

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Policy and Steering Committee on Ways and Means

BILL: CS/CS for SB 0006-A

INTRODUCER: Policy and Steering Committee on Ways and Means, Senator Alexander, Education Pre-K-12 Appropriations and Senator Wise

SUBJECT: Education Funding

DATE: January 8, 2009

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Armstrong</u>	<u>Hamon</u>	<u>EA</u>	<u>Favorable/CS</u>
2.	<u>McVaney</u>	<u>Kelly</u>	<u>WPSC</u>	<u>Favorable/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill conforms applicable statutes to the appropriations for public school and prekindergarten education programs as provided in Senate Proposed Bill 8012-A for the 2008-2009 fiscal year. In addition, the bill provides school districts with additional flexibility to more effectively manage programs and funds.

This bill amends statutes relating to financial emergency in a school district; salaries of school board members; powers and duties of school boards relating to employment contracts for employees and superintendents limiting pay resulting from contract settlements; funding of prekindergarten education programs; waiving instructional materials purchases within the first two years of the current adoption cycle; guidelines for district school board unreserved general fund balances and actions required to avoid a financial emergency; district flexibility to use revenue from district capital improvement millage for specified purposes; and incorporating by reference the document entitled, "Public School Funding - The Florida Education Finance Program," which displays the calculations used by the Legislature in making appropriations and reductions in appropriations for the Florida Education Finance Program for the 2008-2009 fiscal year. In addition, the bill creates two undesignated sections of law: the first pertains to funding availability for the Merit Award Program, and the second allows the Commissioner of Education to waive funding penalties resulting from audit findings based on certain school district expenditures of capital improvement funds.

This bill substantially amends sections 218.503, 1001.395, 1001.42, 1001.50, 1002.53, 1002.61, 1002.63, 1002.71, 1002.73, 1006.40, 1011.71, and 1013.64 of the Florida Statutes, and creates section 1011.051, Florida Statutes.

II. Present Situation:

Financial Emergency

Section 218.503, Florida Statutes, provides that local governmental entities, charter schools, and district school boards shall be subject to review and oversight by the Governor, the charter school sponsor, or the Commissioner of Education, as appropriate, when any one of the following conditions occurs:

- (a) Failure within the same fiscal year in which due to pay short-term loans or failure to make bond debt service or other long-term debt payments when due, as a result of a lack of funds.
- (b) Failure to pay uncontested claims from creditors within 90 days after the claim is presented, as a result of a lack of funds.
- (c) Failure to transfer at the appropriate time, due to lack of funds:
 - 1. Taxes withheld on the income of employees; or
 - 2. Employer and employee contributions for:
 - a. Federal social security; or
 - b. Any pension, retirement, or benefit plan of an employee.
- (d) Failure for one pay period to pay, due to lack of funds:
 - 1. Wages and salaries owed to employees; or
 - 2. Retirement benefits owed to former employees.
- (e) An unreserved or total fund balance or retained earnings deficit, or unrestricted or total net assets deficit, as reported on the balance sheet or statement of net assets on the general purpose or fund financial statements, for which sufficient resources of the local governmental entity, as reported on the balance sheet or statement of net assets on the general purpose or fund financial statements, are not available to cover the deficit. Resources available to cover reported deficits include net assets that are not otherwise restricted by federal, state, or local laws, bond covenants, contractual agreements, or other legal constraints. Fixed or capital assets, the disposal of which would impair the ability of a local governmental entity to carry out its functions, are not considered resources available to cover reported deficits.

School Board Member Salaries

Section 1001.395, Florida Statutes provides a formula methodology for calculating school board member base salaries. The formula is based on county population. In addition, school board member base salaries are increased annually by a cumulative annual factor as provided in section 145.19, Florida Statutes. The Legislative Committee on Intergovernmental Relations (LCIR) annually computes the salaries of county constitutional officers, including school board members. For fiscal year 2009, LCIR-calculated school board member salaries range from \$23,116 to \$40,932. Many states do not pay local school board members a salary.

Employment Contracts

Section 1001.42, Florida Statutes, provides that the district school board has responsibilities for personnel including appointment, compensation, promotion, suspension, and dismissal. Section 1001.50, Florida Statutes, provides that district school superintendents are not subject to the provisions of law, either general or special, relating to tenure of employment or contracts of other school personnel. In addition, the school board shall enter into an employment contract with the superintendent. Currently there is no state-prescribed limitation on payments related to settlement provisions contained in district school board contracts for employment.

Voluntary Prekindergarten Education Program

Section 1002.61 (7), Florida Statutes, provides that each prekindergarten class in the summer prekindergarten program must be composed of at least 4 students but may not exceed 10 students.

Section 1002.63, Florida Statutes, provides that to be eligible to deliver the prekindergarten education program during the school year a school district must meet both of the following requirements:

1. Has reduced the average class size in each classroom in accordance with s. 1003.03 and the schedule in s. 1(a), Art. IX of the State Constitution; and
2. Has sufficient satisfactory educational facilities and capital outlay funds to continue reducing the average class size in each classroom in the district's elementary schools for each year in accordance with the schedule for class size reduction and to achieve full compliance with the maximum class sizes in s. 1(a), Art. IX of the State Constitution by the beginning of the 2010-2011 school year.

Section 1002.71, Florida Statutes, specifies the requirements for funding and for financial and attendance reporting for the Voluntary Prekindergarten Education Program. These requirements include the following:

1. The base student allocation per full-time equivalent student shall be the same regardless of whether the student is enrolled in a school-year or summer program.
2. Each school district's funding for summer programs shall be based on a full-time equivalent student enrollment that is evenly divisible by 10.
3. Each early learning coalition may retain and expend no more than 5 percent of the funds paid by the coalition to providers.

Textbook Adoption

Section 1006.40, Florida Statutes, requires school boards to purchase instructional materials for the core courses in the subject areas of mathematics, language arts, science, social studies, reading, and literature within two years of adoption.

1.75 Capital Improvement Millage Flexibility

Section 1011.71, Florida Statutes, provides that for the 2008-2009 fiscal year a school district that has met the reduction requirements regarding class size and certifies to the Commissioner of Education that the district does not need all of its discretionary 1.75 mill capital improvement

revenue for capital outlay purposes and all of the district's instructional space needs for the next 5 years can be met from capital outlay sources that the district reasonably expects to receive during the next 5 years from local revenues and from currently appropriated state facilities funding or from alternative scheduling or construction, leasing, rezoning, or technological methodologies that exhibit sound management may expend up to \$65 per unweighted full-time equivalent student from the revenue generated by the 2008-2009 discretionary capital millage levy authorized to fund 2008-2009 expenses for the following:

a) The purchase, lease-purchase, or lease of driver's education vehicles; motor vehicles used for the maintenance or operation of plants and equipment; security vehicles; or vehicles used in storing or distributing materials and equipment.

(b) Payment of the cost of premiums for property and casualty insurance necessary to insure school district educational and ancillary plants. Operating revenues that are made available through the payment of property and casualty insurance premiums from discretionary capital millage revenues may be expended only for nonrecurring operational expenditures of the school district.

Prior to enactment of the \$65 limitation on the expenditure of capital improvement revenues, the legislature in May 2007 approved legislation that, if certain criteria were met, a district could spend capital improvement revenues on property and casualty insurance and certain motor vehicles with no dollar limitation. Then, in an October 2007 Special Session, the legislature capped expenditures for this purpose at a cap per FTE. At least one district obligated funds based on the May legislation (no expenditure cap) in excess of the limitation enacted in October. The potential for an audit finding exists.

In addition, section 1011.71(2)(d) allows districts to use capital improvement revenue to purchase, lease-purchase, or lease new and replacement equipment. Computer software is not an allowable use of the capital funds.

Merit Award Program

Section 1012.225, Florida Statutes, provides for the Merit Award Program (MAP) for the purpose of providing annual merit-based pay supplements to high performing school district employees. The amount of the supplement shall be at least 5 percent but not to exceed 10 percent of the average teacher's salary in the school district. Pay supplements are to be disbursed to eligible employees who remain employed by a Florida school or who retired after qualifying for the award, by October 1 of the following school year. Pay supplements are to be funded from moneys appropriated by the Legislature and any additional funds that are designated by the district for the Merit Award Program. The Department of Education will not know until February 15, 2009 which districts have approved plans for 2008-2009; however, preliminary indication is that 2008-2009 participants are likely to be the same as the 2007-2008 participants. School districts are not required to implement this section of the Florida Statutes unless the program is specifically funded by the Legislature. In 2007-2008, 7 school districts, the Florida Virtual School and charter schools in 29 school districts participated in the MAP program. The funding for 2007-2008 MAP participation and performance was appropriated in 2008-2009 in the amount of \$32,072,471.

III. Effect of Proposed Changes:

Financial Emergency

The bill creates Section 1011.051, Florida Statutes, and amends Section 218.503, Florida Statutes, to provide guidelines and actions to be used by school districts for the purpose of anticipating and avoiding a financial emergency.

School district's preliminary annual financial reports, as of June 30, 2008, showed that 23 of the 67 school districts had an end of year unreserved fund balance of less than 5%, 7 of the 23 had a balance of less than 2%, and 3 of the 7 had less than 1%. The end of year balances for the 3 districts below 1% were 0.28%, 0.27% and 0.00%, respectively.

The proposed guidelines in s. 1011.051 provide that if at any time the unreserved general fund balance in the district's approved operating budget falls below five percent of projected general fund revenues, the superintendent shall provide written notification to the district school board and the Commissioner of Education. If a district's finances continue to worsen, the bill provides for the following actions regarding district collective bargaining agreements:

1. If the agreement is executed on or after the effective date of the bill, and the district's approved operating budget falls below two percent of projected general fund revenues, the provisions of s. 447.4095 shall be followed for the purpose of modifying existing collective bargaining agreements as necessary to avoid a financial emergency within the school district as provided under part V of Chapter 218. If the parties fail to reach agreement and proceed to implement the provisions of s. 447.403, the superintendent shall provide written notification to the Commissioner of Education, the dispute shall be resolved through an expedited impasse hearing, and the timelines prescribed in s. 447.403 (2) (c) shall apply. Each such agreement shall make adequate provision for the school board to maintain an unreserved fund balance to avoid a financial emergency or the agreement shall be declared void and may not be enforced.
2. If the agreement is executed before the effective date of the bill, and the district's approved operating budget falls below projected general fund revenues, the provisions of s. 447.4095 shall be followed for the purpose of modifying existing collective bargaining agreements as necessary to avoid a financial emergency within the school district as provided under part V of Chapter 218. If the parties fail to reach agreement and proceed to implement the provisions of s. 447.403, the superintendent shall provide written notification to the Commissioner of Education, the dispute shall be resolved through an expedited impasse hearing, and the timelines prescribed in s. 447.403 (2) (c) shall apply. If at any time during the fiscal year, the district projects insufficient funds to continue normal operations and address normal contingencies, then "financial urgency" is declared for purposes of s. 447.4095.

In addition, the bill amends s. 218.503 to require specific actions if a financial emergency occurs. If the Commissioner of Education determines that if corrective actions have not eliminated a state of financial emergency in a school district within 30 days after the date the condition was declared to exist, the salary of each district school board member, the superintendent, and each

district employee shall be reduced proportionately in an amount necessary to prevent a deficit in the unreserved general fund balance of the district's operating budget during the remainder of the fiscal year.

School Board Member Salaries

The bill amends s. 1001.395 to allow district school board members to voluntarily reduce their salary rate.

Employment Contracts

The bill amends s. 1001.42 and s. 1002.53, to limit school board contracts for employment that are funded from state funds on or after February 1, 2009 to include no more than one year's salary for termination, buy-out, or other contract settlement.

Voluntary Prekindergarten Education Program

The bill amends the following sections of the statutes relating to the Voluntary prekindergarten education program:

1. s. 1002.61 (7), Florida Statutes, to provide that beginning with the 2009 summer session a class in the prekindergarten summer program shall not exceed 12 students, (previously 10 students).
2. s. 1002.63, Florida Statutes, to repeal the provision that prohibited school districts from delivering the prekindergarten education program during the school year because of the K-12 class size requirement.
3. s. 1002.71, Florida Statutes, to provide, beginning with the 2009 summer session, a base student allocation for students enrolled in the summer program that is different from the base student allocation for students enrolled in the school year program. A separate base student allocation for summer school is predicated on the change from 10 to 12 students per class for the summer program. Additionally, the bill amends s. 1002.71, Florida Statutes, to provide that each school district's funding shall be based on a full-time equivalent student enrollment that is evenly divisible by 12 instead of 10; that funding for students who withdraw for good cause and reenroll in the same program shall not exceed one full-time equivalent student; that a student who has not substantially completed any of the prekindergarten programs may withdraw due to extreme hardship that is beyond the student's or the student's parent's control and may reenroll in one of the summer programs and be reported for full-time equivalent student funding; that beginning with the 2009-2010 fiscal year for school-year programs and the 2009 summer program, a student who meets the minimum requirement of 80 percent of the total number of hours for the program may be reported as a full-time equivalent student for funding purposes; that to the maximum extent practicable, administrative reporting should use automation and electronic means; and that for the 2008-2009 fiscal year, each early learning coalition may retain and expend for administrative expense no more than 4.85 percent of the funds paid by the coalition to providers.

Textbook Adoption

The bill waives the requirement for school districts to purchase instructional materials during the first two years of the textbook adoption cycle occurring in 2008-2009.

Capital Improvement Millage Flexibility (1.75 Mills)

The bill amends s. 1011.71, Florida Statutes, to remove for the 2008-2009 fiscal year, the criteria for participation in the flexible use of \$65 per FTE of the 1.75 mill capital improvement revenue for the lease or purchase of certain motor vehicles and the payment of premiums for property and casualty insurance. The removed criteria are that the district must have met class size reduction for 2008-2009 and that the district certify that it does not need all of its discretionary 1.75 mill capital improvement revenue for capital outlay purposes and that all of the district's instructional space needs for the next 5 years can be met from currently appropriated state facilities funding or from alternative scheduling or construction, leasing, rezoning, or technological methodologies that exhibit sound management. The Department of Education estimates that the current criteria for participation exclude approximately 13 school districts from taking advantage of the flexibility provisions.

In addition, because the expenditure cap on capital millage funds for property and casualty insurance and certain motor vehicles was revised in 2007 from no dollar limitation to a cap per FTE, causing at least one district to spend more than the limitation, this bill allows the Commissioner to waive the equal-dollar reduction required in s. 1011.71(5), Florida Statutes, for such expenditures between May 1 and December 31, 2007, if the district acted in good faith.

Also, the bill adds enterprise resource software applications that are classified as capital assets according to Governmental Accounting Standards definitions, having a minimum useful life of five years, and to be used for district-wide administration or state-mandated reporting requirements as allowable expenditures of capital improvement revenue. Because of the inclusion of this software as an allowable expenditure, the Commissioner is provided with the authority to waive the equal-dollar reduction required in s. 1011.71(5), Florida Statutes, for audit findings for the 2006-2007 fiscal year related to the purchase of software, if the school district acted in good faith.

Merit Award Program

In 2007-2008, 7 school districts, the Florida Virtual School and charter schools in 29 school districts participated in the MAP program. The funding for 2007-2008 MAP participation and performance was appropriated in 2008-2009 in the amount of \$32,072,471. The Department of Education will not know until February 15, 2009 which districts have approved plans for 2008-2009; however, preliminary indication is that 2008-2009 participants are likely to be the same as the 2007-2008 participants. Section 1012.225(2), Florida Statutes, provides that school districts are not required to implement this section unless the program is specifically funded by the Legislature. The bill creates an undesignated section of law which states that awards for instructional personnel and school-based administrators selected for the Merit Award Program (MAP) in 2008-2009 shall be funded in 2009-2010 to the extent that funds are available and specifically appropriated.

Florida Education Finance Program

This bill incorporates by reference the document entitled “Public School Funding – The Florida Education Finance Program,” dated January 8, 2009, and filed with the Secretary of the Senate for the purpose of displaying the calculations used by the Legislature, consistent with the requirements of the Florida Statutes, in making appropriations and reductions in appropriations for the Florida Education Finance Program.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Voluntary Prekindergarten Education (VPK) private provider payments may be reduced as a result of modifications made to the VPK program by this bill.

C. Government Sector Impact:

Financial Emergency

The bill creates Section 1011.051, Florida Statutes, and amends Section 218.503, Florida Statutes, to provide guidelines and corrective actions to be used by school districts for the purpose of anticipating or avoiding a financial emergency or correcting a financial emergency once it has been declared. Under the new provisions, districts would be required to renegotiate collective bargaining agreements if their general fund balance became less than two percent of revenues or became less than general fund revenues, depending on the date of contract agreement. In addition, new agreements would have to

maintain an adequate fund balance to forestall financial emergency or be subject to being declared void. Finally, if a financial emergency situation is declared in a school district and is not corrected within 30 days, the salaries of all district employees, including school board members and the superintendent, would be reduced proportionately until a deficit in the unreserved fund balance is eliminated.

School Board Member Salaries

The bill amends s. 1001.395 to allow district school board members to voluntarily reduce their salary rate.

Employment Contracts

Limiting contractual obligations to pay an amount that is not in excess of one year of the employee's or superintendent's salary would potentially reduce school district expenditures for settlement of prospective contracts for employment.

Voluntary Prekindergarten Education Program

Amendments to statutory Voluntary Prekindergarten Education Program requirements are necessary in order to make reductions to appropriations for the VPK program. Increasing the summer program student-to-teacher ratio from 10 to 12 students and authorizing separate base student allocations (BSA) for school year and summer programs results in a savings/reduction, by reducing the BSA in proportion to the change in the class size ratio. The summer program BSA would be reduced from \$2,628 to \$2,190 which would result in a savings/reduction from the summer program for the 2008-2009 fiscal year of approximately \$1.3 million. Additional reductions of approximately \$500,000 are accomplished by reducing the administrative rate for the Early Learning Coalitions from 5 to 4.85%. There is also an anticipated, unquantified savings/reduction resulting from revising the attendance policy for funding from roughly 50 percent to 80 percent for VPK programs. Students who attend less than 80 percent would generate the appropriate fraction of full-time attendance funding.

Textbook Adoption

Waiving school district expenditures for instructional materials for the first two years of the adoption cycle occurring in 2008-2009 provides school districts with the flexibility to defer expenditures for new textbooks and other instructional materials.

Capital Improvement Millage Flexibility (1.75 Mills)

The bill provides districts with greater fiscal flexibility by amending s. 1011.71, Florida Statutes, to allow districts to pay for property and casualty premiums and for the purchase or lease of driver's education and maintenance vehicles from the districts' discretionary capital improvement millage revenue up to \$65 per FTE, instead of out of the general fund for operations. This provision allows *all* districts to participate by removing the criteria regarding class size compliance and capital expenditure certification for

eligibility. The Department of Education indicates that 13 districts are currently excluded. According to school district surveys, in 2006-2007, the total statewide cost of property and casualty insurance premiums was \$178.5 million. This change allows districts more flexibility in spending capital funds for operating purposes. However, it does create inequity in the funding of operations among “property-rich” and “property-poor” districts because of the widely disparate amount of ad valorem revenue raised per FTE from the discretionary capital millage levy (1 mill provides \$3,242 per FTE for Monroe and \$106 per FTE for Union). In addition, some districts may not have available capital millage revenue to spend for this purpose.

In addition, because the expenditure cap on capital millage funds for property and casualty insurance and certain motor vehicles was revised in 2007 from no dollar limitation to a cap per FTE, causing at least one district to spend more than the limitation, this bill allows the Commissioner to waive the equal-dollar reduction required in s. 1011.71(5), Florida Statutes, for such expenditures between May 1 and December 31, 2007, if the district acted in good faith.

Also, the bill adds enterprise resource software applications that are classified as capital assets according to Governmental Accounting Standards definitions, having a minimum useful life of five years, and to be used for district-wide administration or state-mandated reporting requirements as allowable expenditures of capital improvement revenue. This frees districts from spending operations funding on purchases of these large software systems. Because of the inclusion of this software as an allowable expenditure, the Commissioner is provided with the authority to waive the equal-dollar reduction required in s. 1011.71(5), Florida Statutes, for audit findings for the 2006-2007 fiscal year related to the purchase of software, if the school district acted in good faith.

Merit Award Program

In 2007-2008, 7 school districts, the Florida Virtual School, and charter schools in 29 school districts participated in the MAP program. The funding for 2007-2008 MAP participation and performance was appropriated in 2008-2009 in the amount of \$32,072,471. The Department of Education will not know until February 15, 2009 which districts have approved plans for 2008-2009; however, the preliminary indication is that the 2008-2009 participants are likely to be the same as the 2007-2008 participants. Section 1012.225(2), Florida Statutes, provides that school districts are not required to implement this section unless the program is specifically funded by the Legislature. The bill creates an undesignated section of law which states that awards for instructional personnel and school-based administrators selected for the Merit Award Program (MAP) in 2008-2009 shall be funded in 2009-2010 to the extent that funds are available and specifically appropriated.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

The committee substitute removes the required 5% reduction in school board member salaries from February 1 to the end of the fiscal year and instead, provides for a voluntary reduction in school board member salaries and provides the Commissioner of Education with the authority to waive audit penalties for certain expenditures of the 1.75 mill capital improvement revenue.

B. Amendments:

None.