

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 Appropriations Subcommittee on Pre-K – 12 Education

BILL: PCS/CS/SB 868 (118664)

INTRODUCER: Appropriations Subcommittee on Pre-K-12 Education; Education Committee and Senator Baxley

SUBJECT: Educational Options and Services

DATE: April 18, 2017 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bouck</u>	<u>Graf</u>	<u>ED</u>	<u>Fav/CS</u>
2.	<u>Sikes</u>	<u>Elwell</u>	<u>AED</u>	<u>Recommend: Fav/CS</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 868 expands educational options and services to prepare students for higher education and entry into the workforce. Specifically, the bill:

- Repeals the eligibility criteria for students to participate in virtual instruction programs.
- Removes the requirement that student enrollment in a virtual instruction program be limited to a program provided by a school district or virtual charter school operated by the district in which the student resides.
- Clarifies that students with disabilities must be offered the option to pursue a scholar or merit designation, removes the option for a certificate of completion, and modifies the criteria to document mastery of academic and employment competencies.
- Requires an individualized progress monitoring plan be developed for all students in a juvenile justice education program, including those with disabilities.
- Adds the Chancellor of Career and Adult Education to the Higher Education Coordinating Council.
- Requires that any institution seeking initial or continued approval of a graduate-level teacher education program in a certification area that does not require a graduate degree must provide students the option to complete the initial preparation program at the bachelor’s level.
- Revises the dual enrollment program to clarify the description of career dual enrollment, authorize the Commissioner of Education to establish a statewide articulation agreement for the Florida Virtual School, and expand the rulemaking authority of the State Board of

Education to specify rulemaking relating to student eligibility and participation, courses and programs, funding, and articulation agreements.

- Deems participants in on-the-job training activities administered by the Division of Blind Services (DBS) and the Division of Vocational Rehabilitation (VR) as employees of the state for purposes of workers' compensation coverage.

The bill has an indeterminate fiscal impact on state expenditures. The estimated fiscal impact to the Florida Education Finance Program (FEFP) to fund the expansion of student eligibility for public virtual education is expected to be absorbed within the FEFP calculation, and is estimated at \$4,363,075. The Division of Risk Management expects to incur additional claim costs for covering DBS and VR on-the-job training participants.

This bill takes effect on July 1, 2017.

II. Present Situation:

The present situation for the relevant portions of the bill is discussed in the Effect of Proposed Changes section of this bill analysis.

III. Effect of Proposed Changes:

Virtual Instruction (Sections 4, 5, 6, 13, 14, and 15)

Present Situation

A student is eligible to participate in the Florida Virtual School (FLVS) or in a virtual instruction program offered by the school district or by a virtual charter school operated in the district in which the student resides¹ if he or she meets one of the following:²

- The student spent the prior school year in attendance at a public school in the state.
- The student is a dependent child of a member of the United States Armed Forces who transferred within the last 12 months to this state from another state or from a foreign country.
- The student was enrolled during the prior school year in a virtual instruction program³ or a full-time FLVS program.⁴
- The student has a sibling who is currently enrolled in a virtual instruction program and the sibling was enrolled in that program at the end of the prior school year.
- The student is eligible to enter kindergarten or first grade.

¹ Virtual instruction programs are included as options under provisions relating to "controlled open enrollment." Section 1002.31(2)(a), F.S.

² Sections 1002.37(8), 1002.45(5), and 1002.455(2), F.S. These requirements apply to FLVS part-time instruction in kindergarten through grade 5 (section 1002.37(8)(a), F.S.); a virtual instruction program provided by the school district or by a virtual charter school operated in the district (section 1002.45(5), F.S.); school district operated part-time or full-time kindergarten through grade 12 virtual instruction programs for students enrolled in the school district (section 1002.455(3)(a), F.S.); full-time virtual charter school instruction (*Id.* at (3)(b)); and virtual courses offered in the course code directory to students within the school district or to students in other school districts throughout the state (*Id.* at (3)(c)).

³ Section 1002.45, F.S.

⁴ Section 1002.37(8)(a), F.S.

- The student is eligible to enter grades 2 through 5 and is enrolled full-time in a school district virtual instruction program, virtual charter school, or the FLVS.

Effect of the Bill

Section 6 repeals s. 1002.455, F.S., to eliminate the eligibility requirements for student participation in virtual instruction through the Florida Virtual School and in virtual instruction programs. As a result, all students enrolled in public or private schools, or in a home education program are eligible to participate in virtual instruction.

Additionally, section 5 amends s. 1002.45, F.S., to modify student participation requirements related to virtual instruction program. Specifically, this section:

- Removes the requirement that student enrollment in a virtual instruction program be limited to a program provided by a school district or virtual charter school operated by the district in which the student resides. As a result, the bill may allow a student to enroll in virtual instruction provided by any school district or virtual charter school.
- Allows a student enrolled in a virtual instruction program or virtual charter school to take state assessment tests in the district in which the student enrolls, in addition to where the student resides. This section also specifies that if requested by the provider, the district of residence must provide the student with access to the district's testing facilities.

Sections 4, 13, 14, and 15 conform cross-references and make technical changes to ss. 1002.33, 1002.37, 1003.498, and 1011.62, F.S., respectively, to account for the repeal of s. 1002.455, F.S.

Controlled Open Enrollment (Section 3)

Present Situation

Controlled open enrollment is a public education delivery system that allows school districts to make student school assignments using parents' indicated preferential school choice as a significant factor.⁵ School districts have the option to offer controlled open enrollment within the public schools in addition to existing choice programs⁶ such as virtual instruction programs, magnet schools, alternative schools, special programs, collegiate high school programs, advanced placement, and dual enrollment.⁷ The district school board must adopt by rule and post on the district website a controlled open enrollment plan.⁸

Effect of the Bill

Section 3 amends s. 1002.31, F.S., to expand available controlled open enrollment options to include virtual charter schools and district virtual programs.

⁵ Section 1002.31(1), F.S.

⁶ Section 1002.20(6)(a), F.S.

⁷ Section 1002.31(2)(a), F.S.

⁸ *Id.* at (3)

High School Graduation Requirements for Students with Disabilities (Section 7)

Present Situation

By the time a student with an individual education plan (IEP)⁹ reaches 14 years old, the IEP team¹⁰ must begin planning for that student's successful transition to postsecondary education and career opportunities.¹¹ Florida law governing high school graduation for students with a disability requires that the IEP team, during the transition planning process for the student, declare an intent for the student to graduate from high school with either a standard high school diploma or a certificate of completion. A student with a disability who does not satisfy standard high school diploma requirements is awarded a certificate of completion.¹² Such student may also defer graduation subject to certain criteria.¹³

Florida law authorizes the IEP team to determine that mastery of academic and employment competencies is the most appropriate way for a student to demonstrate his or her skills, such employment and competencies include, but are not limited to:¹⁴

- Documented achievement of all annual goals and short-term objectives for academic and employment competencies, industry certifications, and occupational completion points specified in the student's transition plan.
- Documented successful employment for the number of hours per week specified in the student's transition plan and payment of a minimum wage in compliance with federal requirements.

Effect of the Bill

Section 7 amends s. 1003.4282, F.S., to remove the certificate of completion option for a student with an IEP. This section also requires that, as a part of transition planning, the student must be offered the option to pursue a scholar or merit designation. This change aligns with a similar law¹⁵ that requires IEP transition planning to prepare for a student to graduate from high school with a standard diploma, with a scholar or merit designation. The section also makes a technical change to clarify that only students with disabilities may defer the receipt of a standard high school diploma if he or she meets the conditions specified in law.

Section 7 modifies the options that a student with an IEP may use to satisfy the standard high school diploma requirements. This section removes the option to document mastery of academic and employment competencies through the achievement of annual goals and short-term objectives, industry certifications, and occupational completion points specified in the student's

⁹ Section 1003.5715(1), F.S.

¹⁰ The IEP team is defined in 20 U.S.C. 1414(d)(1)(B).

¹¹ Section 1003.5716(1), F.S.

¹² Section 1003.4282(10)(a), F.S. Additional law requires that the process include, but is not limited to, preparation for the student to graduate from high school with a standard high school diploma with a scholar designation unless the parent chooses a merit designation. Section 1003.5716(1)(b), F.S. The scholar and merit designations are in addition to the standard high school diploma for a student who meet certain performance criteria. Section 1003.4285, F.S.

¹³ Section 1003.4282(10)(c), F.S.

¹⁴ Section 1003.4282(10)(b) and (c), F.S.

¹⁵ Section 1003.5716(1)(b), F.S.

transition plan. However, this section expands the existing options regarding successful employment by specifying in the student's employment transition plan, paid or non-paid work in a structured work-study, internship, or preapprenticeship program for the required number of hours per week. Current law specifies documentation of successful employment only through paid employment. Rural areas may not be able to offer enough paid employment opportunities to all students.¹⁶

Juvenile Justice Education Programs (Section 8)

Present Situation

An individualized progress monitoring plan must be developed for all students excluding those classified as exceptional education students, upon entry in a juvenile justice education program and upon reentry in the school district. Such plan must address academic, literacy, and career and technical skills.¹⁷

Effect of the Bill

Section 8 amends s. 1003.52, F.S., to require an individualized progress monitoring plan to be developed for all students upon entry in a DJJ facility or upon reentry in the school district. This modification aligns with requirements for free appropriate public education by allowing all students, including students with disabilities, to be provided the same offered services and provisions.¹⁸

Higher Education Coordinating Council (Section 9)

Present Situation

The Higher Education Coordinating Council (HECC) is created¹⁹ for the purposes of identifying unmet needs; facilitating solutions to disputes regarding the creation of new degree programs and the establishment of new institutes, campuses, or centers; and facilitating solutions to data issues identified by the Articulation Coordinating Committee to improve the K-20 education performance accountability system.²⁰ The HECC includes the following members:²¹

- One member of the Board of Governors, appointed by the chair of the Board of Governors.
- The Chancellor of the State University System.

¹⁶ Email, Florida Department of Education, *2017 Agency Bill Analysis for SB 868* (March 29, 2017).

¹⁷ Section 1003.52(7), F.S. The plan must be developed within 10 school days of a student's entry into a DJJ prevention, residential, or day treatment program or no later than three school days after the administration of the entry assessment. This plan must be based upon the student's entry assessments and past educational history. The plan must include, specific, individualized academic and career objectives; remedial strategies, as needed; progress monitoring evaluation procedures; and, an implementation schedule for determining progress toward meeting the goals of academic and career objectives, including specific monitoring responsibilities. An ESE student's progress monitoring plan must be consistent with the student's individual educational plan (IEP). Rule 6A-6.05281, F.A.C.

¹⁸ Email, Florida Department of Education, *2017 Agency Bill Analysis for SB 868* (March 29, 2017). *See also* 20 U.S.C. s. 1412(a)(1), and Rule 6A-6.03028, F.A.C.

¹⁹ Section 12, ch. 2010-78, L.O.F.

²⁰ Section 1004.015(1), F.S.

²¹ *Id.* at (2).

- The Chancellor of the Florida College System.
- One member of the State Board of Education (SBE), appointed by the chair of the SBE.
- The Executive Director of the Florida Association of Postsecondary Schools and Colleges.
- The president of the Independent Colleges and Universities of Florida.
- The president of Workforce Florida, Inc., or his or her designee.
- The president of Enterprise Florida, Inc., or a designated member of the Stakeholders Council appointed by the president.
- Three representatives of the business community, one appointed by the President of the Senate, one appointed by the Speaker of the House of Representatives, and one appointed by the Governor, who are committed to developing and enhancing world class workforce infrastructure necessary for Florida's citizens to compete and prosper in the ever-changing economy of the 21st century.

Effect of the Bill

Section 9 amends s. 1004.015, F.S., to add the Chancellor of Career and Adult Education to the membership of the HECC.

Teacher Education Programs (Section 10)

Present Situation

Each Florida teacher preparation program must be approved²² by the Florida Department of Education (DOE) and must meet the requirements for continued approval, which include:²³

- Documentation that each program candidate met specified admission requirements.²⁴
- Documentation that each program completer met specified performance requirements.²⁵
- Evidence of performance in each of the following areas:
 - Placement rate of program completers into instructional positions in Florida public schools and private schools, if available.
 - Rate of retention for employed program completers in instructional positions in Florida public schools.

²² Initial and continued approval means that a teacher preparation program has been granted the authority to operate for a five-year period. Rule 6A-5.066(1)(g) and (p), F.A.C.

²³ Section 1004.04(4)(a), F.S., see also Rule 6A-5.066, F.A.C.

²⁴ Id. at (3)(b)1., F.S. These include a grade point average of at least 2.5 on a 4.0 scale for the general education component of undergraduate studies or have completed the requirements for a baccalaureate degree with a minimum grade point average of 2.5 on a 4.0 scale from any college or university accredited by a regional accrediting association as defined by State Board of Education rule or any college or university otherwise approved pursuant to State Board of Education rule.

²⁵ Id. at (3)(b)2., F.S. These include mastery of general knowledge sufficient for entry into the program, including the ability to read, write, and perform in mathematics, by passing the General Knowledge Test of the Florida Teacher Certification Examination or, for a graduate level program, obtain a baccalaureate degree from an institution that is accredited or approved pursuant to the rules of the State Board of Education. Have a grade point average of at least 2.5 on a 4.0 scale for the general education component of undergraduate studies or have completed the requirements for a baccalaureate degree with a minimum grade point average of 2.5 on a 4.0 scale from any college or university accredited by a regional accrediting association.

- Performance of students in prekindergarten through grade 12 on statewide assessments using the results of the student learning growth formula established in law.²⁶
- Performance of students in prekindergarten through grade 12 aggregated by student subgroup²⁷ as a measure of how well the program prepares teachers to work with a diverse population of students in a variety of settings in Florida public schools.
- Results of program completers' annual evaluations in accordance with the timeline as set forth in law.²⁸
- Production of program completers in statewide critical teacher shortage areas as identified in law.²⁹

Effect of the Bill

Section 10 amends s. 1004.04, F.S., to require that, beginning on July 1, 2017, an institution that seeks initial approval to offer only a graduate-level teacher preparation program in an educator certification area that does not require a graduate-level degree must provide students with an option to complete the program at the bachelor's level. Additionally, this section requires an existing state-approved program to also meet the specified requirements for continued approval.

Articulated Acceleration Mechanisms (Section 11)

Present Situation

The Florida statewide articulation agreement³⁰ governs the use of acceleration mechanisms, including nationally standardized examinations through which students may earn credit.³¹

The DOE must annually identify and publish the minimum scores, maximum credit, and course or courses for which credit is to be awarded to include, but not limited to, examinations under the College Board Advanced Placement (AP), Advanced International Certificate of Education (AICE), and International Baccalaureate (IB) programs.³²

Florida law³³ requires that, for AP and IB examinations, the specific course for which a student may receive such credit must be specified in the statewide articulation agreement. The law governing the award of AICE credit authorizes that the specific course for which a student may receive such credit must be determined by the Florida College System institution or university that accepts the student for admission.³⁴

²⁶ Section 1012.34, F.S.

²⁷ Subgroups are defined in the federal Elementary and Secondary Education Act (ESEA), 20 U.S.C. s. 6311(b)(2)(C)(v)(II),

²⁸ Section 1012.34, F.S.

²⁹ Section 1012.07, F.S.

³⁰ Section 1007.23, F.S.

³¹ *Id.* at (1)(e). Examinations include advanced placement, credit by examination, the International Baccalaureate Program, and the Advanced International Certificate of Education Program. Section 1007.27(1), F.S.

³² Section 1007.27(2), F.S. The *Articulation Coordinating Committee Credit-by-Exam Equivalencies* contains a list of examinations, minimum scores for guaranteed transfer credit, maximum credits guaranteed to transfer, and recommended postsecondary course equivalents. Rule 6A-10.024, F.A.C.

³³ Section 1007.27(5) and (7), F.S.

³⁴ *Id.* at (8).

Effect of the Bill

Section 11 amends 1007.27, F.S., to require that the specific course for which a student may receive credit must be specified in the statewide articulation agreement. This revision requires that postsecondary credit awarded for an AICE examination must be awarded in the same manner as for AP and IB examinations.

Dual Enrollment Programs (Section 12)***Present Situation***

Dual enrollment is the enrollment of an eligible secondary student or home education student in a postsecondary course creditable toward high school completion and a career certificate or an associate or baccalaureate degree.³⁵ As a component of dual enrollment, career dual enrollment is provided as an option for secondary students to earn industry certifications,³⁶ which may count toward credits required to earn a standard high school diploma. Career dual enrollment is available for secondary students seeking a degree and industry certification through a career education program or course.³⁷

Articulation agreements govern participation in dual enrollment at an eligible postsecondary institution by public school students,³⁸ private school students,³⁹ and home education students.⁴⁰ However, the Commissioner of Education (Commissioner) may approve dual enrollment agreements for limited course offerings that have statewide appeal. Such programs must be limited to a single site with multiple county participation.⁴¹

The Florida Virtual School full-time program (FLVS Full Time) is a fully accredited K-12 public school offering comprehensive, full time online learning for all Florida students.⁴² FLVS Full Time students who meet Florida graduation requirements are able to receive a standard diploma.⁴³

The State Board of Education has rulemaking authority for dual enrollment programs involving requirements for high school graduation.⁴⁴

³⁵ Section 1007.271(1), F.S.

³⁶ Section 1008.44, F.S., which establishes the CAPE Industry Certification Funding List and CAPE Postsecondary Industry Certification Funding List.

³⁷ Section 1007.271(7), F.S.

³⁸ Section 1007.271(21), F.S.

³⁹ Section 1007.271(24)(b), F.S.

⁴⁰ Section 1007.271(13)(b), F.S.

⁴¹ Section 1007.271(19), F.S., e.g., Boys State and Girls State, Lou Frey Institute of Politics and Government Civic Leadership Academy, the University of Florida Young Entrepreneurs for Leadership and Sustainability, and the University of Florida Student Science Training Program.

⁴² Email, Florida Department of Education, *2017 Agency Bill Analysis for SB 868* (March 29, 2017).

⁴³ *Id.*

⁴⁴ Section 1007.271(12), F.S.

Effect of the Bill

Section 12 amends s. 1007.271, F.S., to define career dual enrollment as non-college-credit towards a career certificate or leading to an industry certification as specified in rule by the SBE. This clarifies that students who are enrolled in college credit dual enrollment that leads to a career degree, such as an associate in science or associate in applied science degree, do not also have to earn an industry certification.

Additionally, this section authorizes the Commissioner to approve a statewide dual enrollment articulation agreement for the FLVS to enroll FLVS full-time students at a postsecondary institution eligible to participate in dual enrollment. As a result, the FLVS will not be required to negotiate a separate agreement with each eligible postsecondary education institution for students to participate in dual enrollment. Additionally, the Florida Virtual School may be required to pay the standard tuition for FLVS full-time students participating in dual enrollment at a public postsecondary institution,⁴⁵ and may be required to provide instructional materials for such students.⁴⁶

This section expands SBE rulemaking to require rulemaking relating to student eligibility and participation, courses and programs, funding, and articulation agreements.

Worker's Compensation Coverage (Sections 1 and 2)

Present Situation

Florida law requires organizations, including the Division of Vocational Rehabilitation (VR) and the Division of Blind Services (DBS),⁴⁷ to cooperate to better assist individuals with disabilities in the workplace.⁴⁸ The DBS and the VR each provide community-based work experiences to their adult and youth clients.⁴⁹

Generally, employers are required to provide medical and indemnity benefits to a worker who is injured due to an accident arising out of and during the course of employment.⁵⁰ For such injuries, an employer is responsible for providing medical treatment,⁵¹ and compensation in the event of employee disability or death.⁵² Specific employer coverage requirements are based on the type of industry, number of employees, and entity organization.⁵³

⁴⁵ Section 1007.271(21)(n), F.S.

⁴⁶ *Id.* at (17).

⁴⁷ Both divisions are divisions within the Florida Department of Education. Section 20.15(3), F.S.

⁴⁸ Section 413.80, F.S.

⁴⁹ Vocational Rehabilitation, *2015-2016 Annual Report*, at 6, available at <http://www.rehabworks.org/docs/AnnualReport16.pdf> and Florida Department of Education, Division of Blind Services, *Employer Services*, <http://dbs.myflorida.com/Employer/index.html> (last visited March 31, 2017).

⁵⁰ Section 440.09(1), F.S.

⁵¹ Section 440.13, F.S.

⁵² Section 440.15, F.S.

⁵³ Division of Workers' Compensation, *Coverage Requirements*, <http://www.myfloridacfo.com/division/wc/Employer/coverage.htm#.WLc13vkrKCg> (last visited March 31, 2017).

Effect of the Bill

Sections 1 and 2 amend ss. 413.011 and 413.209, F.S., respectively, to require that individuals who participate in an on-the-job training activity through the DBS or the VR be deemed an employee of the state for purposes of workers' compensation coverage.

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:

Under this bill, private sector entities may experience a cost savings by not having to provide workers compensation coverage for a person participating in a Division of Blind Services (DBS) or Vocational Rehabilitation (VR) on-the-job-training.

C. Government Sector Impact:

The Division of Risk Management expects to incur additional claim costs for covering DBS and VR on-the-job training participants.⁵⁴

The bill repeals s. 1002.455, F.S., relating to student eligibility for K-12 virtual instruction. These changes will open various virtual education options that are not currently available to students who did not attend public school in the prior year. The estimated fiscal impact to the Florida Education Finance Program (FEFP) to fund the expansion of student eligibility for public virtual education is expected to be absorbed within the FEFP calculation, and is estimated at \$4,363,075.

VI. Technical Deficiencies:

According to the Department of Financial Services,

⁵⁴ Department of Financial Services, *Legislative Bill Analysis for SB 868* (February 22, 2017).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 413.011, 1002.31, 1002.33, 1002.37, 1002.45, 1003.4282, 1003.498, 1003.52, 1004.015, 1004.04, 1007.27, 1007.271, and 1011.62.

This bill creates section 413.209 of the Florida Statutes.

This bill repeals section 1002.455 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS for CS by Appropriations Subcommittee on Pre-K-12 Education on April 18, 2017:

The committee substitute deletes language specifying that the services offered for a Department of Juvenile Justice program of less than 40 days applies to a detention program.

CS by Education on April 3, 2017:

The committee substitute:

- Deems clients who participate in on-the-job training administered by the Division of Blind Services and the Division of Vocational Rehabilitation, as state employees for the purposes of workers' compensation.
- Modifies the student eligibility and student participation requirements related to virtual instruction program. Specifically, the committee substitute:
 - Removes the requirement that student enrollment in a virtual instruction program be limited to a program provided by a school district or virtual charter school operated by the district in which the student resides.
 - Expands the requirement that each student enrolled in a virtual instruction program or virtual charter school take state assessment tests to allow such student to take state assessment tests in the district in which the student enrolls. Additionally, the bill specifies that if requested by the provider, the district of residence must provide the student with access to the district's testing facilities.
- Modifies available controlled open enrollment options to include virtual charter schools and district virtual programs.

- B. Amendments:

None.