

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 491 Certification of Public School Educators

**SPONSOR(S):** Schools & Learning Council; Carroll and others

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 286

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Schools & Learning Council	12 Y, 0 N, As CS	Gillespie/Eggers	Cobb
2) Policy & Budget Council		Martin	Hansen
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

Council Substitute for House Bill 491 establishes inservice requirements for teachers of English for Speakers of Other Languages (ESOL). In effect, it reduces ESOL inservice requirements, which are established in nonrule policies of the Department of Education, for most reading teachers from 300 inservice hours to 60 inservice hours. The council substitute specifies that a teacher providing ESOL instruction must comply with the following inservice requirements:

- Primary teacher of English/language arts:
  - Three hundred inservice hours or the equivalent; or
  - If the teacher passes the ESOL subject area examination of the Florida Teacher Certification Examinations (FTCE), 120 inservice hours or the equivalent.
- Teacher of basic subject areas of reading, mathematics, science, social studies, or computer literacy: 60 inservice hours or the equivalent.
- Teacher of non-basic subject areas: 18 inservice hours or the equivalent.
- School administrator or guidance counselor: 60 inservice hours or the equivalent.

In 2007, Governor Charlie Crist vetoed a substantially similar bill, CS/SB 2512.

The Department of Education estimates that the council substitute may create a negative fiscal impact to state expenditures of approximately \$100,000.<sup>1</sup> According to DOE, the council substitute may require changes to current inservice programs, causing DOE to incur costs in contracting for changes to online programs and training facilitators on the programs in each school district.

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<sup>1</sup> Florida Department of Education, Government Relations, *2008 Agency Bill Analysis of HB 491*, at 3 (Jan. 23, 2008).

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

The council substitute does not appear to implicate any of the House Principles.

#### B. EFFECT OF PROPOSED CHANGES:

##### Present Situation:

In 1984, the Legislature required that English language instruction be provided for a student whose native language is other than English and specified that the instruction be designed to develop the student's mastery of four language skills: listening, speaking, reading, and writing.<sup>2</sup>

In 1989, attorneys representing Multicultural Education, Training, and Advocacy, Inc. (META) advised the Florida Department of Education (DOE) of META's intention to sue the State of Florida on behalf of eight minority rights advocacy groups in the state, including the League of United Latin American Citizens (LULAC). META claimed violations of federal and state provisions concerning the education of Florida's limited English proficient (LEP) students.<sup>3</sup>

In response, the 1990 Legislature required school districts, among other things, to:<sup>4</sup>

- Identify LEP students through assessment;
- Provide LEP students with instruction in English using strategies for teaching English for Speakers of Other Languages (ESOL);
- Provide LEP students with ESOL instruction or home-language instruction in the basic subject areas of mathematics, science, social studies, and computer literacy; and
- Provide qualified teachers.

Instead of pursuing litigation, META and DOE negotiated a settlement agreement, which on August 14, 1990, was approved by a Consent Order issued by a federal district judge.<sup>5</sup> Under the 1990 Consent Order, DOE agreed to the equal treatment of LEP students; proper identification and assessment of LEP students; and adequate placement and programming, certified staff, and supplemental services when needed, for LEP students.<sup>6</sup> Section IV of the Consent Order,<sup>7</sup> among other things, created four categories of school personnel and established separate ESOL training requirements for each of the

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<sup>2</sup> Section 2, ch. 84-336, L.O.F.; former §§ 228.041(30) & 233.058, F.S.

<sup>3</sup> Rosa Castro Feinberg, *Preparing Mainstream Classroom Teachers to Teach Potentially English Proficient Students*, *Proceedings of the First Research Symposium on Limited English Proficient Student Issues*, U.S. Department of Education, Office of Bilingual Education & Minority Languages Affairs (1990), at <http://www.ncela.gwu.edu/pubs/symposia/first/preparing-dis.htm> (last visited Mar. 7, 2008).

<sup>4</sup> Section 41, ch. 90-288, L.O.F.; former § 233.058, F.S.

<sup>5</sup> *League of United Latin American Citizens (LULAC) et al. vs. Florida Board of Education et al.*, No. 90-1913 (S.D. Fla. Aug. 13, 1990), available from Office of Academic Achievement through Language Acquisition, Florida Department of Education, at <http://www.fldoe.org/aala/lulac.asp> (last visited Mar. 7, 2008) [hereinafter *LULAC*].

<sup>6</sup> National Clearinghouse for English Language Acquisition and Language Instruction Educational Programs, at <http://www.ncela.gwu.edu/expert/faq/07court.html> (last visited Mar. 7, 2008).

<sup>7</sup> *LULAC*, *supra* note 5; available from Office of Academic Achievement through Language Acquisition, Florida Department of Education, at <http://www.fldoe.org/aala/lulac.asp#four> (last visited Mar. 7, 2008).

four categories. In September 2003, DOE and META approved a joint stipulation modifying the 1990 Consent Order.<sup>8</sup> The training requirements for the four categories of school personnel, as modified by the 2003 stipulation, are:

- Category I. Teachers of English/language arts must have:
  - ESOL certification through earning a bachelor's or higher degree in Teaching ESOL (TESOL) and passing the ESOL subject area examination of the Florida Teacher Certification Examinations (FTCE);<sup>9</sup>
  - ESOL certification through passing the ESOL subject area examination and 120 inservice hours within 3 years after certification; or
  - ESOL endorsement through completing 15 semester hours of college credit or 300 inservice hours (3 semester hours or 60 inservice hours within 2 years after assignment of an LEP student and 3 semester or 60 inservice hours each subsequent year that the teacher is assigned an LEP student until completing 15 semester hours or 300 inservice hours).<sup>10</sup>
- Category II. Teachers of mathematics, science, social studies, and computer literacy must have, within 1 year of assignment of an LEP student, ESOL endorsement through completing 3 semester hours of college credit or 60 inservice hours.<sup>11</sup>
- Category III. Teachers of other subjects not listed in Category I or Category II must have, within 1 year of assignment of an LEP student, ESOL endorsement through completing 3 semester hours of college credit or 18 inservice hours.<sup>12</sup>
- Category IV. School administrators and guidance counselors must have 3 semester hours of college credit or 60 inservice hours.

The required competencies of the ESOL training (college credit or inservice hours) include methods of teaching ESOL, ESOL curriculum and materials development, cross-cultural communication and understanding, and testing and evaluation of ESOL.<sup>13</sup> The training competencies for Category I ESOL teachers also include applied linguistics.<sup>14</sup>

As a term of the Consent Order, the Miami Division of the United States District Court for the Southern District of Florida retains jurisdiction for purposes of overseeing implementation of the Consent Order. As occurred in 2003, changes to the state's ESOL policies which are inconsistent with the Consent Order require modification of the Consent Order by court order after DOE negotiates the change with META.

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<sup>8</sup> Stipulation Modifying Consent Decree, *LULAC* (No. 90-1913) (Sept. 3, 2003), available at <http://www.fldoe.org/aala/pdf/stipulation.pdf> (last visited Mar. 7, 2008).

<sup>9</sup> Office of Academic Achievement through Language Acquisition, Florida Department of Education, *Options for Obtaining ESOL Certification* (Dec. 2006), available at [http://www.fldoe.org/aala/pdf/esol\\_cert.pdf](http://www.fldoe.org/aala/pdf/esol_cert.pdf) (last visited Mar. 7, 2008) [hereinafter *ESOL Certification Options*]; see rule 6A-4.0245, F.A.C.

<sup>10</sup> *ESOL Certification Options*, *supra* note 9; see rule 6A-4.0244, F.A.C.

<sup>11</sup> See rule 6A-6.0907(1) and (2), F.A.C.

<sup>12</sup> See rule 6A-6.0907(3), F.A.C.

<sup>13</sup> See rules 6A-4.0244(1)(b) & 6A-6.0907, F.A.C.

<sup>14</sup> Rule 6A-4.0244(1)(b)4., F.A.C.

## Requirements for Reading Teachers:

In 2002, following the establishment of the *Just Read, Florida!* initiative<sup>15</sup> and passage of the federal *No Child Left Behind Act of 2001*,<sup>16</sup> the State Board of Education established specialization requirements for a reading endorsement.<sup>17</sup> The reading endorsement requires 15 semester hours of college credit or 300 inservice hours in reading coursework based upon scientifically based reading research with a focus on both the prevention and remediation of reading difficulties.<sup>18</sup>

The certification requirements for a teacher to teach a course are listed in *Course Code Directory and Instructional Personnel Assignments*, which DOE updates annually.<sup>19</sup> By June 30, 2006, DOE required reading teachers to have a reading certification or endorsement.<sup>20</sup> The 2007-2008 course code directory reflects that a teacher who teaches English, language arts, reading, or intensive reading must be certified in reading or have the reading endorsement.<sup>21</sup>

In 2004, DOE created a crosswalk that allows a teacher to receive 80 inservice hours of credit for the reading endorsement based on earning the 300 inservice hours required for the ESOL endorsement.<sup>22</sup> The crosswalk awards the 80 inservice hours based on the competencies of the reading inservice training which are addressed by competencies covered in the ESOL inservice training. Thus, a teacher with the ESOL endorsement is required to earn 220 inservice hours in reading to complete the reading endorsement.<sup>23</sup>

## Intersection of ESOL and Reading Requirements:

According to DOE, reading courses reported for ESOL funding must be assigned a teacher that has ESOL Category I training (300 inservice hours), and reading courses reported as non-ESOL may be assigned a teacher with ESOL Category III training (18 inservice hours).<sup>24</sup>

In 2001, as part of the *Just Read, Florida!* initiative, DOE was directed to recommend statewide standards for reading programs based on the latest scientific research, instructional strategies, and reading course requirements for middle school and high school students who are not reading at grade

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<sup>15</sup> On September 7, 2001, former Governor Jeb Bush issued Executive Order 01-260, which created the *Just Read, Florida!* initiative.

<sup>16</sup> On January 8, 2002, President George W. Bush signed into law the federal *No Child Left Behind Act of 2001*. Pub. L. 107-110 (2002). The act, among other things, requires states to ensure that all teachers teaching core academic subjects ("English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography," 115 Stat. 1958 (codified at 20 U.S.C. § 7801(11))) in public schools are highly qualified. 115 Stat. 1505 (codified at 20 U.S.C. § 6319(a)(2)).

<sup>17</sup> Rule 6A-4.0292, F.A.C.

<sup>18</sup> *Id.*

<sup>19</sup> Rule 6A-1.09441, F.A.C.

<sup>20</sup> Florida Department of Education, Memorandum from Jim Warford & Mary Laura Openshaw to District School Superintendents, No. 2005-82, 3 (June 23, 2005), available at [http://info.fldoe.org/docushare/dsweb/Get/Document-3062/k12\\_05-82.pdf](http://info.fldoe.org/docushare/dsweb/Get/Document-3062/k12_05-82.pdf) (last visited Mar. 7, 2008).

<sup>21</sup> Florida Department of Education, *2007-2008 Course Code Directory and Instructional Personnel Assignments* (Feb. 1997), available at <http://www.fldoe.org/bii/curriculum/CCD> (last visited Mar. 7, 2008).

<sup>22</sup> Florida Department of Education, *ESOL Endorsement to Reading Endorsement Crosswalk* (2004), available at <http://www.fldoe.org/aala/pdf/esolendorsement.pdf> (last visited Mar. 7, 2008).

<sup>23</sup> *Id.*; see also Florida Department of Education, Memorandum from Jim Warford & Mary Laura Openshaw to District School Superintendents, No. 2005-26 (Mar. 4, 2005), available at <http://info.fldoe.org/docushare/dsweb/Get/Document-2802/reesol.pdf> (last visited Mar. 7, 2008).

<sup>24</sup> Florida Department of Education, *Revised Timelines for Completion of the ESOL Training Requirements*, nn. 1 & 3 (Sept. 2006), at <http://www.fldoe.org/aala/timeline.asp> (last visited Mar. 7, 2008).

level.<sup>25</sup> In 2002, the Legislature added “reading” to the list of basic subject areas requiring ESOL instruction or home-language instruction.<sup>26</sup>

Beginning with the 2005-2006 school year, DOE requires that all students in grades 6-12, scoring at the two lowest achievement levels (levels 1 and 2) on the reading portion of the Florida Comprehensive Assessment Test (FCAT), must enroll in an intensive reading course.<sup>27</sup> Before this requirement for intensive reading, according to DOE, most reading instruction for LEP students was provided by the students’ ESOL teacher, not a reading teacher. Since LEP students, by definition, score lower on the reading portion of the FCAT, LEP students are among the students required to enroll in the intensive reading courses.

Before the requirement of intensive reading for students with low FCAT reading scores, most reading teachers taught supplemental reading courses reported as non-ESOL, which consequently required the teacher to have ESOL Category III training (18 inservice hours). As reading teachers are increasingly assigned to teach intensive reading courses containing LEP students reported for ESOL funding, the teachers are required to meet Category I ESOL training requirements (300 inservice hours).

On March 30, 2007, the Department of Education issued a “reverse crosswalk” that allows a teacher to receive 120 inservice hours of credit for the ESOL endorsement based on earning the 300 inservice hours required for the reading endorsement.<sup>28</sup> The reverse crosswalk awards 120 inservice hours based on the competencies of the ESOL inservice training which are addressed by competencies covered in the reading inservice training.<sup>29</sup> Thus, a teacher with a reading endorsement is required to earn 180 inservice hours in ESOL to complete the ESOL endorsement.

On January 25, 2008, DOE published a notice of rule development in the *Florida Administrative Weekly*.<sup>30</sup> The notice included a statement that the preliminary text of the proposed rule development is available from DOE. Among other provisions, the preliminary text proposes to include reading teachers among the category of teachers required to earn 60 inservice hours of ESOL, thereby reducing the current inservice requirements for reading teachers from 300 inservice hours to 60 inservice hours.

According to DOE, as of 2006, there were approximately 49,085 teachers with an ESOL certification or endorsement, 7,837 teachers with a reading certification or endorsement, and 7,132 teachers who have certification or endorsement in both ESOL and reading.<sup>31</sup>

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<sup>25</sup> Executive Order 01-260 (Sept. 7, 2001).

<sup>26</sup> At the 2002 Special Session “E,” the Legislature enacted a general revision to the Florida K-20 Education Code. Within the revision, current § 1003.56, F.S., was created and a substantially similar § 233.058, F.S., was repealed. Sections 150 and 1058, ch. 2002-387, L.O.F. As previously discussed, former § 233.058, F.S., required school districts to provide LEP students with ESOL instruction in English and ESOL or home-language instruction in the basic subject areas of mathematics, science, social studies, and computer literacy. When creating § 1003.56, F.S., the education code revision added “reading” to the list of basic subject areas requiring ESOL instruction or home-language instruction.

<sup>27</sup> Florida Department of Education, *supra* note 20, at 1; §§ 1003.4156(1)(b) & 1003.428(2)(b)2.c., F.S.

<sup>28</sup> Florida Department of Education, *Reading to English for Speakers of Other Languages (ESOL) – Reverse Crosswalk* (Feb. 2007), available at <http://info.fldoe.org/docushare/dsweb/Get/Document-4338/k12-07-24att.pdf> (last visited Mar. 7, 2008); *see also* Florida Department of Education, *supra* note 29, at 1 (although the reverse crosswalk is dated February 2007, it was issued with the Chancellor’s memorandum on March 30, 2007).

<sup>29</sup> Florida Department of Education, Memorandum of Cheri Pierson Yeeke to District Superintendents, No. 2007:24, 1 (Mar. 30, 2007), available at <http://info.fldoe.org/docushare/dsweb/Get/Document-4337/k12-07-24memo.pdf> (last visited Mar. 7, 2008).

<sup>30</sup> Florida Department of State, *Florida Administrative Weekly*, Vol. 34, No. 4, at 461 (Jan. 25, 2008), available at <https://www.flrules.org/Faw/FAWDocuments/FAWVOLUMEFOLDERS2008/3404/3404doc.pdf> (last visited Mar. 7, 2008).

<sup>31</sup> Florida Department of Education, 2007 *Agency Bill Analysis of HB 129*, 3 (Mar. 8, 2007).

### Prior Legislation:

In 2007, the Legislature enacted CS/SB 2512,<sup>32</sup> which is substantially similar to HB 491. On June 28, 2007, Governor Charlie Crist vetoed CS/SB 2512, which he returned to the Legislature with the following veto message:

This bill will reduce the required professional development from 300 hours to 60 hours for reading teachers who teach students who speak English as a second language. I am concerned that this reduction may impede these students' academic, social, and cultural progress. The Florida Hispanic Legislative Caucus has also unanimously expressed similar concerns about this bill in a recent letter to me.

Florida holds high academic standards for its students. Reading is the cornerstone of learning, and reading teachers are the foundation through which students achieve these standards. It is imperative that our students learn to read English from the highest-quality instructors so that they can succeed more readily in other subjects. Accordingly, I cannot justify lower standards for these teachers.

For these reasons, I withhold my approval of Committee Substitute for Senate Bill 2512, and do hereby veto the same.<sup>33</sup>

### Proposed Changes:

The council substitute establishes inservice requirements for ESOL teachers. The council substitute specifies that teachers providing ESOL instruction must comply with the following inservice requirements:

- Primary teacher of English/language arts:
  - Three hundred inservice hours or the equivalent; or
  - If the teacher passes the ESOL subject area examination of the Florida Teacher Certification Examinations (FTCE), 120 inservice hours or the equivalent.
- Teacher of basic subject areas of reading, mathematics, science, social studies, or computer literacy: 60 inservice hours or the equivalent.
- Teacher of non-basic subject areas: 18 inservice hours or the equivalent.
- School administrator or guidance counselor: 60 inservice hours or the equivalent.

The council substitute in effect reduces ESOL inservice requirements, which are established in DOE's nonrule policies, for most reading teachers from 300 inservice hours to 60 inservice hours.

The council substitute does not specify whether the "reverse crosswalk" for awarding a teacher with a reading endorsement credit against the ESOL endorsement requirements continues to apply. Since the reverse crosswalk awards credit for 120 inservice hours, the council substitute may eliminate the ESOL inservice requirement altogether for a teacher with a reading endorsement. In addition, the council substitute establishes inservice requirements for ESOL teachers, but does not specify any requirements for the contents of the inservice training. Thus, the council substitute is unclear whether

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<sup>32</sup> Florida Senate, *CS/SB 2512, Enrolled* (2007), available at <http://www.flsenate.gov/data/session/2007/Senate/bills/billtext/pdf/s2512er.pdf> (last visited Mar. 7, 2008).

<sup>33</sup> The Honorable Charlie Crist, Governor of Florida, Letter to Kurt S. Browning, Secretary of State (June 28, 2007), available at [http://www.flgov.com/leg\\_actions/2007/2007\\_VETOSB2512.pdf](http://www.flgov.com/leg_actions/2007/2007_VETOSB2512.pdf) (last visited Mar. 7, 2008).

inservice hours earned in subjects other than ESOL would count toward the inservice requirements for ESOL.

Although the Consent Order does not specify whether reading is a Category I, II, or III subject area, the modifications of the inservice requirements proposed by the council substitute may require DOE to negotiate modifications to the Consent Order with final approval in federal court.

The council substitute provides an effective date of July 1, 2008.

C. SECTION DIRECTORY:

Section 1. Creates section 1012.587, F.S., which establishes ESOL inservice requirements.

Section 2. Provides an effective date of July 1, 2008.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Department of Education estimates that the council substitute may create a negative fiscal impact to state expenditures of approximately \$100,000.<sup>34</sup> According to DOE, the council substitute may require changes to current inservice programs, causing DOE to incur costs in contracting for changes to online programs and training facilitators on the programs in each school district.<sup>35</sup>

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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<sup>34</sup> Florida Department of Education, Government Relations, *2008 Agency Bill Analysis of HB 491*, at 3 (Jan. 23, 2008).

<sup>35</sup> *Id.*

### **III. COMMENTS**

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

##### **1. Applicability of Municipality/County Mandates Provision:**

Not applicable. The council substitute does not appear to require a county or municipality to spend funds or take an action requiring expenditures; reduce the authority that counties and municipalities had as of February 1, 1989, to raise revenues in the aggregate; or reduce the percentage of a state tax shared in the aggregate with counties and municipalities as of February 1, 1989.

##### **2. Other:**

None.

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

The council substitute does not create new authority for rulemaking; however, in effect it requires the State Board of Education to amend several rules concerning specialization requirements for certification or endorsements in ESOL and reading.

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

None.

#### **D. STATEMENT OF THE SPONSOR**

Waived by sponsor due to time constraints.

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

On March 7, 2008, the Schools & Learning Council adopted an amendment offered by Representative Carroll. The amendment clarifies that, if a primary teacher of English/language arts passes the ESOL subject area examination of the Florida Teacher Certification Examinations (FTCE), the teacher is required to complete 120 inservice or the equivalent (instead of 300 inservice hours).