

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 5101 PCB PAC 10-01 Prekindergarten through Grade 12 Education Funding

SPONSOR(S): PreK-12 Appropriations Committee and Flores

TIED BILLS: _____ **IDEN./SIM. BILLS:** _____

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	PreK-12 Appropriations Committee	10 Y, 4 N	Heflin	Heflin
1)	Full Appropriations Council on Education & Economic Development	12 Y, 5 N, As CS	Heflin	Voyles
2)	_____	_____	_____	_____
3)	_____	_____	_____	_____
4)	_____	_____	_____	_____
5)	_____	_____	_____	_____

SUMMARY ANALYSIS

The bill amends statutory provisions necessary to conform the statutes to appropriations made in the General Appropriations Act for the 2010-2011 fiscal year.

The bill amends statutes relating to:

- Restrictions on the levy of discretionary sales surtaxes;
- Transfer of funds from a school district’s operating funds to a fixed capital outlay category for class size;
- Minimum funding requirements per school district for the Regional Consortium Service Organizations;
- Reductions of administrative services fees that school districts charge charter schools;
- Documentation deadlines for private schools participating in the McKay scholarship program;
- School district virtual instruction program student eligibility;
- Class size reduction implementation requirements;
- School district reporting requirements to separately identify expenditures for gifted students;
- Requirements for instructional materials to be adopted and delivered in an electronic format;
- Authorizations for use of instructional materials funding to be used for the purchase of hardware;
- Access requirements for state-funded electronic library resources provided at colleges and universities;
- Bonus funding for student performance for certain courses and diplomas;
- The percent of taxable value for school purposes used in the calculations for Required Local Effort revenue as well as the calculations for funding for the Developmental research (laboratory) schools and the Florida Virtual School;
- Authorizations for flexibility in the use of FEFP categorical allocations;
- Determination of the sparsity supplement within the FEFP;
- Determination of the total allocation of state FEFP funds to each school district;
- Distribution of the transportation allocation according to the prior year’s average per student cost for transporting disabled students;
- Clarification of the limitations for school districts to levy additional discretionary millage;
- Authorization for an off-site instructor in a traditional classroom;
- Waiver of penalties for school district audit citations.

The bill provides school districts additional fiscal flexibility by giving priority to funding for the core mission of teaching and learning and less emphasis on funding noncore functions. In addition, the bill makes a series of adjustments and reductions to special allocations in the Florida Education Finance Program (FEFP) funding formula to maximize funding in the base allocation for all districts. The bill also provides fiscal efficiencies and limits unnecessary spending.

See FISCAL COMMENTS section.

Except as otherwise specifically provided, the bill takes effect July 1, 2010.

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

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DATE: 3/23/2010

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

School District Capital Outlay Surtax

Florida law authorizes school districts to levy a discretionary sales surtax for capital outlay that cannot exceed ½ cent.¹ Passage requires a majority vote of the county voters on a referendum. Upon levy of the capital outlay surtax, school districts are required to freeze noncapital local school property taxes at the prior year's millage rate for at least three years. However, the freeze does not apply to taxes authorized in the General Appropriations Act. Because all school property taxes for operations are authorized in the GAA, in practice, this section of statute does not result in school districts freezing any school property taxes. There are 14 school districts that levy the ½ cent surtax for capital outlay for the 2009-2010 fiscal year.² The bill repeals the requirement for school districts to freeze noncapital local school property taxes when the district levies a capital outlay surtax.

Transfer authority between appropriation categories

Florida law authorizes the Executive Office of the Governor (EOG) to transfer budget authority between appropriations provided for public school operations to a fixed capital outlay appropriation for class size reduction³. This transfer authority was necessary when the penalty for non-compliance with the constitutional class size requirements resulted in the transfer of a portion of a school district's class size reduction operating categorical to a fixed capital outlay appropriation for class size reduction.⁴ Beginning in the 2010-2011 fiscal year, the compliance calculation will no longer be a transfer of funding from one category to another; therefore, the transfer authorization is no longer needed. The bill repeals the authorization for the EOG to transfer funds from the appropriation for public school operations to a fixed capital outlay appropriation for class size reduction.

Regional Consortium Service Organizations

Current law provides that each school district and each non-district member of a regional consortium service organization is eligible to receive an incentive grant of \$50,000; however, the grant may be less than \$50,000 for the 2009-2010 fiscal year. The 2009-2010 appropriation for this program is

¹ s. 212.055(6), F.S.

² Calhoun, Escambia, Flagler, Hernando, Jackson, Leon, Manatee, Monroe, Orange, Palm Beach, Polk, St. Lucie, Santa Rosa, and Volusia currently levy the surtax.

³ s. 216.292(2)(d), F.S.

⁴ Section 1003.03(4)(a), F.S.

\$1,611,465.⁵ The bill allows that in any fiscal year if the appropriation is not sufficient to provide \$50,000 per participating school district, the amount may be less than \$50,000 and the appropriation shall be prorated equally among participating districts.

Funding for Developmental Research Schools and the Florida Virtual School

Current law requires funding for developmental research schools (lab schools) to include an amount based on the maximum allowable nonvoted discretionary millage rate for operations multiplied by 95 percent of the school taxable property value for the school district in which the lab school is located.⁶ Similarly, funding for the Florida Virtual School (FLVS) includes an amount based on the maximum allowable nonvoted discretionary millage rate for operations multiplied by 95 percent of the school taxable property value for the state and divided by the total state unweighted full-time-equivalent student membership and then multiplied by the FLVS unweighted full-time-equivalent student membership.⁷ Local governments are authorized to give credits to tax payers for early payment of taxes that cannot exceed four percent.⁸ Because the current authorization for tax credits is only four percent, school districts, in practice, are currently collecting more than the calculated amount for lab schools and the FLVS which is based on a five percent credit amount. The bill changes the percent of school taxable value to be used in the calculation of funding for the lab schools and the FLVS to 96 percent.

Charter School Capital Outlay Funding

A charter school is not eligible for a capital outlay funding allocation if it was created by the conversion of a public school and operates in facilities provided by the charter school's sponsor for a nominal fee, or at no charge, or it is directly or indirectly operated by the school district. Section 1002.33(15), Florida Statutes, provides that in order to reduce school and classroom overcrowding throughout the state and to offset the high cost of educational facilities construction, the formation of business partnership schools or satellite learning centers and municipal-operated schools through charter school status is encouraged. A charter school-in-the-workplace may be established when a business provides the school facility to be used; enrolls students based upon a random lottery that involves all of the children of employees of that business or corporation who are seeking enrollment and enrolls students according to a racial/ethnic balance. Any portion of a facility used for a public charter school shall be exempt from ad valorem taxes, for the duration of its use as a public school. The bill allows capital outlay funds authorized in s.1011.71(2) which have been shared with a charter school-in-the-workplace prior to July 1, 2010, are considered to have met the authorized expenditure requirements for such funds.

Section 1013.62, Florida Statutes, provides eligibility and expenditure requirements for charter school capital outlay appropriations. Generally, to be eligible, a charter school must have been in operation for 3 or more years, be an expansion of a feeder chain within a district, or have been accredited by the Commission on Schools of the Southern Association of Colleges and Schools; have financial stability; have satisfactory student achievement; have received final approval from the sponsor; and serve students in facilities not provided by the sponsor. Charter schools may use capital outlay funds for the purchase of real property; school construction; purchase, lease-purchase, or lease of school facilities; purchase of vehicles for student transportation; or renovation or repair of school-owned or leased school facilities. The bill allows charter schools-in-the-workplace to be eligible for an allocation from charter schools capital outlay funding.

Charter School Service Fees

Sponsors of charter schools are currently authorized to charge a fee for certain administrative and educational services provided to charter schools. The fee is limited to five percent of the total funds a

⁵ s. 1001.451(2)(a) & (c), F.S.; Specific Appropriation 93, § 2, ch. 2009-81, L.O.F.

⁶ s. 1002.32(9)(d), F.S.

⁷ s. 1002.37(3)(f), F.S.

⁸ s. 200.069(8), F.S.

charter school is eligible to receive and is further restricted to charter schools of 500 or fewer students.⁹ The bill reduces the number of students in a charter school that can be charged the administrative fee by its sponsor from 500 students to 250 students.

John M. McKay Scholarship payments

The John M. McKay Scholarships for Students with Disabilities Program was established as an option for parents of K-12 students with disabilities to request and receive from the state a scholarship for their eligible child to attend a public school for which the student is not zoned or a private school of choice if they are dissatisfied with the child's current educational institution. Eligible students include those that have spent the prior year in a public school or the Florida School for the Deaf and the Blind who have a documented disability, including intellectual disability; speech impairment; language impairment; hearing impairment, including deafness; visual impairment, including blindness; dual sensory impairment; orthopedic impairment; other health impairment; emotional or behavioral disability; specific learning disability, including, but not limited to, dyslexia, dyscalculia, or developmental aphasia; traumatic brain injury; developmental delay; or autism spectrum disorder.¹⁰ If a student uses the scholarship to attend a private school, parents receive scholarship payments, which are then signed over to the private school, based on a quarterly payment schedule established in statute.¹¹ In order for a parent to receive scholarship payments, the private school must verify student participation and the fee schedule for the student at least 30 days prior to the first quarterly payment.¹² If the private school misses the 30 day deadline, there is not a statutory penalty established. The bill clarifies that a student is not eligible for a quarterly payment if the private school misses the 30 day deadline.

School District Virtual Instruction Program

Section 1002.45, Florida Statutes, creates the school district virtual instruction program to provide virtual instruction full-time for K-12 students or part-time for 9-12 at-risk students only, either through a district contract with the Florida Virtual School (FLVS) or the establishment of an FLVS franchise; an agreement with another school district; or a contract with an approved provider. FTE are funded through the Florida Education Finance Program, and funding for providers is established by a negotiated contract with the school district. The bill expands eligibility into the school district virtual programs to include the sibling of a currently enrolled student of a school district virtual instruction program and a student with a disability or medical condition which has been documented by a physician.

Class Size Reduction

In November 2002, the Florida Constitution was amended to require the Legislature, beginning with the 2003-2004 fiscal year, to provide sufficient funds to reduce the average number of students per classroom by at least two students per year until the number of students per classroom does not exceed the maximums. By the beginning of the 2010 school year, the maximum number of students who may be assigned to each teacher who is teaching in a public school classroom may not exceed the following:

- 18 for prekindergarten through grade 3;
- 22 for grades 4 through 8; and
- 25 for grades 9 through 12.¹³

The implementation schedule for reducing the number students per classroom by at least two students per year is as follows:¹⁴

⁹ s. 1002.33(20)(a), F.S.

¹⁰ s. 1002.39(1) & (2), F.S.

¹¹ s. 1002.39(10)(e), F.S.

¹² s. 1002.39(8), F.S.

¹³ s. 1(a), Art. IX of the State Constitution.

¹⁴ s. 1003.03(2), F.S.

- 2003-2004 through 2005-2006¹⁵ at the district level;
- 2006-2007 through 2009-2010¹⁶ at the school level; and
- 2010-2011 and thereafter, at the classroom level.

Since adoption of the class size reduction amendment, average class sizes have been reduced as follows:

	<u>District Average Class Size¹⁷</u>							
	<u>2002-03</u>	<u>2003-04</u>	<u>2004-05</u>	<u>2005-06</u>	<u>2006-07</u>	<u>2007-08</u>	<u>2008-09</u>	<u>2009-10</u>
Grades PK-3	23.07	20.54	18.98	18.16	17.01	16.28	15.95	16.39
Grades 4-8	24.16	22.43	21.30	20.48	19.45	18.76	18.60	18.91
Grades 9-12	24.10	24.06	23.65	22.96	22.22	21.39	21.49	21.94

Beginning with the 2003-2004 General Appropriations Act, the Legislature has appropriated and allocated funds annually to school districts and charter schools to be used to reduce the average number of students per classroom by two students.

Class Size Reduction Funding History

	Operating	Fixed Capital	Total
Fiscal Year	Appropriations	Outlay	Appropriations
2003-2004	468,198,634	600,000,000	1,068,198,634
2004-2005	972,191,216	100,000,000	1,072,191,216
2005-2006	1,507,199,696	83,400,000	1,590,599,696
2006-2007	2,108,529,344	1,100,000,000	3,208,529,344
2007-2008	2,640,719,730	650,000,000	3,290,719,730
2008-2009	2,789,748,660	-	2,789,748,660
2009-2010	2,845,578,849		2,845,578,849
Total Year to Date			
Appropriations	13,332,166,129	2,533,400,000	15,865,566,129

Florida law provides the statutory framework for making adjustments to appropriations for school districts that fail to meet required class size reductions. From 2003-04 to 2005-06, compliance was measured at the district level. For fiscal years 2006-2007 through 2009-2010 compliance has been measured at the school level. Any school district that has not reduced its average school class size as required by statute may have a portion of its class size reduction operating funds transferred to a fixed capital outlay account. The adjustment is calculated by the Department of Education and verified by the Florida Education Finance Program Allocation Conference. The amount of the funds actually transferred shall be the lesser of the amount calculated or the undistributed balance of the district's class size reduction operating categorical. However, the Commissioner of Education and the State Board of Education may make a recommendation to the Legislative Budget Commission for approval of an alternate amount of funds to transfer if a district has been unable to meet the class size reduction requirements despite appropriate effort to do so.¹⁸

¹⁵ Chapter 2003-391, L.O.F. established district level compliance for Fiscal Years 2003-2004 through 2005-2006. Chapter 2006-27, L.O.F. extended district level compliance to Fiscal Year 2006-2007.

¹⁶ Chapter 2003-391, L.O.F. established school level compliance for Fiscal Years 2006-2007 through 2007-2008. Chapter 2008-142, L.O.F. extended school level compliance to 2008-2009. Chapter 2009-59, L.O.F. extended school level compliance to 2009-2010.

¹⁷ Florida Department of Education, 2010 Legislative Information Request, December 2009.

¹⁸ s. 1003.03(4)(a), F.S.

For the 2009-2010 fiscal year the initial transfer calculation completed on December 21, 2009, by the Florida Education Finance Program Allocation Conference found that 72 traditional schools in 26 school districts did not meet the current year class size reduction requirements on a school average basis, for a total potential transfer from the class size reduction operating categorical to fixed capital outlay in the amount of \$1,912,030. Following the initial transfer calculation, the Commissioner recommended an adjustment for unexpected student growth which reduced the transfer amount to \$1,234,912. Pursuant to Section 1003.03(4)(a), F.S., the State Board of Education reviewed evidence presented by school districts on February 9, 2010, and determined that district data reporting errors were factors to be considered in the appeal process. After the appeals, the transfer amount was reduced to \$267,263. The Commissioner of Education subsequently requested, and the Legislative Budget Commission approved, a budget amendment that transferred \$267,263 from district class size reduction allocations for operations to fixed capital outlay accounts.

House Joint Resolution 7039 to be considered in the 2010 legislative session would allow voters to amend Section 1, Article IX of the State Constitution, relating to class size. The joint resolution proposes modifying the class size requirements so that compliance, beginning with the 2010-2011 school year, would be calculated as follows:

- PreK – Grade 3: The maximum number of students who may be assigned to each teacher in an individual classroom is raised from 18 to 21, *but the average number of students assigned per class to each teacher within each public school may not exceed 18 students.*
- Grades 4 – 8: The maximum number of students that may be assigned to each teacher in an individual classroom is raised from 22 to 27, *but the average number of students assigned per class to each teacher within each public school may not exceed 22 students.*
- Grades 9 – 12: The maximum number of students that may be assigned to each teacher in an individual classroom is raised from 25 to 30, *but the average number of students assigned per class to each teacher within each public school may not exceed 25 students.*

Additionally, the joint resolution:

- Clarifies that full compliance with class size is required by the “beginning of the 2010-2011 school year,” rather than “the beginning of the 2010 school year” as currently provided in the constitution.
- Clarifies that virtual schools are exempt from class size requirements.
- Requires the Legislature to provide sufficient funding to maintain the average number of students required by the amendment and deletes obsolete language requiring the Legislature, beginning in 2003-2004, to fund class size reductions by at least two students annually.
- Contains a ballot summary that notifies voters of the contents of the proposed amendment.

The joint resolution must be adopted by a three-fifths vote of the membership of each house of the Legislature. If passed, the proposed amendments would be placed on the ballot at the November 2, 2010, general election. Sixty percent voter approval is required for adoption. If adopted by the voters, the amendment would take effect retroactively to the beginning of the 2010-2011 school year.

The bill requires school districts to develop two plans for the 2010-2011 school year. The first plan would be based on the requirements of the current constitutional class size maximums and would have to be implemented by the school board at the beginning of the 2010-2011 school year and continued if HJR 7039 is not approved at the 2010 general election. The second or contingency plan would be based on maintaining the class size requirements at the school average while maintaining hard caps of 21 per classroom for grades prek-3, 27 for grades 4-8 and 30 for grades 9-12 as proposed in HJR 7039 and could be implemented at the discretion of the school board upon approval of HJR 7039. The bill would further require school districts to hold public hearings and notify parents of the potential impacts of the two plans, including:

- A review of school attendance zones and transportation policies to maximize use of facilities;
- The impact on the district’s budget for the district to comply with class size requirements; and
- The potential impact on the district’s budget if the district fails to comply with class size requirements.

School districts are prohibited from campaigning for or against SJR 2 or HJR 7039 while complying with the requirements to develop and publish plans for implementation of class size requirements.

The bill further provides implementation alternatives upon passage or failure of HJR 7039 at the 2010 general election. If the HJR is approved by the electorate, the class size maximums would be calculated based on the school averages of 18 for grades preK-3, 22 for grades 4-8, and 25 for grades 9-12 with hard caps on the number of students per classroom of 21 for grades preK-3, 27 for grades 4-8, and 30 for grades 9-12. The DOE would calculate compliance based on the February 2011 student membership survey for the 2010-2011 fiscal year and based on the October student membership survey for the 2011-2012 fiscal year and annually thereafter. The penalty for non-compliance would be equal to the class-size reduction allocation factor as set in the GAA for each student that the district is out of compliance. The bill also clarifies that school districts should encourage participation in the school district virtual instruction program as a strategy to meeting class size requirements.

Alternatively, if the HJR is not approved by the electorate, the bill maintains the current class size maximums of 18 per classroom for grades preK-3, 22 for grades 4-8, and 25 for grades 9-12. The DOE would calculate compliance based on the February 2011 student membership survey for the 2010-2011 fiscal year and based on the October student membership survey for the 2011-2012 fiscal year and annually thereafter. The penalty for non-compliance would be equal to the class-size reduction allocation factor as set in the GAA for each student that the district is out of compliance. Based on the current requirement to simulate the compliance calculation required in s. 1003.03(4)(b) and (c), F.S., DOE estimated that school districts would have been out of compliance at the classroom level by approximately 120,996 FTE for the 2009-2010 fiscal year. If the proposed penalty equal to the class size reduction allocation factor as set in the GAA would have been in place for 2009-2010, the class size reduction operating categorical within the FEFP would have been reduced by \$131.5 million.¹⁹

Gifted Student Education Services and Funding

A “gifted” student is defined as “one who has superior intellectual development and is capable of high performance.”²⁰ Gifted students are classified as exceptional students²¹ because they need special services in order to make appropriate educational progress.

District school boards are statutorily required to provide exceptional students in grades K-12 with appropriate diagnosis, evaluation, special instruction, facilities, and services. Instruction, facilities, and services may be provided within a district school system, in cooperation with other district school systems, or through contractual arrangements with approved private schools or community facilities that meet certain standards. While current law requires districts to provide special instruction and services to gifted students, it does not specify type of courses and services required.²²

Funding for exceptional students is calculated using a system of weighted cost factors. Cost factors are determined by using a matrix of services (MOS) that the exceptional student will receive. For exceptional students who do not receive MOS funding and gifted students in grades K-8 the funding of their education is provided through the Exceptional Student Education (ESE) Guaranteed Allocation. The ESE Guaranteed Allocation is a lump sum allocation that districts receive in addition to base student funding through the Florida Education Finance Program (FEFP).²³

The Legislature increased gifted student funding by 26% from 2005-2006 to 2007-2008. This increase is attributed to a 6.7% rise in the statewide number of gifted students which caused the amount of ESE Guaranteed Allocation funding for gifted students to increase from \$243 million in 2005-2006 to \$276

¹⁹ Florida Department of Education, 2009-10 CSR Simulation Using 2009-10 Data Average Values, January 12, 2010.

²⁰ Rule 6A-6.03019, F.A.C.

²¹ s. 1003.01(3), F.S.

²² s. 1003.57(1), F.S.

²³ s. 1011.62(1)(e), F.S.

million in 2006-2007.²⁴ In response to these increases, the 2007 Legislature amended the FEFP statute to provide that a school district's expenditure of ESE Guaranteed Allocation funds for gifted students in grades nine through 12 could not exceed the amount it expended in 2006-2007.²⁵

In 2009, the Legislature appropriated \$981,724,365 for the ESE Guaranteed Allocation for the 2009-2010 school year.²⁶ Approximately \$112,898,302 of the ESE Guaranteed Allocation is for gifted students. The total FEFP funds for gifted students, including the ESE Guaranteed Allocation, are approximately \$706,509,946.²⁷

In order to participate in the FEFP, school districts are required to maintain accurate financial records.²⁸ Each school district must annually report its expenditures of all state, local, and federal funds. However, school districts are not currently required to separately identify the amounts of ESE Guaranteed Allocation funding expended to provide education services to disabled students and gifted students.²⁹

The bill requires district school boards to annually report to the Department of Education (DOE) by school and grade level:

- The number of students classified as gifted under the generally applicable criteria set forth in SBE rule and the number classified under a DOE-approved school district plan for increasing the participation of underrepresented groups.
- The types of gifted student education services that it provides and the number of students receiving each service. Additionally, districts are directed to specify: the number of hours per week each service is provided to each student; whether the service consists of direct instruction in a gifted-only class, differentiated instruction in a class with both gifted and non-gifted students, or noninstructional consultation services; and whether the service is provided by a SBE gifted endorsed teacher.
- Performance data for students receiving gifted education services.

The bill also requires each school district in its annual financial report to the DOE to separately identify the following amounts that it expends from the Exceptional Student Education Guaranteed Allocation: (a) the amount expended for students identified as exceptional who do not have a matrix of services; and (b) the amount expended for gifted students in grades K-12 according to grade level.

Instructional Materials

Florida law currently requires the district school board to provide adequate instructional materials for all students. The term "adequate instructional materials" means a sufficient number of textbooks or sets of materials serving as a basis for instruction for each student in the core courses of mathematics, language arts, social studies, science, reading, and literature.³⁰

State funding for instructional materials is provided annually in the General Appropriations Act as an earmark specifically for instructional materials in proviso as part of the calculation of the Florida Education Finance Program (FEFP).³¹ In the 2009-2010 fiscal year, \$216,031,121 was appropriated for instructional materials.³² Once the funds are distributed to the district school boards, each board must

²⁴ <http://www.oppaga.state.fl.us/reports/educ/r08-01s.html>, Office of Program Policy Analysis and Government Accountability, *Florida Gifted Grew Faster Than the Overall School Enrollment*, Report No. 08-01, January 2008.

²⁵ s. 1011.62(1)(e), F.S.

²⁶ Specific Appropriation 76, Chapter 2009-81, L.O.F.

²⁷ Florida Department of Education. Revenue Estimate Worksheet for Gifted Based on the Third Calculation of the FEFP 2009-2010, March 14, 2010.

²⁸ s. 1011.60(1), F.S.

²⁹ s. 1010.20, F.S.

³⁰ s. 1006.28(1), F.S.

³¹ The Florida Education Finance Program (FEFP) is the mechanism used by the state to fund the operating costs of Florida's school districts. See s. 1011.67, F.S. and s. 1011.67(1), F.S.

³² Specific Appropriation 76, § 2, ch. 2009-81, L.O.F.

use at least 50 percent of the funds allocated to purchase instructional materials on the state-adopted list.³³ A district school board may use the remaining 50 percent of the annual allocation to purchase materials, including library and reference books and nonprint materials, not included on the state-adopted list and for the repair and renovation of textbooks and library books.³⁴ Under current law, state-adopted instructional materials and non state-adopted instructional materials have similar meanings. However, both definitions explicitly exclude the purchase of electronic or computer hardware even if such hardware is bundled with software or other electronic media, and exclude equipment and supplies.³⁵

Currently, school districts purchase computer equipment with state FEFP and capital outlay funds.³⁶ Additionally, federal funding for fiscal year 2009-2010 includes \$30.3 million for education technology from the American Recovery and Reinvestment Act of 2009 appropriated through the state's 2009-2010 GAA.³⁷ The DOE was directed to implement a technology grant program for school districts to demonstrate the use of technology in teacher professional development and student instruction in science, technology, engineering, and mathematics (STEM) content areas. The student portion was to be used to incorporate the use of classroom laptops and personal learning devices that are mobile and able to extend learning beyond the classroom day. The teacher portion was to be used to combine the use of laptops and personal learning devices and must include the development and delivery of professional development linked to the newly adopted math and science standards.

In addition, federal entitlement funds are provided through the No Child Left Behind Title IID – Enhancing Education Through Technology program to school districts based on their Title I allocation.³⁸ School districts also have flexibility in the expenditure of categorical funding provided for specific purposes within the Florida Education Finance Program, including funding provided for instructional materials, but only after March 1, 2010,³⁹ and hardware is explicitly prohibited from being purchased with this source of funding.

On March 4, 2010, Florida was named a finalist in phase 1 of the \$4.35-billion federal Race to the Top⁴⁰ education reform competition.⁴¹ If funded, fifty percent of the state's total award will be distributed to participating school districts according to the federal Title I allocation formula, and the remaining 50 percent will fund state-level projects designed to benefit all school districts statewide.⁴² A requirement of the Memorandum of Understanding between the DOE and participating school districts is to ensure that each school possesses the technology, including hardware, connectivity, and other necessary

³³For purposes of state adoption, instructional materials means items having intellectual content that, by design, serve as a major tool for assisting in the instruction of a subject or course. These items may be available in bound, unbound, kit, or package form and may consist of hardbacked or softbacked textbooks, consumables, learning laboratories, manipulatives, electronic media, and computer courseware or software. The term does not include electronic or computer hardware even if such hardware is bundled with software or other electronic media, nor does it include equipment or supplies. s. 1006.29(4), F.S., and s. 1006.40(3)(a), F.S.

³⁴ Items not on the state-adopted list must be used to purchase instructional materials or other items having intellectual content which assist in the instruction of a subject or course. These items may include replacements for items which were part of previously purchased instructional materials and other commonly accepted instructional tools as prescribed by district board rule. s. 1006.40(4), F.S., and s. 1006.40(3)(b), F.S.

³⁵ s. 1006.29(4), F.S.

³⁶ The Discretionary Capital Outlay Levy is a statutorily authorized discretionary property tax that district school boards may levy without approval of the electorate. School districts are authorized to purchase equipment (including computers for classrooms) with this fund source. See s. 1011.71(2), F.S.

³⁷ Specific Appropriation 100, § 2, ch. 2009-81, L.O.F.

³⁸ Department of Education analysis of HB 623, January 12, 2010.

³⁹ s. 1011.62(6), F.S.

⁴⁰ Through the federal Race to the Top competitive grant program, the U.S. Department of Education encourages and rewards states to propose education reforms focused on helping struggling schools, elevating the effectiveness of teaching professionals and education leaders, building internationally recognized education standards and assessments, and improving state education data systems. American Recovery and Reinvestment Act of 2009, Section 14006(c), Public Law 111-5. See <http://www2.ed.gov/programs/racetothetop/eligibility.html>.

⁴¹ Press Release issued March 4, 2010, *Florida Announces as Finalist in \$4.35-Billion Race to the Top Competition*, Office of the Governor. See <http://www.flgov.com/release/11409>.

⁴² American Recovery and Reinvestment Act of 2009, Public Law 111-5. See <http://www2.ed.gov/programs/racetothetop/eligibility.html>.

infrastructure to provide teachers and students sufficient access to strategic tools for improved classroom instruction and computer-based assessment.⁴³

The bill adds “electronic textbooks” to the definition of “adequate instructional materials” that serve as the basis for instruction and requires publishers or manufacturers of instructional materials provided as single bundles to also make available those instructional materials as unbundled items that are priced individually. Beginning in the 2012-2013 fiscal year, the bill authorizes the use of instructional materials funding to purchase materials not on the state-adopted list including computer hardware that is used for the sole purpose of delivering instructional materials content in an electronic format. The bill also provides guidelines for performance standards related to the interactive functionality, capacity and reliability of the hardware purchased from the instructional materials categorical, but provides the authority to the DOE to set specific standards and requires DOE to provide districts with a list of recommended vendors or providers from which to purchase devices or services. However, districts that are able to find a better value can submit a waiver to use different providers.

The bill allows the Commissioner of Education to add materials to the list of recommendations from the state instructional materials advisory committees if the publishers of materials met the requirements established for submission, timely appealed any failure to adopt and the materials are aligned with the Next Generation Sunshine State Standards.

The bill also creates section 1006.281, Florida Statutes, to provide school districts with minimum standards and ensure that all school districts have access to digitally rich instructional materials. The section provides guidelines and instructions for implementation of electronic learning management systems that provide teachers, staff, students and parents the ability to organize and access electronic instructional materials and other teaching and learning tools as determined appropriate by the school district.

Access to Electronic Library Resources

There are four different automated library systems and services in Florida that provide centralized automated library services for different constituents as follows:⁴⁴

- Florida Center for Library Automation (FCLA) – State University System
- College Center for Library Automation (CCLA) – Florida College System
- SUNLINK – K-12 public schools
- Florida Electronic Library (FEL) – Florida public libraries.

Each system provides, in part, access to commercial electronic resources through subscription contracts with publishers. Currently, there is ad hoc coordination among the automated library systems and no assurances that all students have the necessary access to ensure equitable learning experiences in similar courses across secondary and postsecondary coursework.

The bill amends section 1007.27, Florida Statutes, to require secondary students enrolled in acceleration courses or programs such as advanced placement, early admission, dual enrollment, the Advanced International Certificate of Education Program and the International Baccalaureate Program be provided access to the electronic library resources provided by the Florida colleges and state universities.

Bonus Funding for Student Performance for Certain Courses and Diplomas

Section 1011.62(1), Florida Statutes, provides bonus full-time equivalents (FTE) for funding for student performance in the following academic programs:

⁴³ Florida Department of Education, *Florida's Race to the Top Application – Participating Local Education Agency Memorandum of Understanding*, p.8, December 9, 2009. See <http://www.fldoe.org/ARRA/Racetothetop.asp>.

⁴⁴ Joint Library Planning Committee, “A plan providing options and recommendations for cooperative library automation activity,” available at <http://www.fldoe.org/cc/pdf/jlpc-report-1.pdf> (last accessed March 12, 2010).

- 0.16 FTE per student for passed International Baccalaureate examinations.
- 0.16 FTE per student for passed Advanced International Certificate of Education examinations. (Half for middle school equivalent programs)
- 0.16 FTE per student for passed College Board Advanced Placement examinations.
- 0.3 FTE for International Baccalaureate diplomas.
- 0.3 FTE for Advanced International Certificate of Education diplomas.
- 0.3 FTE for Industry-Certification courses and high school diploma (with \$15 million cap).⁴⁵

The bill reduces the bonus from 0.3 FTE to 0.16 FTE for students earning industry certification, and further limits the funding in the FEFP to \$8 million in total for all bonus FTE earning industry certification. This aligns the industry certification incentive FTE with the other programs receiving bonus funding in the FEFP.

The bill also provides for allowable expenditures for the International Baccalaureate program to include teacher bonuses and administrative costs of school fees, examinations fees, and professional development. Remaining funds are to be provided to the school that generated the funding.

Sparsity Allocation Methodology

The sparsity supplement provides additional funding to districts with 20,000 or fewer FTE and 3 or fewer high school centers. It compensates districts for diseconomies of scale. The sparsity supplement is allocated based on the total number of FTE in a district per high school center while adjusting for the wealth of the school district which is based on the district's total potential funds per FTE. If a district's sparsity supplement is less than \$100 per FTE, the supplement is increased to equal \$100 per FTE. Thirty-three of the 67 school districts and three lab schools receive a sparsity supplement in 2009-10. The current wealth adjustment methodology excludes School Recognition funding.⁴⁶ The bill authorizes the exclusion of Merit Award Program funding from the wealth adjustment calculation within the sparsity supplement allocation methodology, which results in a redistribution of the sparsity supplement to all eligible districts.

Required Local Effort

The required local effort (RLE) for all school districts is an aggregate amount set in the GAA each year. The calculation of each district's RLE is prescribed in statute to be based on 95 percent of the school taxable property value for each school district.⁴⁷ There is also established an RLE equalization factor that is based on the level of assessment for the prior year and is also determined using 95 percent of the school taxable value for each school district.⁴⁸ Local governments are authorized to give credits to tax payers for early payment of taxes that cannot exceed more than four percent.⁴⁹ Because the current authorization for tax credits is only four percent, school districts, in practice, are currently collecting more on average than the calculated amount for RLE which is based on a five percent credit amount. The bill changes the percent of school taxable value to be used in the calculation of the RLE and the RLE equalization factor to 96 percent.

Total Allocation of State Funds for Current Operation

Current Florida law establishes the basic amount for current operation for the FEFP to equal the base student allocation multiplied by district cost differential factor, plus the amounts provided for categorical components within the FEFP, plus the discretionary millage compression supplement, the sparsity supplement, the declining enrollment supplement, the research-based reading allocation, the DJJ supplemental allocation, the student transportation allocation, the teachers lead allocation, the

⁴⁵ s. 1011.62(1)(m-p), F.S.

⁴⁶ s. 1011.62(7), F.S.

⁴⁷ s. 1011.62(4)(a), F.S.

⁴⁸ s. 1011.62(4)(b), F.S.

⁴⁹ s. 200.069(8), F.S.

instructional materials allocation, and the minimum guarantee, minus the required local effort.⁵⁰ The bill adds a limitation on FEFP calculations after the conference report that no calculation shall result in negative state funds for any district.

Student Transportation Allocation Methodology

Student Transportation funds are allocated to school districts based on each district's average bus occupancy, county-by-county differences in the cost of living, the extent of rural population in the district, and the increased costs associated with transporting students with disabilities.⁵¹ The bill authorizes the per student cost designated for the base transportation dollar allocation for disabled students to be designated in the GAA each year.

School District Discretionary Non-voted Capital Improvement Millage

Section 1011.71(3)(b), Florida Statutes, provides school boards with the flexibility to levy an additional discretionary 0.25 millage for critical operation needs or fixed capital outlay. The measure must be approved by a supermajority of the school board and put before the voters in a referendum at the next general election. The bill clarifies that in order for school districts to continue additional millage after the 2010-2011 fiscal year the voters must approve the referendum at the 2010 general election and if the measure fails, it cannot be put before the voters again for a full year. The bill also clarifies that the millage will have to be reauthorized by the voters every two years.

B. SECTION DIRECTORY:

Section 1: Amends s. 212.055, F.S., repealing the requirement for school districts to freeze noncapital local school property taxes when the district levies a capital outlay surtax.

Section 2: Amends s. 216.292, F.S., repealing the authorization for the EOG to transfer funds from the appropriation for public school operations to a fixed capital outlay appropriation for class size reduction.

Section 3: Amends s. 1001.451, F.S., authorizing that the amount paid to each eligible members of the Regional Consortium Service Organizations shall be prorated equally among all eligible members based on the amount provided in the General Appropriations Act.

Section 4: Amends s. 1002.32, F.S., changing the percent of school taxable value to be used in the calculation of funding for the lab schools to 96 percent.

Section 5: Amends s. 1002.33, F.S., providing that capital outlay funds shared by school districts with a charter school in the workplace have met the expenditure requirements for capital outlay funding and reducing the number of students in a charter school that can be charged the administrative fee by its sponsor from 500 students to 250 students.

Section 6: Amends s. 1002.37, F.S., changing the percent of school taxable value to be used in the calculation of funding for the Florida Virtual School to 96 percent.

Section 7: Amends s. 1002.39, F.S., clarifying that a student is not eligible for a quarterly payment for the McKay Scholarship Program if the private school misses the 30 day deadline for verification of student participation.

Section 8: Amends s. 1002.45, F.S., expanding eligibility for the school district virtual programs to include siblings of a currently enrolled student of a school district virtual instruction program and

⁵⁰ s. 1011.62(12)(a), F.S.

⁵¹ s. 1011.68, F.S.

students with a disability or medical condition which has been documented by a physician without having to be counted in the public school enrollment counts for the prior year.

Section 9: Requiring school districts to develop plans for complying with class size requirements.

Section 10: Amends s. 1003.03, F.S., providing implementing provisions if HJR 7039 is adopted by the voters at the 2010 general election.

Section 11: Amends s. 1003.03, F.S., providing implementing provisions if HJR 7039 is not adopted by the voters at the 2010 general election.

Section 12: Creates s. 1003.572, F.S., requiring district school board reporting of gifted classification, services, and performance data; requiring the DOE to develop data elements for district reporting; and requiring rulemaking.

Section 13: Creates s. 1006.281, F.S., providing guidelines and instructions to implementation of electronic learning management systems.

Section 14: Amends s. 1006.29, F.S., adding “electronic textbooks” to the definition of “adequate instructional materials” that serve as the basis for instruction and requiring publishers or manufacturers of instructional materials as single bundles to also make available those instructional materials as unbundled items that are priced individually.

Section 15: Amends s. 1006.33, F.S., requiring instructional materials adopted after 2012-2013 to be adopted in an electronic format; requiring all samples submitted by bidders to the DOE be in electronic format; and requiring superintendents to request samples in addition to the electronic samples through the DOE.

Section 16: Amends s. 1006.34, F.S., authorizing the Commissioner of Education to add to the list of recommended materials submitted by the instructional materials advisory committees in certain circumstances.

Section 17: Amends s. 1006.40, F.S., adding “electronic textbooks” to the definition of “adequate instructional materials” and authorizing the use of instructional materials funding to purchase materials not on the state-adopted list including computer hardware that is used for the sole purpose of delivering instructional materials content in an electronic format.

Section 18: Amends s. 1007.27, F.S., requiring secondary students enrolled in acceleration courses or programs such as advanced placement, early admission, dual enrollment, the Advanced International Certificate of Education Program and the International Baccalaureate Program be provided access to the electronic library resources provided by the Florida colleges and state universities.

Section 19: Amends s. 1011.62, F.S., providing that after allowable expenditures for the International Baccalaureate including teacher bonuses, administrative costs of school fees, examinations fees, and professional development, remaining funds generated from the bonus FTE shall be provided to the school that generated the funding; reducing the bonus from 0.3 FTE to 0.16 FTE for students earning industry certification; limiting the funding in the FEFP to \$8 million in total for all bonus FTE earning industry certification; changing the percent of school taxable value to be used in the calculation of the RLE and the RLE equalization factor to 96 percent; extending school districts the flexibility to use the instructional materials categorical for technological equipment to support student learning after March 1, 2011; and clarifying the funds included in the total allocation of state funds to each district for current operation.

Section 20: Amends s. 1011.67, F.S., repealing the requirement for early release schedule of instructional materials funding.

Section 21: Amends s. 1011.68, F.S., authorizing the per student cost designated for the base transportation dollar allocation for disabled students to be designated in the GAA each year.

Section 22: Amends s. 1011.71, F.S., clarifying that in order for school districts to continue additional millage after the 2010-2011 fiscal year the voters must approve the referendum at the 2010 general election and if the measure fails, it cannot be put before the voters again for a full year and clarifying that the millage will have to be reauthorized by the voters every two years.

Section 23: Amends s. 1011.73, F.S., correcting a cross reference.

Section 24: Amends s. 1012.55, F.S., authorizing an off-site instructor for a traditional classroom providing instruction through a virtual environment to be the instructor of record for purposes of FTE reporting.

Section 25: Amends s. 1013.62, F.S., providing that charter schools in the workplace are eligible for charter school capital outlay funding.

Section 26: Providing an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have a fiscal impact on state revenues.

2. Expenditures:

See FISCAL COMMENTS section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill clarifies that in order for school districts to continue to levy the 0.25 mill additional levy for critical operating needs after the 2010-2011 fiscal year the voters must approve the referendum at the 2010 general election and if the measure fails, it cannot be put before the voters again for a full year. The bill also clarifies that the millage will have to be reauthorized by the voters every two years.

2. Expenditures:

See FISCAL COMMENTS section.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have a direct fiscal impact on the private sector.

D. FISCAL COMMENTS:

The bill conforms the statutes to the K-12 public schools budget. The bill provides school districts additional fiscal flexibility by giving priority to funding for the core mission of teaching and learning and less emphasis on funding noncore functions. In addition, the bill makes a series of adjustments and reductions to special allocations in the FEFP funding formula to maximize funding in the base allocation for all districts. The bill also provides fiscal efficiencies and limits unnecessary spending.

The bill requires each school district in its annual financial report to the DOE to separately identify the following amounts that it expends from the Exceptional Student Education Guaranteed Allocation: (a) the amount expended for students identified as exceptional who do not have a matrix of services; and (b) the amount expended for gifted students in grades K-12 according to grade level.

The cost to school districts to add three new data elements to capture data regarding direct instruction to gifted student classes only, differentiated instruction to gifted students in classes with non-gifted students and non-instructional services, and the number of hours per week for each service per student served and to determine whether the service was provided by a teacher with gifted endorsement will range from \$1,080,000 - \$1,512,000. School districts will absorb these costs within the allocation of FEFP funding. The table below illustrates how the costs were derived.⁵²

Number of School Districts: (67 school districts, 5 developmental research schools, and Florida Virtual School)	72
Number of Data Elements Needed	3
Cost per School District: (based on the size of the district)	\$5,000 - \$7,000
TOTAL	\$1,080,000 - \$1,512,000

The bill provides school districts with the flexibility to purchase computer hardware with funding provided for instructional materials, but only beginning in the 2012-2013 year and after the district has purchased the necessary materials to comply with the increased standards for math and science.⁵³ Allowing this flexibility will help school districts meet technology needs while maintaining quality instructional materials in the classroom.

The bill expands eligibility for the school district virtual programs to include the sibling of a currently enrolled student of a school district virtual instruction program and a student with a disability or medical condition which has been documented by a physician without having to be counted in the public school enrollment counts for the prior year. The impact from this provision on public school enrollment is expected to be insignificant.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax sharing with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides the Department of Education rule making authority to establish rules in order to implement the requirements for school districts to report expenditures and services provided for gifted students. The bill also provides the Department of Education the authority to establish guidelines for school districts to use when purchasing technological equipment from categorical funds within the FEFP.

⁵² Florida Department of Education. Analysis of 2009 HB 835, March 5, 2009.

⁵³ See s. 1003.41, F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 23, 2010, the Full Appropriations Council on Education and Economic Development reported the bill favorably with nine amendments.

- Amendment 1 allows capital outlay funds authorized in s.1011.71(2), F.S. which have been shared with a charter school-in-the-workplace prior to July 1, 2010, are considered to have met the authorized expenditure requirements for such funds.
- Amendment 2 expands eligibility for the school district virtual programs to include the sibling of a currently enrolled student of a school district virtual instruction program and a student with a disability or medical condition which has been documented by a physician without having to be counted in the public school enrollment counts for the prior year.
- Amendment 3 removes changes to the school-year prekindergarten program to restore the VPK program student-teacher ratios to current statutory levels.
- Amendment 4 prohibits school districts from campaigning for or against SJR 2 or HJR 7039 while complying with the requirements to develop plans for implementation of class size requirements.
- Amendment 5 allows the Commissioner of Education to add to the list of recommended instructional materials submitted by the instructional materials advisory committees in certain circumstances.
- Amendment 6 provides for allowable expenditures of the International Baccalaureate program to include teacher bonuses and administrative costs of school fees, examinations fees, and professional development. Remaining funds are to be provided to the school that generated the funding.
- Amendment 7 removes the requirement for DOE to conduct and approve the survey of facilities for a district project to be eligible for an appropriation under the Special Facilities Construction Account and the changes to the composition of the Special Facility Construction Committee to only allow appointments of members by district superintendents and school boards from districts that do not currently qualify for an appropriation from the Special Facilities Construction Account.
- Amendment 8 authorizes an off-site instructor for a traditional classroom providing instruction through a virtual environment to be the instructor of record for purposes of FTE reporting.
- Amendment 9 provides that charter schools in the workplace are eligible to receive charter school capital outlay funding.