

**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 Budget Committee

BILL: SB 1972 (SPB 7078)

INTRODUCER: Budget Committee

SUBJECT: K-12 Education Funding

DATE: February 15, 2012      REVISED: \_\_\_\_\_

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION                                |
|----|---------|----------------|-----------|---------------------------------------|
| 1. | Hamon   | Rhodes         |           | <b>SPB 7078 Favorable, as amended</b> |
| 2. |         |                |           |                                       |
| 3. |         |                |           |                                       |
| 4. |         |                |           |                                       |
| 5. |         |                |           |                                       |
| 6. |         |                |           |                                       |

**I. Summary:**

This bill conforms applicable statutes to the appropriations provided in the Senate proposed budget which makes appropriations for Prekindergarten through grade 12 education for the 2012-2013 fiscal year.

The bill:

- Modifies the FEFP Reading allocation to provide intensive reading instruction for low performing students during an additional one hour of instruction beyond the normal school day for each school day and limits the use of these funds for reading coaches;
- Modifies the FEFP Supplemental Academic Instruction allocation to require districts with low performing elementary schools to provide intensive reading instruction for the students in these schools for an additional hour a day beyond the normal school day for the entire school year;
- Limits flexibility for the use of Reading and Supplemental Academic Instruction allocations to first require the additional hour of instruction;
- Delays the increased class size penalty (full Base Student Allocation amount) until 2014-15;
- Provides for the calculation and funding adjustments for the class size penalty for the 2011-2012 fiscal year;
- Provides a waiver for the requirement to purchase newly adopted instructional materials within two years, if the district can demonstrate that the instructional materials content is provided by alternative means;
- Requires districts to provide Discretionary Local Effort funds and state compression funding, if necessary, up to the state average for Department of Juvenile Justice students;

- Requires school districts to participate in the School District Consortium to maximize purchasing power for goods and services;
- Limits the 5% charter school administrative charge for schools that have exceptional student enrollment that is 75 percent or more of the total enrollment;
- Conforms severance package language for district superintendents and other employees to s. 215.425, F.S.;
- Clarifies that Auditor General audits satisfy the audit requirement for school districts;
- Provides technical clarification of FEFP FTE reporting requirements and FTE audit adjustments;
- Deletes an obsolete fiscal year reference of 2009-2010 for the waiver of the three-fourths limit for the proceeds of discretionary capital outlay millage for payments required by lease-purchase agreements; and
- Authorizes the Commissioner of Education to waive certain facilities requirements when justified by districts.

This bill substantially amends sections 1001.42, 1001.50, 1002.33, 1003.03, 1003.52, 1006.40, 1011.61, 1011.62, 1011.71, 1013.03, and 1013.35 of the Florida Statutes.

## **II. Present Situation:**

### **Supplemental Academic Instruction Allocation**

Funds from the Supplemental Academic Instruction categorical fund are allocated annually to each school district in the amount provided in the General Appropriations Act. These funds are provided in addition to the funds appropriated on the basis of FTE student membership in the Florida Education Finance Program and are included in the total funds for each district. These funds are used to provide supplemental academic instruction to students enrolled in the K-12 program. Supplemental instruction strategies may include, but are not limited to: modified curriculum, reading instruction, after-school instruction, tutoring, mentoring, class size reduction, extended school year, intensive skills development in summer school, and other methods for improving student achievement. Supplemental instruction may be provided to a student in any manner and at any time during or beyond the regular 180-day term identified by the school as being the most effective and efficient way to best help that student progress from grade to grade and to graduate.<sup>1</sup> The Supplemental Academic Instruction appropriation for the 2011-2012 fiscal year is \$615,924,773.

### **Reading Instruction Allocation**

Funds for comprehensive, research-based reading instruction are allocated annually to each school district in the amount provided in the General Appropriations Act. Each eligible school district receives the same minimum amount as specified in the General Appropriations Act, and any remaining funds are distributed to eligible school districts based on each school district's proportionate share of K-12 base funding. These funds must be used to provide a system of comprehensive reading instruction to students enrolled in K-12 programs. The reading instruction program may include the following:

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<sup>1</sup> s. 1011.62(1)(f), F.S.

- The provision of highly qualified reading coaches;
- Professional development for school district teachers in scientifically based reading instruction, including strategies to teach reading in content areas and with an emphasis on technical and informational text;
- The provision of summer reading camps for students who score at Level 1 on FCAT Reading;
- The provision of supplemental instructional materials that are grounded in scientifically based reading research; or
- The provision of intensive interventions for middle and high school students reading below grade level.

Annually, by a date determined by the Department of Education but before May 1, school districts must submit a K-12 comprehensive reading plan for the specific use of the research-based reading instruction allocation in the format prescribed by the department for review and approval by the Just Read, Florida! Office created pursuant to s. 1001.215, F.S. The plan annually submitted by school districts must be deemed approved unless the department rejects the plan on or before June 1. If a school district and the Just Read, Florida! Office cannot reach agreement on the contents of the plan, the school district may appeal to the State Board of Education for resolution. School districts shall be allowed reasonable flexibility in designing their plans and shall be encouraged to offer reading remediation through innovative methods, including career academies. The plan format shall be developed with input from school district personnel, including teachers and principals, and shall allow courses in core, career, and alternative programs that deliver intensive reading remediation through integrated curricula, provided that the teacher is deemed highly qualified to teach reading or working toward that status. No later than July 1 annually, the department shall release the school district's allocation of appropriated funds to those districts having approved plans. A school district that spends 100 percent of this allocation on its approved plan shall be deemed to have been in compliance with the plan. The department may withhold funds upon a determination that reading instruction allocation funds are not being used to implement the approved plan.<sup>2</sup> The Reading Instruction allocation was provided an appropriation for the 2011-2012 fiscal year of \$97,673,434.

### **Categorical Program Fund Flexibility**

Categorical program funds are provided for a specific purpose, such as student transportation, safe schools, supplemental academic instruction, reading instruction, or instructional materials. These funds may only be spent by the school district for the designated purpose. However, under Section 1011.62(6), if a school district finds that these funds are urgently needed to maintain academic classroom instruction, the school board may adopt a resolution to amend the district budget and use the categorical funds for the classroom instruction.

### **Class Size Reduction**

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<sup>2</sup> s. 1011.62(9), F.S.

In November 2002, the State Constitution was amended<sup>3</sup> to provide that by the beginning of the 2010 school year, the maximum number of students assigned to a teacher who teaches core-curricula courses in public school classrooms shall be as follows:

- For prekindergarten through grade 3, the number of students may not exceed 18;
- For grades 4 through 8, the number of students may not exceed 22; and
- For grades 9 through 12, the number of students may not exceed 25.

The amendment required that, beginning with the 2003-2004 fiscal year, the Legislature was to provide sufficient funds to reduce the average number of students in each classroom by at least two students per year until the number of students per classroom did not exceed the maximum required by the beginning of the 2010 school year.

The schedule for phasing in the reduction of the average number of students per classroom by at least two students per year was established as follows<sup>4</sup>:

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

To implement the required reduction in class size the Legislature created a Class Size Reduction operating categorical fund<sup>5</sup> for the following district purposes:

- to meet the constitutional maximums specified, or to reduce the class size by the required average two students per year toward the constitutional maximums; or,
- if one of these two criteria have been achieved, for any lawful operating expenditure. Priority, however, was to be given to increase the salaries of classroom teachers.

The Legislature has appropriated over \$19 billion for the Class Size Reduction operating categorical fund and \$2.5 billion for the Classrooms for Kids program for additional facilities construction to meet class size requirements.

### **Class Size Accountability**

School districts and charter schools are required to meet the constitutional class size maximums and if they are not successful, the funds provided to them are adjusted based on the number of students over the maximum for each classroom (for charter schools, the maximum is based on the school average instead of the classroom average ). The calculation of funds to be reduced for students over the maximum is as follows:

- Multiply the total number of FTE students which exceed the maximum for each grade group by the district's FTE dollar amount of the class size categorical allocation for that year and calculate the total for all three grade groups.
- Multiply the total number of FTE students which exceed the maximum for all classes by an amount equal to 50 percent of the base student allocation adjusted by the district cost differential for the 2010-2011 fiscal year and by an amount equal to the full base student

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<sup>3</sup> S.1, Art. 1, State Constitution

<sup>4</sup> s. 1003.03(2)(b), F.S.

<sup>5</sup> s. 1011.685, F.S.

allocation adjusted by the district cost differential beginning in the 2011-2012 fiscal year and thereafter. This represents roughly a 40% increase in the penalty for 2011-2012.

- Reduce the district's class size categorical allocation by an amount equal to the sum of the required calculations.
- The amount of funds reduced is the lesser of the amount calculated or the undistributed balance of the district's class size categorical allocation. The Florida Education Finance Program Appropriation Allocation Conference verifies the department's calculations. The commissioner may withhold distribution of the class size categorical allocation to the extent necessary for compliance.

In lieu of the reduction in the initial calculation, if the Commissioner of Education has evidence that a district was unable to meet the class size requirements despite appropriate efforts to do so or because of an extreme emergency, the commissioner may recommend by February 15, subject to approval of the Legislative Budget Commission, the reduction of an alternate amount of funds from the district's class size categorical allocation.

Upon approval of the reduction in the initial calculation, the commissioner must prepare a reallocation of the funds made available for the districts that have fully met the class size requirements. The funds shall be reallocated by calculating an amount of up to 5 percent of the base student allocation multiplied by the total district FTE students. The reallocation total may not exceed 25 percent of the total funds reduced.

Each district that has not complied with the requirements must then submit to the commissioner by February 15 a plan certified by the district school board that describes the specific actions the district will take in order to fully comply with the requirements by October of the following school year. If a district submits the certified plan by the required deadline, the funds remaining after the reallocation calculation must be added back to the district's class size categorical allocation based on each qualifying district's proportion of the total reduction for all qualifying districts for which a reduction was calculated. However, no district shall have an amount added back that is greater than the amount that was reduced. The department must adjust school district class size reduction categorical allocation distributions based on the approved calculations.<sup>6</sup>

The penalty adjustment in the initial calculation for the 2011-2012 fiscal year is \$94.2 million for traditional public schools and \$6.3 million for charter schools. The alternate calculation which is reduced, takes into account data reporting errors and unintended student growth and is equal to \$70.1 million for traditional schools and \$1 million for charter schools. These amounts will then be brought to the Legislative Budget Commission for approval. If they are approved, then non-compliant districts may earn back 75 percent of the reduction amount if they submit the plan by February 15. If all non-compliant districts do so, they will earn back \$52.5 million of the \$70.1 million reduction.

For 2011-2012, districts that have complied will earn \$17.5 million from the "up to 5 percent" bonus calculation. The same calculation methodology also applies to charter schools.

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<sup>6</sup> s. 1003.03(4), F.S.

In 2010-2011, in lieu of approval of the alternate calculation by the Legislative Budget Commission, the Legislature adopted by reference the alternate calculation in the budget conforming bill.<sup>7</sup>

If the penalty for 2011-2012 was calculated at the 50% base student allocation level that was used for 2010-2011, rather than at the full amount of the base student allocation, then the adjusted penalty for traditional schools would be \$43.4 million rather than \$70.1 million, a 38% reduction. For charter schools, the reduced penalty would be \$655,982 rather than \$1 million.

### **Instructional Materials Purchases**

Each district school board must purchase current state adopted instructional materials for the subject areas of mathematics, language arts, science, social studies, reading, and literature for student in kindergarten through grade 12. The term of each adoption is a 5-year period, and school district purchases must be made within the first 2 years after the effective date of the adoption cycle. The department of education publishes annually an official schedule of subject areas to be called for adoption for each of the succeeding 2 years, and a tentative schedule for years 3, 4, and 5.<sup>8</sup>

Each district receives an instructional materials allocation through the FEFP;<sup>9</sup> the allocation for the 2011-2012 fiscal year was \$209,240,737. Each district must use 50 percent of its allocation to purchase instructional materials on the state-adopted list.

### **Juvenile Justice Education Funding**

Each district school board must fund the educational program in a Department of Juvenile Justice facility at the same or higher level of funding for equivalent students in the district school system based on the funds generated by state funding through the Florida Education Finance Program for such students<sup>10</sup>. Juvenile justice educational programs are to be funded in the appropriate FEFP program based on the educational services needed by the student for Department of Juvenile Justice programs in accordance with s. 1011.62, F.S. Juvenile justice educational programs eligible to receive the appropriate FEFP funding include those operated through a contract with the Department of Juvenile Justice and which are under purview of the Department of Juvenile Justice quality assurance standards for education.

A supplemental allocation that is equal to the state average of the class-size-reduction factor is provided for students in the juvenile justice programs.<sup>11</sup>

Because the law provides some discretion for school district sharing of funds with juvenile justice educational programs, there is a disparate level of funding for these programs among school districts. In addition, there is some concern that juvenile justice education in many districts does not receive a proportionate share of the district funding.

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<sup>7</sup> s. 41, ch. 2011-55, Laws of Florida

<sup>8</sup> s. 1006.40(2), F.S.

<sup>9</sup> s. 1011.67, F.S.

<sup>10</sup> s. 1003.52(12), F.S.

<sup>11</sup> s. 1011.62(12), F.S.

## **School District Purchases of Goods and Services**

School districts are independent constitutional entities that make purchasing decisions and have purchasing policies that are authorized by the district school board. For cost effective purchasing of goods and services, districts are free to make cooperative arrangements with other districts for pool purchasing of goods and services. School districts of 20,000 or fewer students participate in regional educational consortia which provide services that include purchasing. Section 1006.27, F.S. authorizes the Department of Education to pool school district bids for school bus purchases.

## **Severance Packages**

A district school board may not enter into an employment contract that requires the district to pay from state funds an employee or a district school superintendent an amount in excess of one year of the employee's annual salary for termination, buyout, or any other type of contract settlement. This provision does not prohibit the payment of earned leave and benefits in accordance with the district's leave and benefits policies which were accrued by the employee before the contract terminates.<sup>12</sup>

Section 215.42, F.S. requires that after July 1, 2011, a unit of government that enters into a contract or employment agreement, or renewal or renegotiation of an existing contract or employment agreement, that contains a provision for severance pay with an officer, agent, employee, or contractor, must include the following provisions in the contract:

- A requirement that severance pay provided may not exceed an amount greater than 20 weeks of compensation.
- A prohibition of provision of severance pay when the officer, agent, employee, or contractor has been fired for misconduct, as defined in s. 443.036(29), by the unit of government.

## **Charter School Administrative Fee**

### Charter Schools

A school district sponsor is required to provide certain administrative and educational services to charter schools.<sup>13</sup> These services include contract management services; full-time equivalent and data reporting services; exceptional student education administration services; services related to eligibility and reporting duties required to ensure that school lunch services under the federal lunch program; test administration services; processing of teacher certificate data services; and information services. Student performance data for each student in a charter school are also provided.

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<sup>12</sup> s. 1001.42(24), F.S., 1001.50, F.S.

<sup>13</sup> s. 1002.33(20), F.S.

A total administrative fee for the provision of such services is calculated based upon up to 5 percent of the amount of funds for all students. However, a sponsor may only withhold up to a 5-percent administrative fee for enrollment for up to and including 250 students. For charter schools with a population of 251 or more students, the difference between the total administrative fee calculation and the amount of the administrative fee withheld may only be used for capital outlay purposes specified in s. 1013.62(2), F.S.

#### High-performing Charter Schools

For high-performing charter schools, a sponsor (school district) may withhold a total administrative fee of up to 2 percent for enrollment up to and including 250 students per school.

#### System of charter schools

A sponsor may withhold up to a 5-percent administrative fee for enrollment for up to and including 500 students within a system of charter schools which meets all of the following:

- Includes both conversion charter schools and nonconversion charter schools;
- Has all schools located in the same county;
- Has a total enrollment exceeding the total enrollment of at least one school district in the state;
- Has the same governing board; and
- Does not contract with a for-profit service provider for management of school operations.

The difference between the total administrative fee calculation and the amount of the administrative fee withheld may be used for instructional and administrative purposes as well as for capital outlay purposes specified in s. 1013.62(2), F.S.

#### High-performing Charter School System

For a high-performing charter school system that also meets the requirements of a charter school system, a sponsor may withhold a 2-percent administrative fee for enrollments up to and including 500 students per system.

Sponsors shall not charge charter schools any additional fees or surcharges for administrative and educational services in addition to the maximum 5-percent administrative fee.

#### Virtual Charter School

A sponsor of a virtual charter school may withhold a fee of up to 5 percent. The funds shall be used to cover the cost of services provided and for the school district's local instructional improvement system pursuant to s. 1006.281, F.S. or other technological tools that are required to access electronic and digital instructional materials.

#### **Audits**

Not less than once every 5 years, each district school board must contract with a qualified, independent third party to conduct a financial management and performance audit of the educational planning and construction activities of the district. An audit conducted by the Office



of Program Policy Analysis and Government Accountability and the Auditor General pursuant to s. 1008.35 satisfies this requirement.<sup>14</sup>

### **Discretionary Capital Outlay Millage**

In addition to the maximum millage levy for operations that each school board may levy, the board may also levy up to 1.5 mills for capital outlay purposes, one of which is for payments for educational facilities and sites due under a lease-purchase agreement. These payments may not exceed, in the aggregate, an amount equal to three-fourths of the proceeds from the millage levied for educational facilities. However, the three-fourths limit is waived for lease purchase agreements entered into before June 30, 2009.<sup>15</sup>

### **State Requirements for Educational Facilities**

It is the responsibility of each district school board to ensure that all plans and educational and ancillary plants meet the standards of the Florida Building Code and the Florida Fire Prevention Code and to provide for the enforcement of these codes in the areas of its jurisdiction.<sup>16</sup> Each board must provide for the proper supervision and inspection of the work. Each board may employ a chief building official and such other inspectors, who have been certified pursuant to chapter 468, a fire official and such other inspectors, who have been certified pursuant to chapter 633, and such personnel as necessary to administer and enforce the provisions of such codes. Boards may also use local building department inspectors who are certified by the department to enforce the Florida Building Code and the State Requirements for Educational Facilities. Boards may also use local county, municipal, or independent special fire control district fire safety inspectors who are certified by the State Fire Marshal to conduct reviews of site plans and inspections and to enforce the Florida Fire Prevention Code.

Plans or facilities that fail to meet the standards of the Florida Building Code or the Florida Fire Prevention Code may not be approved. When planning for and constructing an educational, auxiliary, or ancillary facility, a board must use construction materials and systems that meet standards adopted pursuant to s. 1013.37(1)(e)3. and 4. If the planned or actual construction of a facility deviates from the adopted standards, the 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 Florida Building Code. The board must explain the reason for the proposed deviations and compare how the total construction costs and projected life-cycle costs of the facility or component system of the facility would be affected by implementing the proposed deviations rather than using materials and systems that meet the adopted standards.

Each school district that undertakes the construction, renovation, remodeling, purchasing, or lease-purchase of any educational plant or ancillary facility, the cost of which exceeds \$200,000, may submit plans to the department for approval.<sup>17</sup>

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<sup>14</sup> s. 1013.35 (2)(f), F.S.

<sup>15</sup> s. 1011.72 (2)

<sup>16</sup> s. 1013.371(2), F.S.

<sup>17</sup> s. 1013.371(3), F.S.

### III. Effect of Proposed Changes

The bill:

- Modifies the FEFP Supplemental Academic Instruction allocation to require that districts with low performing elementary schools are to provide intensive reading instruction for the students in these schools for an additional hour a day beyond the normal school day for the entire school year.
- Modifies the FEFP Reading allocation to require that priority be given to school districts to provide intensive reading instruction for low performing students during an additional one hour of instruction beyond the normal school day for each school day and limits the use of these funds for reading coaches . The bill also modifies the types of intensive reading instruction that may be provided in the additional hour and modifies other criteria for use of the funds.
- Limits flexibility for the use of Reading and Supplemental Academic Instruction allocations to first require the additional hour of instruction for low performing schools and students.
- Delays the increased class size penalty to the full Base Student Allocation amount until 2014-15. For 2011-2012, as a result, the alternate penalty amount will be reduced by 38%, from \$70.1 million to \$43.4 million for traditional schools and from \$1 million to \$655,982 for charter schools.
- Approves the penalty calculations required for class size for the 2011-2012 fiscal year.
- Provides a waiver for the requirement to purchase newly adopted instructional materials within two years, if the district can demonstrate that the required content for the instructional materials for the adoption is provided by alternative means.
- Requires districts to provide Discretionary Local Effort funds and state compression funds, if necessary, up to the state average funds per student for juvenile justice education students; this amount for 2012-2013 from the discretionary .748 mill levy is \$360. In addition, juvenile justice education programs would receive a uniform funding amount per student from school districts.
- Requires school districts to participate in the School District Consortium to maximize purchasing power for goods and services.
- Reduces the 5% charter school administrative fee charged by school districts for schools that have an exceptional student enrollment that is 75% or greater of the total school enrollment. The fee for affected schools would be based on unweighted FTE rather than weighted FTE.
- Confirms the severance package language for district superintendents to s. 215.425, F.S. which limits severance from July 1, 2011, forward to no greater than 20 weeks of compensation and to not allow any severance if an employee has been fired for misconduct.
- Clarifies that the Auditor General audits satisfy the independent audit requirement of school districts.
- Provides technical clarification of FEFP FTE reporting requirements and FTE audit adjustments.
- Deletes an obsolete fiscal year reference of 2009-2010 for the waiver of the three-fourths limit for the proceeds of discretionary capital outlay millage for payments for lease-purchase agreements.

- Authorizes the Commissioner of Education to waive certain facilities requirements for school districts when substantial savings of funds can be realized or they are advantageous to the educational system, subject to justification by the school district.

#### **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.

##### **C. Government Sector Impact:**

This bill conforms applicable statutes to the appropriations provided in the Senate proposed budget which makes appropriations for Prekindergarten through grade 12 education for the 2012-2013 fiscal year.

The bill designates Supplemental Academic Instruction allocation funds for all low performing elementary schools and Reading allocation funds for low performing students to be used to provide an additional hour a day of intensive reading instruction beyond the normal school day for the entire school year.

The bill requires uniform and proportionate funding for juvenile justice education programs among all districts.

The bill increases fiscal flexibility and efficiency by:

- Reducing the Class Size Reduction noncompliance penalty;
- Providing a waiver for the requirement to purchase instructional materials within two years for the current adoption if required content is provided by alternative means;

- Requiring school districts to participate in the School District Consortium to maximize purchasing power for goods and services;
- Reducing the 5% charter school administrative fee for charter schools that have an exceptional student enrollment that is 75% or greater of the total school enrollment;
- Reducing the cost of severance for school districts to no greater than 20 weeks of compensation for superintendents and to not allow any severance if an employee has been fired for misconduct; and
- Reducing district facilities costs if certain facilities requirements are waived, subject to adequate justification by the district.

The bill also provides technical clarification of FEFP FTE reporting requirements, FTE audit adjustments, and removes an obsolete fiscal year reference for the waiver of the three-fourths limitation for payments for lease purchases from the proceeds from discretionary capital outlay millage.

**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.)

None.

- B. **Amendments:**

None.