

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 5105      PCB EDC 17-03      School Improvement  
**SPONSOR(S):** Education Committee, Latvala and others  
**TIED BILLS:**                      **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Education Committee	13 Y, 5 N	Fudge	Hassell
1) Appropriations Committee	19 Y, 9 N	Seifert	Leznoff

### SUMMARY ANALYSIS

The bill streamlines early warning system requirements and alleviates school improvement planning requirements by requiring a school improvement plan only for schools with a grade of “D” or “F.” The bill also streamlines the school improvement process by:

- requiring the same level of intensive interventions and support strategies for “D” and “F” schools;
- requiring the school district to provide the SBE a district-managed turnaround plan by September 1 after a school earns a “D” or “F;”
- requiring the selection of another turnaround option after the school receives a third consecutive grade below a “C” unless the school is deemed likely to improve to a “C” and receives an additional year; and
- requiring another turnaround option be implemented after 2 years implementing the first plan unless the school is deemed likely to improve to a “C.”

The bill provides that an educational emergency exists in a school district when a school earns a “D” or “F” and requires the district to execute a memorandum of understanding with the collective bargaining agent concerning the selection, placement, and expectations of instructional personnel and school administrators at the school. The memorandum must also be submitted to the SBE by September 1 after a school earns a “D” or “F.”

The bill authorizes the establishment of “schools of hope” and designation of “hope operators” to provide students in areas of persistently low-performing schools with a high-quality education option designed to close the opportunity gap and increase student achievement. The bill:

- establishes criteria for schools of hope and hope operators;
- defines persistently low-performing schools as those subject to differentiated accountability for more than three years or closed as a result of school improvement requirements;
- authorizes the State Board of Education (SBE) to identify and designate hope operators who meet specified criteria;
- removes barriers to hope operators by creating a new notice and agreement process that is exempt from the current charter law and state procurement laws. The prss:
  - allows a hope operator to submit a notice of intent to establish a school of hope in a school district with one or more persistently low-performing schools;
  - requires the school district to enter into a performance based agreement with the hope operator which must include specified provisions;
- provides a school of hope with specific exemptions from current law;
- provides provisions for facilities and funding for schools of hope;
- establishes a grant program to cover specified operational expenses; and
- establishes the Schools of Hope Revolving Loan Program to help schools of hope cover school building construction and startup costs.

The bill takes effect July 1, 2017, except as otherwise provided.

The bill conforms to the proposed House General Appropriations Act.

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

**STORAGE NAME:** h5105a.APC

**DATE:** 4/5/2017

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

“Differentiated accountability” (DA) references the escalating interventions and supports that must be provided to schools receiving school grades of “D” or “F” under Florida’s statewide accountability system in order to help them improve student performance.<sup>1</sup> Of Florida’s approximately 3,500 public schools, 461 (13 percent) are currently subject to DA requirements.<sup>2</sup> As of the 2015-2016 school year, 115 schools have been in DA status, meaning they have earned a “D” or “F” for more than 3 consecutive years.<sup>3</sup>

<b>2015-2016 Schools in DA for More than 3 Years</b>			
# of Years in DA	# Schools	Avg % Scoring Lvl 3+ ELA assessment	Avg % Scoring Lvl 3+ Math assessment
4	54	33.9%	33.3%
5+	61	24.7%	28.6%
<b>Total</b>	<b>115</b>	<b>29.30%</b>	<b>30.95%</b>

Although progressively intensive interventions and supports are provided by school districts and the Florida Department of Education (DOE) under the law, many schools fail to make sufficient improvement to demonstrate that their students are being adequately served. This highlights lax provisions in the law which allow school districts to maintain operation of low-performing schools, even for up to 10 years.<sup>4</sup>

In *Citizens for Strong Schools v. Florida State Board of Education et al*,<sup>5</sup> the trial court stated that “[t]here can be little doubt that allowing a school to remain in F status for an extended period of time raises serious issues regarding the constitutional acceptance of such an event. While the Department of Education’s hands may be tied by the legislation that it is required to follow, the Legislature is not similarly situated.” While “the State cannot be held liable for ineffective operational, control, and supervisory decisions at the local level, the court would be concerned about how long the Legislature would tolerate a local school board’s ineffectual operation that involves the presence of long term “F” schools.”<sup>6</sup> “This is especially true since the . . . evidence shows that an “F” school can be turned around without additional resources being provided.”<sup>7</sup>

<sup>1</sup> See s. 1008.33, F.S.; rule 6A-1.099811, F.A.C.

<sup>2</sup> Florida Department of Education, *Turning Around Low Performing Schools: hearing before the House PreK-12 Quality Subcommittee* (Jan. 25, 2017).

<sup>3</sup> Email, Florida Department of Education, Office of Government Relations (Mar. 22, 2017).

<sup>4</sup> Northwestern Middle School has received a “D” or “F” for the last 10 school years. *See id.*

<sup>5</sup> Case No. 16-2862, (Fla. 1st DCA 2016).

<sup>6</sup> *Citizens for Strong Schools v. Fla. St. Bd. of Ed. et al*, Case No. 16-2862, (Fla. 1st DCA 2016).

<sup>7</sup> *Id.* “The Court also concludes that local school boards, pursuant to their constitutional responsibility to ‘operate, control and supervise’ schools and to ‘determine the rate of school district taxes’ in support of schools, are ‘part of the state system of public education’ and play a very important role in delivering education in Florida. To the extent that Plaintiffs complain about particular levels of student performance or the availability of resources in particular schools, those are matters within the authority of local school boards.” *Id.* at 14.

## **Differentiated Accountability**

### **Present Situation**

The SBE is responsible for holding all school districts and public schools accountable for student performance<sup>8</sup> through a state system of school improvement and education accountability that assesses student performance by school, identifies schools that are not meeting accountability standards, and institutes appropriate measures for enforcing improvement.<sup>9</sup>

The state system of school improvement and education accountability must:

- provide for uniform accountability standards;
- provide assistance of escalating intensity to schools not meeting accountability standards;
- direct support to schools in order to improve and sustain performance;
- focus on the performance of student subgroups; and
- enhance student performance<sup>10</sup>

School districts must be held accountable for improving the academic performance of all students and for identifying and improving schools that fail to meet accountability standards.<sup>11</sup>

The academic performance of all students has a significant effect on the state school system. The SBE must equitably enforce the accountability requirements of the state school system and may impose state requirements on school districts in order to improve the academic performance of all districts, schools, and students.<sup>12</sup>

The DOE must annually identify each public school in need of intervention and support to improve student academic performance. All schools earning a grade of “D” or “F” are schools in need of intervention and support.<sup>13</sup>

The SBE must adopt a differentiated matrix of intervention and support strategies for assisting public schools identified as in need of intervention. The intervention and support strategies must address student performance and may include improvement planning, leadership quality improvement, educator quality improvement, professional development, curriculum alignment and pacing, and the use of continuous improvement and monitoring plans and processes. In addition, the SBE may prescribe reporting requirements to review and monitor the progress of the schools. The rule must define the intervention and support strategies for school improvement for schools earning a grade of “D” or “F” and the roles for the district and department. The rule shall differentiate among schools earning consecutive grades of “D” or “F,” or a combination thereof, and provide for more intense monitoring, intervention, and support strategies for these schools.<sup>14</sup>

The SBE must apply the most intense intervention and support strategies to schools earning an “F.” Within a year after receiving the first “F,” the school district must implement a differentiated matrix of intervention and support strategies, select a turnaround option, and submit a plan for implementing the turnaround option to the DOE. The plan must be approved by the SBE. Upon approval, the turnaround option must be implemented in the following school year.<sup>15</sup> A school that earns a grade of “D” for 3 consecutive years must implement the district-managed turnaround option.<sup>16</sup>

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<sup>8</sup> Sections 1008.33(1) and (2)(a), 1008.34 and 1008.345, F.S.

<sup>9</sup> Section 1008.33(2)(a), F.S.

<sup>10</sup> Section 1008.33(2)(b), F.S.

<sup>11</sup> Section 1008.33(2)(c), F.S.

<sup>12</sup> Section 1008.33(3)(a), F.S., Art. IX, Fla. Const.

<sup>13</sup> Sections 1008.33(3)(b) and 1008.34, F.S.

<sup>14</sup> Sections 1008.33(3)(c) and 1002.33(9)(n), F.S.

<sup>15</sup> Section 1008.33(4)(a), F.S.

<sup>16</sup> Section 1008.33(5), F.S.

Turnaround options include:

- converting the school to a district-managed turnaround school;
- reassigning students to another school and monitor the progress of each reassigned student;
- closing the school and reopening the school as one or more charter schools, each with a governing board that has a demonstrated record of effectiveness;
- contracting with an outside entity that has a demonstrated record of effectiveness to operate the school; or
- implementing a hybrid of the above turnaround options or other turnaround models that have a demonstrated record of effectiveness.<sup>17</sup>

A school earning a grade of “F” or 3 consecutive grades of “D” must have a planning year followed by 2 full school years to implement the initial turnaround. Implementation of the turnaround option is no longer required if the school improves by at least one letter grade during the planning year.<sup>18</sup>

A school earning a grade of “F” or 3 consecutive grades of “D” that improves its letter grade must continue to implement strategies identified in its school improvement plan pursuant to s. 1001.42(18)(a). The department must annually review implementation of the school improvement plan for 3 years to monitor the school’s continued improvement. The department must annually review implementation of the school improvement plan for 3 years to monitor the school’s continued improvement.<sup>19</sup>

If a school with an “F” or 3 consecutive grades of “D” does not improve by at least one letter grade after 2 full years of implementing the turnaround option, the school district must select a different option and submit another implementation plan to the department for state board approval. Implementation of the new plan must begin the school year following the implementation period of the existing turnaround option, unless the SBE determines that the school is likely to improve a letter grade if additional time is provided to implement the existing turnaround option.<sup>20</sup>

### Effect of Proposed Changes

The bill requires the SBE to apply the intensive intervention and support strategies to schools earning a grade of “D” along with schools earning a grade of “F.” The bill requires such schools to immediately implement a differentiated matrix of intervention and support strategies and, by September 1, provide the DOE with a district managed turnaround plan and the memorandum of understanding it must execute as a result of an educational emergency. An educational emergency exists if a school district has one or more “D” or “F” schools and requires district school boards to negotiate to free “D” and “F” schools from restrictions that limit their ability to implement programs and strategies to improve student performance. The negotiations must result in a memorandum of understanding that addresses the selection, placement and expectations of instructional personnel and school administrators.

Upon approval by the SBE, the school district must implement the plan for the remainder of the year and continue implementation for the next full school year. The SBE may allow an additional year of implementation if the SBE determines the school is likely to improve to a “C” or higher after the first full school year of implementation. If the school’s grade does not improve to a “C” or higher after the additional year (its fourth consecutive grade below a “C”), or after the first full year of implementation if an additional year is not granted, the school must:

- reassign students to another school and monitor the progress of each student;

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<sup>17</sup> Section 1008.33(4)(b), F.S.

<sup>18</sup> Section 1008.33(4)(c), F.S. *But see* 6A-1.099811(9)(a), F.A.C. (providing that a school district may discontinue implementing a turnaround plan only if it earns a school grade of “C” or higher).

<sup>19</sup> Section 1001.42(18)(a) and 1008.33(4)(d), F.S.

<sup>20</sup> Section 1008.33(4)(e), F.S.

- close the school and reopen as one or more charter schools with a governing board that has a demonstrated record of effectiveness; or
- contract with an outside entity that has a demonstrated record of effectiveness to operate the school.

If a school does not improve to a “C” or higher after 2 full years of implementing the turnaround option, it must implement another turnaround option beginning with the next school year unless the SBE determines that the school is likely to improve to a “C” or higher if additional time is provided to implement the existing turnaround option.

The bill provides for earlier implementation of a community assessment team by requiring a team to be assigned to each school district or governing board with a school earning a “D,” whereas current law provides for assignment only when a school earns a grade of “F” or three consecutive grades of “D.” The bill requires the team to make recommendations based on effective intervention and support strategies identified by the commissioner<sup>21</sup> for incorporation into the school’s improvement plan.

## **School Improvement Planning**

### **Present Situation**

With the exception of charter schools graded “A”, “B” or “C,”<sup>22</sup> all Florida public schools must have a school improvement plan that is developed and implemented by the school’s advisory council.<sup>23</sup> If a school has a significant gap in achievement on statewide, standardized assessments<sup>24</sup> by one or more student subgroups;<sup>25</sup> has not significantly increased the percentage of students passing statewide, standardized assessments;<sup>26</sup> has not significantly increased the percentage of students demonstrating learning gains as determined using the school grade calculation<sup>27</sup> who passed statewide, standardized assessments; or has significantly lower graduation rates for a subgroup when compared to the state’s graduation rate,<sup>28</sup> the school’s improvement plan must include strategies for improving those results.<sup>29</sup>

For non-charter schools earning a “D” or “F” in the most recent grades release and schools that improved from an “F” to a “C” or higher within the last three years, development and implementation of the plan is based on a form developed by the DOE.<sup>30</sup> In such cases, the plan must be submitted through the Continuous Improvement Management System (CIMS).<sup>31</sup> The DOE reviews, approves, and

<sup>21</sup> The Commissioner of Education is required to report intervention and support strategies used by school districts whose students in both the highest and lowest quartiles exceed the statewide learning growth for students in those quartiles. *See s. 1008.345(5)(b), F.S.*

<sup>22</sup> Section 1002.33(9)(n) <sup>22</sup>

<sup>23</sup> Sections 1001.42(18)(a) and 1001.452(2), F.S. SACs are composed of principals, teachers, educational support personnel, parents, students, local business representatives, and community members. Section 1001.452(1)(a), F.S. SACs are responsible for developing and implementing the school’s improvement plan, assisting in the development of the school’s budget, and assisting in determinations regarding the use of school improvement funds and school recognition awards. Sections 1001.452(2) and 1008.36(4), F.S.

<sup>24</sup> Statewide, standardized assessments include statewide, standardized assessments for English language arts (grades 3-10) and mathematics (grades 3-8); end-of-course assessments for Algebra I, Algebra II, Geometry, Biology I, Civics, and U.S. History; the Statewide Science Assessment (grades 5 and 8), and their associated alternate assessments for students with significant cognitive disabilities. *See s. 1008.22(3), F.S.*

<sup>25</sup> Subgroups include economically disadvantaged students, students from major racial/ethnic groups, students with disabilities, and students with limited English proficiency. 20 U.S.C. s. 6311(b)(2)(C)(v)(II).

<sup>26</sup> A Level 3, Level 4, or Level 5 constitutes a passing score on statewide, standardized assessments. Section 1008.34(1)(a), F.S.

<sup>27</sup> *See s. 1008.34(3)(b), F.S.*

<sup>28</sup> Section 1008.34(3)(b)2.a., F.S.

<sup>29</sup> Section 1001.42(18)(a)1., F.S.

<sup>30</sup> *See Florida Department of Education, Form DA-2 Checklist for Focus and Priority Schools (Dec. 2014), available at <https://www.flrules.org/gateway/reference.asp?No=Ref-04620> (incorporated by reference in rule 6A-1.099811, F.A.C.).*

<sup>31</sup> CIMS is a web application developed by the DOE’s Bureau of School Improvement to provide district and school teams with an online platform for collaborative planning and problem solving as well as a public site for stakeholders to access approved plans. Florida Department of Education, Bureau of School Improvement, *Welcome to CIMS*, <https://www.floridacims.org/> (last visited Aug. 17, 2016).

also monitors implementation of the plan.<sup>32</sup> Schools that receive a “D” three years in a row or that receive an “F” are assigned a community assessment team, which reviews the school’s performance data to determine causes for the low performance, including the role of school, area, and district administrative personnel.<sup>33</sup>

### Effect of Proposed Changes

To reduce paperwork and time associated with school improvement planning, the bill eliminates the requirement that schools with a grade above a “D” develop and implement a school improvement plan, except for schools that must implement strategies to address a deficiency enumerated above.

## **Charter School Requirements**

### Present Situation

Charter schools that earn a grade of “D” or “F” must develop a school improvement plan, which must be approved by the sponsor.<sup>34</sup> Corrective actions are required for charter schools earning three consecutive grades of “D,” two consecutive grades of “D” followed by a grade of “F,” or two nonconsecutive grades of “F” within a three-year period. Such a charter school may choose to:

- contract for educational services to be provided directly to students, instructional personnel, and school administrators;
- contract with an outside entity with a track record of effectiveness to operate the school;
- hire a new director or principal who has authority to hire new staff; or
- voluntarily close the school.<sup>35</sup>

The charter school must implement the corrective action in the school year following receipt of a third consecutive grade of “D,” a grade of “F” following two consecutive grades of “D,” or a second nonconsecutive grade of “F” within a 3-year period.<sup>36</sup> Corrective actions are no longer required if the charter school improves by at least one letter grade; however, the school must continue to implement its school improvement plan.<sup>37</sup> If a charter school does not improve by at least one letter grade after two full school years of implementing a corrective action, the school must choose another action.<sup>38</sup>

A charter school’s contract is automatically terminated if the school earns two consecutive grades of “F,” unless the charter school qualifies for an exception.<sup>39</sup> A sponsor may terminate, at any time, a charter school that is required to implement a school improvement plan or corrective actions; however, this discretionary authority does not extend to charter schools that meet an exception to mandatory termination.<sup>40</sup>

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<sup>32</sup> Florida Department of Education, Bureau of School Improvement, *Frequently Asked Questions: SIP*, <https://www.floridacims.org/faqs?category=sip> (last visited Sept. 8, 2016).

<sup>33</sup> Section 1008.345(6)(d), F.S.

<sup>34</sup> Section 1002.33(9)(n)1., F.S.

<sup>35</sup> Section 1002.33(9)(n)2.a., F.S.

<sup>36</sup> Section 1002.33(9)(n)2.b., F.S.

<sup>37</sup> Section 1002.33(9)(n)2.d., F.S.

<sup>38</sup> Section 1002.33(9)(n)2.c. and e., F.S. Implementation of the new corrective action must begin in the school year following the implementation period of the existing corrective action. The sponsor may waive corrective actions if it determines that the charter school is likely to improve its grade if additional time is given to implement the school improvement plan. The sponsor may also extend the implementation period for a corrective action based upon a similar standard. The sponsor may not waive or extend corrective actions if the charter school earns a second consecutive grade of “F” while in corrective action. *Id.* Unless an exception applies, such a charter school must be terminated by the sponsor. Section 1002.33(9)(n) 4, F.S.

<sup>39</sup> Section 1002.33(9)(n)4., F.S.

<sup>40</sup> Section 1002.33(9)(n)6., F.S.

The director and a representative of a charter school that is required to implement a school improvement plan or corrective action must annually appear before the sponsor to report the progress of the corrective strategies being implemented by the school.<sup>41</sup>

### Effect of Proposed Changes

The bill requires corrective actions be taken by a charter school if the school earns three consecutive grades below a “C” and requires the corrective action be implemented in the school year following the third consecutive “C.” The bill provides that corrective actions are no longer required if the charter school grade improves to a “C” or higher. The bill permits an exception to a “double ‘F’” termination for a charter school that serves a majority of students who are zoned for a “D” or “F” school.

## **Schools of Hope**

### **Schools of Hope Program**

#### Effect of Proposed Changes

The bill provides for the establishment of schools of hope to provide students in areas of persistently low-performing schools with a unique, high-quality education option designed to close the opportunity gap and increase student achievement.

The bill defines a school of hope as a charter school operated by a hope operator to serve students from one or more persistently low-performing schools; is located within the attendance zone of the persistently low-performing school or within a five mile radius of the school, whichever is greater; and is a Title I eligible school. The bill defines hope operators as nonprofit organizations that operate three or more charter schools with a record of serving students from low-income families and receives the designation from the SBE. In determining hope operator status, the SBE must determine whether the past performance of the operator meets or exceeds the following criteria:

- Student achievement results which must exceed the district and state averages in the state in which the school operates.
- College attendance rates at all schools currently operated by the entity which must exceed 80 percent.
- The percent of students enrolled at all schools currently operated by the entity eligible for a free or reduced price lunch which must exceed 70 percent.
- The operator is in good standing with the authorizer in each state in which it operates.
- The audited financial statements of the operator are free of material exceptions and going concern issues.
- Other outcome measures determined by the SBE.

A hope operator may also qualify if the operator:

- was awarded a U.S. Department of Education Charter School Program Grant for Replication and Expansion of High-Quality Charter Schools within the past 3 years;
- receives funds through the National Fund or Regional Fund of the Charter School Growth Funds; or
- is selected by a district school board as part of the turnaround process requirements under the bill.

Once measurable criteria is established, any operator seeking status as a hope operator must meet those qualifications, unless an operator is selected by a district as a turnaround option. Any operator seeking hope operator status must meet those qualifications, unless the operator is selected. The bill authorizes initial hope operator status to be valid for up to 5 years. If a hope operator seeks renewal of

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<sup>41</sup> Section 1002.33(9)(n)5., F.S.  
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its status, renewal is solely based on the academic and financial performance of all schools established in Florida by the hope operator since its initial designation.

The bill authorizes a hope operator to submit a notice of intent to open a school of hope in the school district where a persistently low-performing school has been identified.

The bill requires the notice of intent to include:

- an academic focus and plan;
- a financial plan;
- the goals and objectives for increasing student achievement for student from low-income families;
- a completed or planned community outreach plan;
- the organizational history of hope in working with student with similar demographics;
- the grade levels to be served and enrollment projections;
- the proposed location proposed for the school and its proximity to the persistently low-performing school; and
- a staffing plan.

The school district must enter into a performance based agreement with a hope operator. The performance based agreement must:

- incorporate the notice of intent;
- identify the location proposed for the school and its proximity to the persistently low-performing school.
- enumerate the grades to be served each year of the agreement and whether the school will serve children in school readiness or prekindergarten;
- describe the plan of action and specific milestones for student recruitment and enrollment of students from persistently low-performing schools, including enrollment preferences and procedures for conducting transparent admissions lotteries. Students from persistently low-performing schools are exempt from any enrollment lottery to the extent permitted by federal grant requirement;
- establish the current incoming baseline standard of student academic achievement, the outcomes to be achieved and the method of measurement that will be used;
- describe the methods of involving parents and expected levels for the involvement;
- describe the grounds for termination, including failure to meet the requirements for student performance, generally accepted standards of fiscal management or material violation of the terms of the agreement. The nonrenewal or termination of a performance based agreement must comply with the requirements of s. 1002.33(8);
- allow the hope operator to open additional schools to serve students zoned for a persistently low-performing school;
- provide for an initial term of at least five years. The agreement must be renewed, unless the school fails to meet the requirements for student performance, the generally accepted standards of fiscal management or the school materially violates the law or terms of the agreement;
- require transportation of students to conform to statutory guidelines. The governing body of the school may provide transportation through an agreement with the district school board, a private provider or parents. Transportation cannot be a barrier to equal access for student residing in a reasonable distance of school;
- require that any agreement to borrow or secure funds from a source other than the state or school district must indemnify the state and school district from any and all liability;
- provide that any financial agreement entered into by the hope operator is not an obligation of the state or school district and is payable only from funds pledged by such agreement; and
- prohibit the pledge of credit or taxing power of the state or school district.

The bill requires a school district that fails to enter into a performance based agreement within 60 days to reduce the charter school administrative fee to one percent for all charter schools operating in the

district. Upon successful execution of the performance based agreement, the district may resume withholding the full administrative fee but may not recover previous lost fees. The bill allows an aggrieved charter school to recover attorney's fees and costs in actions to recover withheld administrative fees.

The bill requires that disputes between hope operators and school district regarding performance based agreements be submitted to a magistrate that is agreed to by both parties. If the parties are unable to agree, the dispute will be submitted to a qualified magistrate appointed by the Commissioner of Education. The bill requires the magistrate to hold hearings and make recommendations to the SBE, which may not alter the statutory provisions of performance agreements. The final decision of the SBE may be appealed to the First District Court of Appeals. The bill permits the hope operator to recover attorney's fees and cost if the SBE determines the district acted unlawfully with regard to the performance agreement.

The bill requires the SBE to:

- publish an annual list of persistently low-performing schools;
- adopt a standard notice of intent and performance based agreement to be used by hope operators and school boards;
- resolve disputes between a hope operator and a school district arising from a performance-based agreement or a contract, including the appointment of a special magistrate to hold hearings and render decisions regarding disputes; and
- provide students in persistently low-performing schools with a public school that meets accountability standards.

The Florida Constitution provides that “[t]he state board of education shall be a body corporate and have such supervision of the system of free public education as is provided by law,” while local school boards have the power to “operate, control and supervise all free public schools within the school district.” Courts have held that this supervisory authority allows the SBE to approve or deny a charter application because the school board has control over the contractual process. “This broader supervisory authority may at times infringe on a school board’s local powers, but such infringement is expressly contemplated – and in fact encouraged by the very nature of the supervision – by the Florida Constitution.”<sup>42</sup>

The bill addresses the conditions that allow a school to persistently fail to meet the needs of its students, while recognizing a school district’s authority to operate, control, and supervise schools within the district, by requiring a school district with a “D” or “F” to enter into a performance based agreement with a hope operator who has submitted a notice of intent. However, the SBE, in the exercise of its supervisory authority, may contract with a hope operator if the school district fails to do so. Unlike *Duval County School Board*,<sup>43</sup> the bill authorizes the SBE to exercise its supervisory authority only when a school district fails to fulfill its constitutional duty. If the SBE enters into a performance based agreement with a hope operator, the district must transfer to the school of hope the proportionate share of state funds allocated from the FEFP.

The bill provides hope operators with the following statutory authority:

- allows a school of hope to be designated as a local educational agency for the purposes of receiving federal funds;
- provides that, for the purpose of tort liability, the operator, school of hope and its employees or agent are subject to the same waiver of sovereign immunity in tort actions as the state, state

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<sup>42</sup> *Sch. Bd. of Palm Beach Cnty. v. Fla. Charter Educ. Found., Inc.*, 42 Fla. L. Weekly D 189 (Fla. 4th DCA 2017).

<sup>43</sup> In *Duval County School Board v. State Board of Education*, 998 So. 2d 641 (Fla. 1st DCA 2008), several school districts challenged s. 1002.335 F.S., which created an independent state-level entity that could directly authorize the creation of charter schools. School districts could retain exclusive authority to sponsor charter schools if approved by the state board. The court found that the law was facially unconstitutional because it created a parallel system of free public education outside the control of locally elected school boards.

agencies and or subdivisions. The sponsor is not liable for civil damages under state law for the employment actions or personal injury, property damage or death resulting from an act or omission of an operator, the school of hope and its employees or agents;

- allows a school of hope to be either a private or public employer and provides that employees of a public employer must be compulsory members of the Florida Retirement System;
- allows a hope operator to employ staff that do not meet the educator certification requirements, so long as the school disqualifies staff from employment in any position that requires direct contact with students if the staff member is statutorily disqualified for such employment; and
- allows calculation for class size compliance to be the average at the school level.

The bill provides that schools of hope are exempt from chapters 1000-1013 of the Florida Statutes and all board polices, except statutes pertaining to:

- the student assessment program and school grading;
- student progression and graduation;
- services to students with disabilities
- civil rights and discrimination;
- student health, safety and welfare;
- public meetings and records public inspection and criminal and civil penalties;
- public records; and
- code of ethics for public officers and employees.

The bill provides that a school of hope must utilize facilities which comply with the Florida Building Code except for the State Requirements for Educational Facilities. Schools of hope that utilize school district facilities must comply with the State Requirements for Educational Facilities only if the school district and hope operator have entered into a mutual management plan for the reasonable maintenance of such facilities. The mutual management plan must have a provision requiring the district school board to maintain the school facilities in the same manner as its other public schools within the district.

The local governing authority cannot impose any local building requirements or site-development restrictions that are addressed by and more stringent than those found in the State Requirements for Educational Facilities of the Florida Building Code. The local governing authority must treat school of hope equitably in comparison to similar requirements, restrictions, and site planning processes imposed upon public schools. The local municipality is the agency with jurisdiction for inspection of a facility and issuance of a certificate of occupancy or use. If in an unincorporated area, the authority is placed with the county governing authority. If an official or employee of the local governing authority refuses to comply with this paragraph, the aggrieved school has the right to bring an action in circuit court to enforce its rights by injunction.

The bill provides that facilities of a school of hope are exempt from a number of taxes, fees and assessments. The bill also provides that a number of existing community and state facilities may provide space to schools of hope.

The bill requires each district to annually provide a list of its underutilized, vacant or surplus property and facilities to the DOE. A hope operator operating a school of hope may utilize an underutilized, vacant, or surplus educational facility at no cost or at a mutually agreed cost not to exceed \$600 per student. The hope operator cannot sell or dispose of the facility without written permission from the school district. An underutilized, vacant or surplus property is an entire, or portion of, a property that is not fully used (or used irregularly or intermittently) by the school district for instructional or program use.

### **Schools of Hope Funding**

The bill provides that a school of hope is funded in the same manner as other charter schools and traditional schools. A school of hope is considered a charter school for purposes of charter capital outlay, but may not use the funds to purchase real property or construct school facilities. In addition,

the bill provides school of hope with priority in the DOE's Public Charter School Grant Program competitions.

The bill creates a special category of grants and aids for school of hope. Eligible expenditures from an appropriation in the special category may include:

- Preparing teachers, school leaders, and specialized instructional support personnel, including costs associated with:
  - providing professional development; and
  - hiring and compensating teachers, school leaders, and specialized instructional support personnel for services beyond the school day and year.
- Acquiring supplies, training, equipment, and educational materials including developing and acquiring instructional materials.
- Providing one-time, startup costs associated with providing transportation to students to and from the charter school.
- Carrying out community engagement activities, which may include paying the cost of student and staff recruitment.
- Providing funds to cover the nonvoted ad valorem millage that would otherwise be required for schools and the required local effort funds when the state board enters into an agreement with a hope operator.

The bill provides that if a school of hope is not renewed or is terminated, any unencumbered funds and all equipment and property purchased with the funds revert to ownership of the state. Such reversion must focus on tangible or irrecoverable costs, such as rental or leasing fees, normal maintenance, and limited renovations. The reversion of all property secured with grant funds is subject to the complete satisfaction of all lawful liens or encumbrances.

Funds from the special category which are not disbursed by June 30 of the fiscal year in which the funds are appropriated may be carried forward for up to 5 years after the effective date of the original appropriation.

The bill establishes the Schools of Hope Revolving Loan Program within the DOE. The purpose of the program is to provide assistance to charter schools to meet school building construction and to pay for expenses related to starting up a new charter school. The fund will comprise legislatively appropriated funding, repaid loan funding, and interest earned. The bill requires that all repayments of principal and interest be returned to the loan fund and made available for loans to other applicants.

The bill limits funds provided through the program to 25 percent of the total cost of the project. The total cost of the project must be calculated based on 80 percent of the cost per student station multiplied by the capacity of the facility. The interest rate on loans from the fund may be used to defray the costs of administration. The rate must be the lower of the rate paid on monies held in the fund or a rate equal to 50 percent of the statewide maximum bond interest rate authorized pursuant to state law.

A hope operator that has been designated by the state board and has executed a performance based agreement shall receive a loan for projects that are located in the attendance area of a persistently low-performing school or within a five mile radius and primarily serve students from low-performing schools.

The bill allows the department to select a third-party administrator to administer the program and report annually to the department. However, the department must continue to administer the program until a third-party administrator is selected. The department must post on its website the projects that have received loans, the geographic distribution of the projects, the status of the projects, the costs of the program, and student outcomes.

Funds appropriated for the program which but are not disbursed by June 30 of the fiscal year in which they are appropriated may be carried forward for up to 5 years after the effective date of the original appropriation.

## **Early Warning Systems**

### **Present Situation**

Currently, schools with a 6th, 7th or 8th grade class must implement an early warning system (EWS) to identify students who need additional support to improve academic performance. The EWS must include the following early warning indicators:

- Attendance below 90 percent.
- One or more suspensions.
- Course failure in English Language Arts or math.
- A Level 1 score on the statewide, standardized assessment in English Language Arts or math.
- Additional indicators deemed appropriate by the school district.

The schools' child study team or a school-based team must convene to determine appropriate intervention strategies when a student exhibits two or more early warning indicators. The school must provide 10 days' written notice of the meeting to the parent. The notice must include the meeting's purpose, time and location and provide the parent the opportunity to participate.<sup>44</sup>

Schools with a 6th, 7th or 8th grade class must include data and information in its school improvement plan regarding the schools early warning system. The information must include:

- a list of the early warning indicators used;
- the number of students who have two or more early warning indicators;
- the number of students in each grade that exhibits each early warning indicator; and
- a description of all intervention strategies used to improve academic performance of students identified by the early warning system.

The school must also describe in its school improvement plan the strategies used by the school to implement the instructional practices for middle grades emphasized by the district's professional development system.<sup>45</sup>

### **Effect of Proposed Changes**

The bill expands the schools that must implement an EWS from schools with a 6th, 7th or 8th grade class to schools that serve any students in kindergarten through grade 8.

The bill clarifies that the EWS indicator that identifies a course failure in English Language Arts or math must be for any grading period and includes a substantial reading deficiency for a kindergarten through grade 3 student as an EWS indicator.

The bill requires a school-based team, rather than a "child study team," to be responsible for monitoring EWS data and to implement appropriate intervention strategies for a student who exhibits two or more early learning indicators unless the student is already being served by an intervention program. The team may include a school psychologist. Because not all schools are required to implement a school improvement plan, the bill eliminates the requirement that a school's improvement plan include middle grades EWS data and related information.<sup>46</sup>

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<sup>44</sup> Section 1001.42(18)(b), F.S.

<sup>45</sup> Section 1001.42(18)(a), F.S.

<sup>46</sup> Early warning system is already a component of the school improvement plan for schools with a grade of "D" or "F." See Florida Department of Education, *Form SIP-1, School Improvement Plan* (Dec. 2014), available at [https://www.flrules.org/gateway/readRefFile.asp?refId=4622&filename=SIP-1\\_2014-15.pdf](https://www.flrules.org/gateway/readRefFile.asp?refId=4622&filename=SIP-1_2014-15.pdf) (incorporated by reference in rule 6A-1.099811, F.A.C.).

**B. SECTION DIRECTORY:**

Section 1. Amends s. 1001.42, F.S., relating to the powers and duties of the district school board.

Section 2. Amends s. 1008.33, F.S., relating to the authority to enforce public school improvement.

Section 3. Amends s. 1008.345, F.S., relating to the implementation of state system of school improvement and education accountability.

Section 4. Amends s. 1002.33, F.S., relating to charter schools.

Section 5. Creates s. 1002.333, F.S., relating to persistently low-performing schools.

Section 6. Creates s. 1001.291, F.S., establishing schools of hope revolving loan program; providing criteria for administration of the program.

Section 7. Provides for the severability of the provisions of the bill.

Section 8. Provides an effective date of July 1, 2017, except as otherwise provided.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

The proposed House General Appropriations Act provides \$200 million in recurring General Revenue funds to implement the provisions of this act.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

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

None.

**D. FISCAL COMMENTS:**

None.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

#### **B. RULE-MAKING AUTHORITY:**

The bill requires the State Board of Education to adopt rules regarding schools of hope.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 30, 2017, the Education Committee adopted one amendment and reported the proposed committee bill favorably. The amendment changes the name of “success operators” to “hope operators” and “schools of success” to “schools of hope.” The amendment also revises the definition of “schools of hope” to include Title I eligibility as a required criterion. The bill analysis reflects the bill as amended.