

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Education

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BILL: SB 642

INTRODUCER: Senators Garcia and Artiles

SUBJECT: Public Educational Facilities

DATE: March 20, 2017

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Benvenisty</u>	<u>Graf</u>	<u>ED</u>	<b>Favorable</b>
2.	_____	_____	<u>AED</u>	_____
3.	_____	_____	<u>AP</u>	_____

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**I. Summary:**

SB 642 revises provisions related to public educational facilities. Specifically, the bill:

- Requires the Commissioner of Education to, upon request by a district school board, grant an exemption to the State Requirements for Educational Facilities (SREF).
- Requires the district school board to provide a comprehensive cost-benefit analysis along with its request for an SREF exemption.
- Specifies, for the purposes of determining the capacity of school facilities as reported in the Florida Inventory of School Houses that a school containing kindergarten through grade 5 is considered an elementary school and a school containing students in grades 6 through 8 is considered a middle school.

The bill takes effect July 1, 2017.

**II. Present Situation:**

Florida law authorizes state and local officials to cooperate in establishing and maintaining educational facilities that will provide for public educational needs throughout the state.<sup>1</sup>

The Office of Educational Facilities (OEF) within the Florida Department of Education (DOE) provides technical support and information for all issues related to educational facilities planning, funding, construction, and operations throughout Florida's K-20 Education System.<sup>2</sup> As part of this responsibility, the OEF require district school boards to submit other educational plant inventories data and statistical data or information relevant to construction, capital improvements, and related costs.<sup>3</sup>

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<sup>1</sup> Section 1013.02(1), F.S.

<sup>2</sup> Florida Department of Education, *Educational Facilities*, <http://www.fl DOE.org/finance/educal-facilities/> (last visited March 20, 2017).

<sup>3</sup> Section 1013.03(3), F.S.

## School District Educational Facilities Plan

Each district school board must annually, prior to the adoption of the district school budget prepare a tentative district educational facilities plan that includes long-range planning for facilities needs over 5-year, 10-year, and 20-year periods.<sup>4</sup> This plan must be submitted to the OEF<sup>5</sup> and must include a financially feasible district facilities work program for a 5-year period that specifies:<sup>6</sup>

- A schedule of major repairs and renovation projects necessary to maintain the educational and ancillary facilities of the district.
- A schedule of capital outlay projects necessary to ensure the availability of satisfactory student stations for the projected student enrollment in K-12 programs. The schedule must consider factors specified in law, including but not limited to the capacity of existing satisfactory facilities as reported in Florida Inventory of School Houses (FISH), which must be compared to the capital outlay full-time equivalent student enrollment as determined by the DOE.

The district school board must annually consider and adopt the tentative district facilities plan.<sup>7</sup>

### *The Florida Inventory of School Houses (FISH)*

The FISH is the electronic database created and supported by the OEF is a numbering system used by the DOE for parcels, buildings, and rooms in public educational facilities.<sup>8</sup> The FISH is available to all school districts for reporting facilities information.<sup>9</sup> Only facilities contained in the FISH are eligible to generate capital outlay funds.<sup>10</sup> The FISH helps the DOE and school districts determine the capacity<sup>11</sup> at each educational facility in the district.<sup>12</sup> School districts must periodically update their inventory of educational facilities as new capacity becomes available and as unsatisfactory space is eliminated.<sup>13,14</sup>

<sup>4</sup> Section 1013.35(2)(a).

<sup>5</sup> *Id.* at (1)(c).

<sup>6</sup> *Id.* at (2)(b).

<sup>7</sup> *Id.* at (4).

<sup>8</sup> Florida Department of Education, Office of Educational Facilities, *2014 State Requirements for Educational Facilities*, available at <http://www.fldoe.org/core/fileparse.php/7738/urlt/srefrule14.pdf>, at 22 of 258; see also Florida Department of Education, Office of the Inspector General, *Audit of the Florida Inventory of School Houses* (March 2008).

<sup>9</sup> Florida Department of Education, *Florida Inventory of School Houses (FISH) User's Manual, 2013 Edition*, available at <http://public2.fldoe.org/efis/fishusermanual.pdf>, at 5.

<sup>10</sup> *Id.* at 16.

<sup>11</sup> "Capacity" is the number of students that may be housed in a facility at any given time based on a utilization percentage (factor) of the total number of existing satisfactory student stations. Florida Department of Education, Office of Educational Facilities, *2014 State Requirements for Educational Facilities*, available at <http://www.fldoe.org/core/fileparse.php/7738/urlt/srefrule14.pdf>, at 110 of 258.

<sup>12</sup> *Id.* at 82.

<sup>13</sup> Section 1013.31(1)(d), F.S.

<sup>14</sup> Unsatisfactory space means the space condition is such that the purpose for which the space was designated cannot be accomplished. Florida Department of Education, *Florida Inventory of School Houses (FISH) User's Manual, 2013 Edition*, available at <http://public2.fldoe.org/efis/fishusermanual.pdf>, at 83. Unsatisfactory space is typically designated as such due to compromising effects on structural integrity, safety, or excessive physical deterioration of a building. *Id.*

## State Uniform Building Code for Public Educational Facilities

The Florida Building Commission (commission) adopts the State Requirements for Educational Facilities (SREF)<sup>15</sup> within the Florida Building Code (FBC), which governs the planning and construction of public educational and ancillary plants.<sup>16</sup> The State Fire Marshal adopts standards for public school fire safety within the Florida Fire Prevention Code (FFPC).<sup>17</sup>

The construction of public educational facilities<sup>18</sup> and ancillary plants by a district school board must conform to the FBC, FFPC, and the Florida Accessibility Code for Building Construction (FACBC)<sup>19</sup>.<sup>20</sup> Collectively, the FBC, FFPC, and FACBC form the uniform building code for public educational facilities construction and ensure that such facilities are a safe, secure, sanitary, and accessible learning environment for all students, and that the structures will perform efficiently over their expected life cycles.<sup>21</sup> The requirements preempt local codes and local amendments to the FBC.<sup>22</sup>

### Review of Compliance with the Florida Building Code

Before approving any construction plans, the department, the district school board, or an authorized review agent must ensure that the plans comply with the applicable standards of the FBC and the FFPC.<sup>23</sup> For each proposed new facility and each proposed new addition, exceeding

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<sup>15</sup> In 2016, the Florida Legislature directed the Office of Program Policy Analysis and Government Accountability (OPPAGA) to review the SREF to identify current requirements that could be eliminated or modified in order to decrease the cost of construction of educational facilities while ensuring student safety. On January 31, 2017, OPPAGA released Report 17-04, which recommended that the SREF be retained and noted that 82 percent of school districts supported retaining the SREF due to benefits to “student safety, facility quality, facility longevity, and school uniformity.” The report identified 10 potential modifications for legislative consideration, but noted that each posed potential safety drawbacks with cost savings of 1 percent or less and a lack of consensus among the school districts as to which requirements could be modified and how they should be modified. In the agency response, the commissioner concurred with the recommendation to retain the SREF, but (with one exception) urged continuation of the current SREF requirements without modification to protect student safety and further prudent expenditure of taxpayer funds. Florida Department of Education, *2017 Legislative Bill Analysis for HB 559* (March 17, 2017), at 4. HB 559 is similar to SB 642. See also Office of Program Policy Analysis and Government Accountability, *The State Requirements for Educational Facilities (SREF) Should Be Retained; Some Modifications Could Be Made*, Report No. 17-04 (Jan. 2017), available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1704rpt.pdf>.

<sup>16</sup> Sections 553.73 and 1013.37(1), F.S.; Rule 6A-2.0010, F.A.C.; Section 423, FBC. The 2014 *State Requirements for Educational Facilities* (effective Nov. 4, 2014), available at <http://www.fl DOE.org/core/fileparse.php/7738/urlt/srefrule14.pdf>.

<sup>17</sup> Sections 381.006(16), 1013.03(6), and 1013.37(1) and (4), F.S.; Section 443, FBC.

<sup>18</sup> “Educational facilities” is defined as the buildings and equipment, structures, and special educational use areas that are built, installed, or established to serve primarily the educational purposes and secondarily the social and recreational purposes of the community and which may lawfully be used as authorized by the Florida Statutes and approved by boards. Section 1013.01(6), F.S.

<sup>19</sup> The federal Americans with Disabilities Act Standards for Accessible Design, and related regulations in 28 C.F.R. parts 35 and 36 and 49 C.F.R. part 37, are adopted by the Florida Building Commission. Sections 553.503 and 553.73(1)(b), F.S.

<sup>20</sup> The ancillary plants are exempt from other state building codes; county, municipal, or other local amendments to the FBC and local amendments to the FFPC; building permits, and assessments of fees for building permits; ordinances; road closures; and impact fees or service availability fees. Section 1013.371(1)(a), F.S.

<sup>21</sup> Sections 1013.03, 1013.37(1)(e) and 1013.451, F.S.

<sup>22</sup> The enforcement of construction regulations governing public school districts is conducted by personnel and contract providers who are certified to perform plan reviews and inspections. Section 553.80(1)(e) and (6), F.S.

<sup>23</sup> Sections 1013.37(2), 1013.371(1)(c), and 1013.38(4)(a), F.S.

2,500 square feet, the district school board must submit a copy of the plans<sup>24</sup> to the county, municipality, or independent special fire control district providing fire protection services to the facility for review at no charge.<sup>25</sup> Upon determining that the construction plans comply with the applicable standards, the district school board may approve the plans and construction may begin on the facilities.<sup>26</sup>

The Commissioner of Education must cooperate with the Commission in addressing all questions, disputes, or interpretations involving provisions of the FBC which govern the construction of public educational and public ancillary facilities.<sup>27</sup> Any objections to decisions made by the inspectors or the DOE must be submitted in writing.<sup>28</sup>

### **Approval of Facilities Construction**

Before the commencement of the construction, renovation, or remodeling of any educational or ancillary plants, the DOE, the district school board, or an authorized review agent must review the construction plans, including any related documents.<sup>29</sup> In reviewing the plans, the district school board must consider, among other things:<sup>30</sup>

- The need for the new facility.
- Plans for future expansion.
- The type of construction.
- Sanitary provisions.
- Conformity with the FBC and FFPC standards.
- The energy efficiency and conservation of design.
- Life-cycle cost considerations.
- The design to accommodate physically handicapped persons.
- The proposed construction cost per gross square foot.

### ***Waivers or Variances***

The State Constitution prohibits the enactment of any special act or general law of local application that proposes to amend, alter, or contravene the provisions of the SREF.<sup>31</sup> Legislative intent is that building officials, local enforcement agencies, and the commission interpret the FBC in a manner that protects the public safety, health, and welfare at the most reasonable cost.<sup>32</sup>

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<sup>24</sup> Such site plans are exempt from all other state building codes; local amendments to the FBC and FFPC; local ordinances; building permits, including related fees; road closures; and impact fees or service availability fees. Sections 1013.371(1)(a) and 1013.38(1)(b), F.S.

<sup>25</sup> Section 1013.38(1)(a)-(b), F.S.

<sup>26</sup> Sections 1013.37(2)(a) and 1013.38(4)(a), F.S.

<sup>27</sup> Sections 1013.37(2)(a), F.S.

<sup>28</sup> *Id.* at (3).

<sup>29</sup> Section 1013.37(2)(a) and (b), F.S.

<sup>30</sup> Section 1013.37(2)(b), F.S.

<sup>31</sup> Section 1013.37(5), F.S. The enactment of a special law or general law of local application is prohibited if pertaining to a subject prohibited by general law. Art. III, s. 11(a)(21), Fla. Const.

<sup>32</sup> Section 553.775(1), F.S.

The Commission is not authorized to accept a petition for and may not grant any waiver<sup>33</sup> or variance<sup>34</sup> from the requirements of the FBC.<sup>35</sup> However, the commission is required to adopt criteria and procedures for granting alternative means of compliance with the FBC standards, or local amendments to the FBC, for enforcement by local governments, local enforcement districts, or other entities authorized by law to enforce the FBC.<sup>36</sup> Upon a determination by the Commission of unnecessary, unreasonable, or extreme economic hardship, provided the waiver does not violate federal accessibility laws and regulations, the Commission must grant an applicant's request for waiver.<sup>37</sup>

If planned or actual construction of a facility deviates from the standards, a district school board must, at a public hearing, quantify and compare the costs of constructing the facility with the proposed deviations and in compliance with the adopted standards and the FBC, and explain the reason for the proposed deviations.<sup>38</sup>

### III. Effect of Proposed Changes:

SB 642 revises provisions related to public educational facilities. Specifically, the bill:

- Requires the Commissioner of Education to, upon request by a district school board, grant an exemption to the State Requirements for Educational Facilities (SREF).
- Requires the district school board to provide a comprehensive cost-benefit analysis along with its request for an SREF exemption.
- Specifies, for the purposes of determining the capacity of school facilities as reported in the Florida Inventory of School Houses (FISH) that a school containing kindergarten through grade 5 is considered an elementary school and a school containing students in grades 6 through 8 is considered a middle school.

According to the Florida Department of Education (DOE), school districts use a diverse range of grade configurations in their schools.<sup>39</sup> As of February 7, 2017, data reported by school districts include 43 different grade configurations for the 3,072 schools in the FISH, as follows:<sup>40</sup>

- Prekindergarten through grade 5 – 1,426 schools (46.42 percent);
- Kindergarten through grade 5 – 165 schools (5.37 percent);
- Grades 6 through 8 – 480 schools (15.63 percent);

<sup>33</sup> “Waiver” means a decision by an agency to apply all or part of a rule to a person who is subject to the rule. Any waiver must conform to the standards for waivers outlined in the Administrative Procedure Act and in the uniform rulemaking procedures. Section 120.52(22), F.S. (definition of “waiver”); Section 120.54, F.S. (rulemaking procedure).

<sup>34</sup> “Variance” means a decision by an agency to grant a modification to all or part of the literal requirements of an agency rule to a person who is subject to the rule. Any variance must conform to the standards for variances outlined in the Administrative Procedure Act and in the uniform rulemaking procedures. Section 120.52(21), F.S. (definition of “variance”); Section 120.54, F.S. (rulemaking procedure).

<sup>35</sup> Sections 120.80(16)(a) and (b) and 553.512(1), F.S.

<sup>36</sup> Section 120.80(16)(b), F.S. Each local government and each code enforcement agency with statutory authority must regulate building construction and enforce the FBC standards. Section 553.513, F.S.

<sup>37</sup> Section 553.512(1), F.S. Alterations made to provide an accessible path of travel to the altered area will be deemed disproportionate to the overall alteration when the cost exceeds 20 percent of the cost of the alteration to the primary function area. 28 C.F.R. s. 36.403(f)(1).

<sup>38</sup> Section 1013.371(2), F.S.

<sup>39</sup> Florida Department of Education, *2017 Legislative Bill Analysis for HB 559* (March 17, 2017), at 3. HB 559 is similar to SB 642.

<sup>40</sup> *Id.*

- Grades 9 through 12 – 408 school (13.28 percent).

In addition, the FISH includes 593 schools (19.30 percent) in 39 other unique grade configurations.<sup>41</sup>

Based on the grade configurations reported in the FISH and the bill as drafted, the DOE would classify nine grade configurations currently in use among the school districts as elementary schools and two grade configurations currently in use among the school districts as middle schools.<sup>42</sup> This would not affect the capacity of those schools.<sup>43</sup>

District school boards may save money in construction of school facilities if the school district receives one or more exemptions from the SREF.

The bill takes effect July 1, 2017.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

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<sup>41</sup> Florida Department of Education, *2017 Agency Legislative Bill Analysis for HB 559* (March 17, 2017), at 5. HB 559 is similar to SB 642.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

**C. Government Sector Impact:**

The Florida Department of Education (DOE) may incur program costs to the extent the Department may be required to reprogram how the Florida Inventory of School Houses calculates school capacity.<sup>44</sup> This cost is indeterminate.<sup>45</sup>

District school boards may incur costs associated with preparing the comprehensive cost-benefit analysis if the district school board chooses to request an exemption from the State Requirements for Educational Facilities.<sup>46</sup> District school boards that are granted exemptions from the State Requirements for Educational Facilities by the Commissioner of Education may achieve cost savings.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 1013.35, 1013.37, and 1013.64.

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

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

None.

**B. Amendments:**

None.

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

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<sup>44</sup> Florida Department of Education, *2017 Agency Legislative Bill Analysis for HB 559* (March 17, 2017), at 7. HB 559 is similar to SB 642.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*