Program Quarterly Report*, November 2010. See https://www.floridaschoolchoice.org/Information/McKay/quarterly_reports/mckay_report_nov2010.pdf.

¹⁰ 29 U.S.C. § 705(20)(B), incorporating 42 U.S.C. § 12102 (1); 34 C.F.R. § 104.3(j).

¹¹ 29 U.S.C. § 794(a); see also 34 C.F.R. § 104.4.

¹² 34 C.F.R. § 104.2

The plan provides a description of the accommodations the school will provide to the student.¹³ According to the DOE, students who have 504 plans or are receiving Tier 3 interventions do not have individual educational plans or matrixes.¹⁴

According to the DOE, there has been a 64 percent increase in the number of eligible s. 504 students since the 2006-2007 school year: 2006-2007: 32,610 students; 2007-2008: 36,425 students; 2008-2009: 44,582 students; and 2009-2010: 51,069 students.¹⁵ The DOE also notes that students eligible for a Section 504 plan do not require the level of instruction (specialized instruction) required for students with IEPs. Section 504 plans identify accommodations that allow access to programs.

Tier 3 Response to Intervention Plan¹⁶

Problem-solving/Response to Intervention is Florida's framework for ensuring that instructional and intervention resources are matched to student needs. It is an integrated system where students receive Tier 3 interventions concurrently with Tier 1 and Tier 2 interventions and supports. It is based on a three-tier model that integrates core instruction (Tier 1), supplemental instruction/interventions (Tier 2), and intensive interventions (Tier 3). This 3-tiered approach provides all students with the opportunity for effective core instruction and the provision of supplemental and intensive instruction.

According to the DOE, Tier 3 does not refer to a finite category of students, rather it refers to the level of support necessary to foster success for all students and reflects the most intensive (amount of time and focus of instruction) level of intervention in Florida's multi-tiered system of support.¹⁷

III. Effect of Proposed Changes:

A student with a disability would be eligible for a McKay Scholarship if he or she has a 504 accommodation plan or a Tier 3 response to Intervention plan. However, the student would be ineligible if his or her 504 plan was for six months or less or if his or her Tier I Response to Intervention plan was less than 90 days.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹³ Florida Department of Education, *A Parent and Teacher Guide to Section 504: Frequently Asked Questions*, See www.fldoe.org/ese/pdf/504bro.pdf. Examples of such accommodations include: permission to self-administer diabetes medication, special dietary considerations for allergies, and assistance with carrying books. Florida Department of Education, Bureau of Exceptional Education & Student Services, *Section 504*.

¹⁴ DOE, April 6, 2011, on file with the committee.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

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:

Additional students may be eligible for a McKay scholarship.

C. Government Sector Impact:

The DOE notes that Section 504, unlike IDEA, does not provide any additional federal funding assistance to state or schools.¹⁸ Students eligible under Section 504 are funded at basic Florida Education Finance Program (FEFP) levels. Students receiving Tier 3 interventions are funded at the basic FEFP level.

The bill provides that the scholarship amount for a student eligible under a 504 plan or Tier I plan would be based on the matrix that assigns the student to support level I of services as it existed prior to the 2000-2001 school year. The fiscal impact is indeterminate, since the number of eligible students who would receive a scholarship is unknown.

The bill has an indeterminate fiscal in that it expands the number of students who are eligible for the McKay Scholarship Program if the students received specialized instructional services under the Voluntary Prekindergarten Program during the previous school year and had a 504 accommodation plan.

VI. Technical Deficiencies:

On lines 218 and 223, the reference to support level I should be changed to 251, the base level of support for a student with a disability. According to the DOE, there is no Tier 3 Plan in the current implementation framework.¹⁹ The framework is characterized by a continuum of academic and behavior supports reflecting the need for students to have fluid access to instruction of varying intensity levels. The three tiers (Tier 1, Tier 2, and Tier 3) describe the level and intensity of the instruction/interventions provided across the continuum.²⁰ The

¹⁸ DOE, April 6, 2011, on file with the committee.

¹⁹ DOE, April 6, 2011, on file with the committee.

²⁰ *Id.*

intervention plan associated with an individual student addresses the supports and interventions the student is receiving in the multi-tiered system of support, not just Tier 3.

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 (Wise) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (1) of section 1001.395, Florida Statutes, is amended to read:

1001.395 District school board members; compensation.—

(1) Each member of the district school board shall receive a base salary, the amounts indicated in this section, based on the population of the county the district school board member serves. In addition, compensation shall be made for population increments over the minimum for each population group, which



13 shall be determined by multiplying the population in excess of
14 the minimum for the group times the group rate. The product of
15 such calculation shall be added to the base salary to determine
16 the adjusted base salary. The adjusted base salaries of district
17 school board members shall be increased annually as provided for
18 in s. 145.19. Notwithstanding this subsection and s. 145.19,
19 individual district school board member salaries may not exceed
20 the salary provided to members of the Senate and House of
21 Representatives as defined in s. 11.13(1)(a)2.
22

Pop. Group	County Pop. Range		Base Salary	Group Rate
	Minimum	Maximum		
I	-0-	9,999	\$5,000	\$0.08330
II	10,000	49,999	5,833	0.020830
III	50,000	99,999	6,666	0.016680
IV	100,000	199,999	7,500	0.008330
V	200,000	399,999	8,333	0.004165
VI	400,000	999,999	9,166	0.001390
VII	1,000,000		10,000	0.000000

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



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

And the title is amended as follows:

 Delete everything before the enacting clause
and insert:

 A bill to be entitled
An act relating to district school board members;
amending s. 1001.395, F.S.; providing a cap on
salaries of district school board members; providing
an effective 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 2172

INTRODUCER: Committee on Education Pre-K - 12

SUBJECT: District School Board Members

DATE: April 6, 2011

REVISED: _____

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

I. Summary:

This bill caps district school board member compensation at a \$100 stipend per school board meeting and clarifies that this amount is not to be considered for retirement purposes. Total annual stipend for meetings for each school board member is limited to \$2400. Travel reimbursement would still be authorized.

This bill substantially amends sections 145.19, 1001.39 and 1001.395, of the Florida Statutes.

II. Present Situation:

School Board Member Salary Calculations in Florida

School board members are paid through a formula that is based upon the county population of the district in which the member serves, as calculated in the following table:

Population Group	County Population Range (CPR) Minimum	CPR Maximum	Base Salary	Group Rate
I	0	9,999	\$5,000	\$0.08330
II	10,000	49,999	5,833	0.020830
III	50,000	99,999	6,666	0.016680
IV	100,000	199,999	7,500	0.008330
V	200,000	399,999	8,333	0.004165
VI	400,000	999,999	9,166	0.001390
VII	1,000,000		10,000	0.000000

As is reflected in the table, as the county population and correlating base salary increases, the group rate decreases.¹ Still, this generally means that larger districts provide larger salaries.

Florida law provides for base salaries to be annually adjusted based on a variety of factors.² For fiscal year 2010-2011 only, however, school board member salaries remain at either the base salary or are the district's beginning salary for a teacher with a baccalaureate degree, whichever is less, such that the annual increase authorized in s. 145.19, F.S., does not apply.³

For 2008-2009, the average salary of a school board member statewide was \$31,619, and for 2009-2010, the salary dropped to \$30,850. For 2009-2010, salaries in the state ranged from a low of \$22,300 in Liberty County to \$39,000 in Broward County for school board members.⁴

School Board Member Salaries in Other States

Through a survey commissioned by the National School Boards Association (NSBA), two-thirds of the 759 school board members who responded nationally indicated that they receive no salary for their service to the board. Almost 10 percent responded that they earn less than \$2,000 annually. Just 20 percent stated that they receive \$2,000 or more annually, and only 3.4 percent are paid \$10,000 or more. As provided above, no district in Florida paid their members less than \$20,000 annually in the past two fiscal years. Although approximately 20 percent of NSBA study participants indicated that they also receive a per-meeting stipend in addition to salary, of those that indicated that they receive stipends, it amounts to a median of just \$63 per meeting.⁵

A state-by-state legislative survey conducted originally by NSBA in 2001 and updated in 2007 revealed that a full 32 state legislatures do not authorize payment of any salary for school board member service. Only Florida is classified in the survey as a state in which school board members are paid as elected officials. A handful of states legislate the provision of health insurance or provide the opportunity to purchase group health insurance through the district. Seven states are not permitted expense reimbursement. The availability of stipends varies widely and is not capable of being reported in a meaningful fashion. Notably, even in one of the highest-cost-of-living areas of the country, New York City, board members earned just \$15,000 in 2007. The NSBA compiled the information from 45 states, with the remaining not addressing (permitting or prohibiting) school board member salaries, stipends, or reimbursements in law.⁶

III. Effect of Proposed Changes:

The cap of a \$100 stipend per school board meeting, at a maximum basis of \$2400 per year, would constitute the entire salary and compensation of a school board member, other than travel expense reimbursement. This represents a marked departure from the current salary of school

¹ s. 1001.395(1), F.S.

² s. 145.19, F.S.

³ s. 1001.395(3), F.S.

⁴ *Average Salaries for Selected Positions in Districts 1-67, 2008-09 and 2009-10*, 2009-10 Survey 3 data, February 8-12, 2010, as of August 13, 2010; *Average Salaries for Selected District-level Administrative Staff, 2009-10*, 2009-10 Survey 3 data, February 8-12, 2010, as of August 13, 2010.

⁵ Frederick M. Hess, National School Boards Association, *School Boards at the Dawn of the 21st Century* (pgs. 20-21, 2002).

⁶ *State Board Member Compensation*, NSBA (June 2007).

board members, although it appears to be a move towards greater consistency with the manner in which school board members serve in other states.

Travel expense reimbursement would be expected to be minimal as it is anticipated that most, if not all, meetings are sited in the district.

This bill takes effect July 1, 2011, with provisions to apply to district school board members elected or reelected in the general election of 2012 and after.

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:

None.

C. Government Sector Impact:

This bill would have a positive fiscal impact on revenue as it would represent a significant reduction in costs currently expended on school board member salaries across the state. According to the Department of Education, for fiscal year 2009-2010, Florida school districts spent almost \$10.9 million in school board member salaries. If meetings were held twice a month in every district, the \$100 stipend per meeting would equate to a total cost of \$900,000 on an annual basis. Subtracting this from the current amount spent on salaries represents a savings of \$10 million.

This bill would equalize school board member pay, through the adoption of a stipend per meeting, across all districts.

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.
