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# **Schools & Learning Council Meeting Packet**

**March 27, 2007**

**212 Knott**

**1:00 – 4:00 pm**

**Marco Rubio  
Speaker**

**Joe H. Pickens  
Council Chair**



# The Florida House of Representatives

## Schools & Learning Council

Marco Rubio  
Speaker

Joe H. Pickens  
Chair

**Meeting Agenda**  
**Tuesday, March 27, 2007**  
**212 Knott**  
**1:00 – 4:00 PM**

**I. Roll Call**

**II. Consideration of the following proposed council bill(s):**

PCB SLC 07-07 -- Option to Divide School Districts

**Consideration of the following bill(s):**

HB 35 Educational Opportunities for Dependent Children  
of Servicemembers or Civilian Personnel Classified as  
Prisoners of War or Missing in Action by Jordan  
HB 289 Textbook Affordability by Flores  
HB 355 Florida Teachers Lead Program Stipend by Vana  
HB 491 Tuition Waivers by Scionti  
HB 561 Human Papillomavirus by Homan  
HB 575 School Safety by Thompson, N., Aubuchon  
HB 645 Growth Management by Hays  
HB 721 Tax on Sales, Use, and Other Transactions by Proctor  
HB 967 Public School Physical Education by Weatherford  
HB 1107 Child Care by Ausley  
HB 1201 Building Designations by Gibson, A.  
High School Athletics -- PCS for HB 461  
Public Records/Drug Test/HS Athletics -- PCS for HB 463  
High School to Business Career Enhancement -- PCS for HB 1161

**III. Closing Comments / Meeting Adjourned**



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 35 Educational Opportunities for Dependent Children of Servicemembers or Civilian Personnel Classified as Prisoners of War or Missing in Action

**SPONSOR(S):** Jordan and others

**TIED BILLS:**

**IDEN./SIM. BILLS:** CS/SB 412

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| REFERENCE                                      | ACTION          | ANALYST                  | STAFF DIRECTOR        |
|--|-----------------|--------------------------|-----------------------|
| 1) <u>Committee on Postsecondary Education</u> | <u>9 Y, 0 N</u> | <u>Thomas</u>            | <u>Tilton</u>         |
| 2) <u>Schools &amp; Learning Council</u>       | <u></u>         | <u>Thomas <i>MST</i></u> | <u>Cobb <i>cc</i></u> |
| 3) <u>Policy &amp; Budget Council</u>          | <u></u>         | <u></u>                  | <u></u>               |
| 4) <u></u>                                     | <u></u>         | <u></u>                  | <u></u>               |
| 5) <u></u>                                     | <u></u>         | <u></u>                  | <u></u>               |

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### SUMMARY ANALYSIS

HB 35 expands the requirement that the state provide educational opportunity to a citizen of the state who has a parent classified as a prisoner of war or missing in action. The bill deletes the restriction in current law that limits the benefits to children whose parents served in the Korean Conflict or the Vietnam Era.

The effective date provided is July 1, 2007.

The fiscal impact of the bill is minimal. (See Fiscal Comments)

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0035b.SLC.doc

DATE: 3/23/2007



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Empower families** – The bill expands educational opportunities for dependent children when either parent has been classified as a prisoner of war or missing in action.

#### B. EFFECT OF PROPOSED CHANGES:

##### Background

Section 295.015 F.S., currently provides for educational benefits at state expense to dependent children of certain Florida residents who have been classified prisoners of war (POW) or missing in action (MIA) in the Korean Conflict and the Vietnam Era. In order for dependent children to qualify for these benefits, a POW or MIA must have been a bona fide Florida resident for 5 years preceding an application for benefits and be a permanent resident of Florida on the effective date of the act. The initial act was passed in 1972.

The benefit applies to dependent children whose parents were classified as prisoners of war or missing in action while serving in the U.S. Armed Forces or in the capacity of civilian personnel captured while serving with the consent or authorization of the United States Government.

The educational opportunity is provided until the time that the parent is classified as returned alive or the parent's remains are recovered.

##### Effect of Proposed Changes

HB 35 expands the requirement that the state provide educational opportunity to a citizen of the state who has a parent classified as a prisoner of war or missing in action. The bill deletes the restriction in current law that limits the benefits to children whose parents served in the Korean Conflict or the Vietnam Era.

According to the U.S. Department of Veterans' Affairs records, only one person since the Korean Conflict or the Vietnam Era from Florida is listed as POW/MIA.<sup>1</sup>

#### C. SECTION DIRECTORY:

**Section 1.** Amends s. 295.015, F.S., expanding the provision of educational opportunity at state expense for children of servicemembers, or civilian personnel captured while serving with the consent or authorization of the United States Government and classified as prisoners of war or missing in action.

**Section 2.** Provides an effective date of July 1, 2007.

### II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

See FISCAL COMMENTS.

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<sup>1</sup> Florida Department of Veterans' Affairs Bill analysis for House Bill 35

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Dependent children who qualify will receive financial support for undergraduate education.

D. FISCAL COMMENTS:

The fiscal impact is projected to be minimal. The Florida Department of Veterans' Affairs reports that currently only two children in the state will be affected by the expansion of the educational opportunities for children of POWs and MIAs.<sup>2</sup>

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require a city or county to expend funds or to take any action requiring the expenditure of funds

The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

This bill does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Current law requires the parent to have been a permanent resident of Florida on "the effective date of the act". The act was created in 1972. If this provision is not changed, it could nullify the intended expansion of the program.<sup>3</sup>

The sponsor of the bill has filed an amendment with committee staff to address this concern.

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<sup>2</sup> Conversation with Florida Department of Veterans' Affairs dated March 1, 2007.

<sup>3</sup> Florida Department of Veterans' Affairs Bill Analysis for House Bill 35

#### D. STATEMENT OF THE SPONSOR

House Bill 35 corrects an issue relating to the education of dependent children of Florida residents classified as Prisoner of War/Missing in Action.

This bill was originally an amendment to House Bill 1065 adopted during the 2006 session. The limitations currently in F.S. 295.015 to the dependent children of Korean War or Vietnam Conflict service members excluded the children of Captain Scott Speicher from Jacksonville. Capt. Speicher is the only Florida resident who is currently listed as POW/MIA. His status after being shot down on the first night of the first Gulf War has changed several times from Prisoner of War/Mission in Action (POW/MIA) to Killed in Action (KIA) back to POW/MIA.

Had he remained classified as KIA, his children would have been eligible for the Children of Deceased or Disabled Veterans Scholarship. Once he was reclassified POW/MIA, his children became ineligible to receive that benefit. His family suggested the amendment to HB 1065 in 2006, which was adopted. Unfortunately, the Senate companion was already on second reading at the time this House amendment was adopted and would have required the Senate bill be re-referred to committee and thus jeopardized the original bill. It was decided to adopt the Senate companion in the House without the amendment for the dependents of those classified as POW/MIA; with the promise to the Speicher family that a stand alone bill would be filed for the 2007 session.

This legislation removes any qualifiers based on a specific conflict or war and will ensure that in the unfortunate event any other Florida residents becomes classified POW/MIA, their dependent children will be eligible to receive their education at state expense, just as the dependent children and spouses of those service members who are killed or become disabled in action.

The amendment to HB 35 to be taken up in the Committee on Post-Secondary Education will also address concerns on the effective date of the act raised in the staff analysis. The amendment will also decrease the residency requirement from five years to one year. The reduced residency requirement brings this section of F.S. 295 in line with the residency requirements in other sections of F.S. 295.

#### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 13, 2007, the Committee on Postsecondary Education adopted an amendment to reduce the Florida residency requirement from 5 years to 1 year prior to an event resulting in said parent being declared a prisoner of war or missing in action. In addition, the amendment deletes a reference in current law that requires the parent to have been a permanent resident of Florida on "the effective date of the act". The act was created in 1972.

1 A bill to be entitled

2 An act relating to educational opportunities for dependent  
 3 children of servicemembers or civilian personnel  
 4 classified as prisoners of war or missing in action;  
 5 amending s. 295.015, F.S.; expanding the provision of  
 6 educational opportunity at state expense for children of  
 7 servicemembers, or civilian personnel captured while  
 8 serving with the consent or authorization of the United  
 9 States Government, classified as prisoners of war or  
 10 missing in action; providing an effective date.

11  
 12 Be It Enacted by the Legislature of the State of Florida:

13  
 14 Section 1. Subsection (1) of section 295.015, Florida  
 15 Statutes, is amended to read:

16 295.015 Children of prisoners of war and persons missing  
 17 in action; education.--

18 (1) It is hereby declared to be the policy of the state to  
 19 provide educational opportunity at state expense for dependent  
 20 children either of whose parents has been ~~became~~ classified as a  
 21 prisoner ~~prisoners~~ of war or missing in action in the service of  
 22 the Armed Forces of the United States ~~during the Korean Conflict~~  
 23 ~~or during the Vietnam Era, as defined in s. 1.01(14),~~ or in the  
 24 capacity of civilian personnel captured while serving with the  
 25 consent or authorization of the United States Government. Such  
 26 educational opportunity shall be provided until such time as the  
 27 parent so classified is returned alive or the parent's remains  
 28 are recovered; provided that, in order to be eligible, the

HB 35

2007

29 | parents of such children must have been bona fide residents of  
30 | the state for 5 years next preceding their application for the  
31 | benefits hereof and must be permanent residents of the state on  
32 | the effective date of this act.

33 |       Section 2. This act shall take effect July 1, 2007.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **HB 35**

COUNCIL/COMMITTEE ACTION

|                       |                                     |       |
|-----------------------|-------------------------------------|-------|
| ADOPTED               | ___                                 | (Y/N) |
| ADOPTED AS AMENDED    | ___                                 | (Y/N) |
| ADOPTED W/O OBJECTION | <input checked="" type="checkbox"/> | (Y/N) |
| FAILED TO ADOPT       | ___                                 | (Y/N) |
| WITHDRAWN             | ___                                 | (Y/N) |
| OTHER                 | _____                               |       |

1 Council/Committee hearing bill: Committee on Postsecondary  
2 Education

3 Representative(s) Jordan offered the following:

4  
5 **Amendment (with directory and title amendments)**

6 Remove line(s) 29 - 32 and insert:

7  
8 parents of such children must have been ~~bona fide~~ residents of  
9 the state for 1 year ~~5 years next~~ preceding the event which led  
10 to the parent's classification as prisoner of war or missing in  
11 action by the United States Government ~~their application for the~~  
12 ~~benefits hereof and must be permanent residents of the state on~~  
13 ~~the effective date of this act.~~

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## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

*Provide limited government* – This bill requires the State Board of Education and the Board of Governors to adopt policies, procedures, and guidelines for community colleges and state universities to further efforts to minimize textbook costs. This bill also requires OPPAGA to study the rising costs of textbooks and textbook purchasing practices in Florida.

*Ensure lower taxes* – This bill creates a tax exemption for required textbooks for degree-seeking students.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Background**

Textbook costs across the country have increased at twice the rate of inflation over the last 2 decades.<sup>1</sup> The high cost of textbooks is an issue facing not only Florida, but the entire country. States across the country have been proposing and implementing legislation to address this issue. California urges textbook publishers to “unbundle” texts from expensive software as often as possible. California requires the cost of the textbook to be disclosed to faculty. California passed legislation urging universities to create a textbook rental service, but this was subsequently vetoed by the governor. Connecticut requires the cost of textbooks be disclosed to faculty as well and also allows students to purchase their textbooks prior to financial aid disbursement. Virginia prohibits university faculty from receiving any benefits from textbook publishers for requiring students to purchase a certain textbook. Virginia also created guidelines that encourage efforts to minimize the cost of textbooks. Washington requires bookstores to disclose how new editions differ from previous editions. Last session, Maryland considered but failed to pass two bills related to textbook affordability. One provided a tax exemption for textbooks and the other required bookstores to post textbook information by a certain time and prohibited faculty compensation from textbook publishers. There are two bills currently before the Texas legislature regarding textbook affordability and three before the Arkansas legislature. These bills require the establishment of guidelines for the use of royalties received by a faculty member from the sale of textbooks for their classes, require the publication of required textbooks by a given deadline, prohibit faculty compensation, require the same edition of textbooks to remain in use for three years unless good cause for change exists, and restrict bundling of materials.

Postsecondary education institutions across Florida have individually created textbook adoption processes, policies for notification of required textbooks to students, and restrictions on instructors from receiving compensation. The textbook adoption policies created by each institution vary from formal processes set out in their collective bargaining agreements between the union and the Board of Trustees to less formal faculty discussions or committee meetings. Most institutions follow the less formal textbook adoption process of faculty discussions or committee meetings. Most postsecondary education institutions make the textbook information available to students prior to the first day of class through online syllabi, a specific textbook information web page, or most commonly through the campus bookstore website. A minority of institutions have an express prohibition against instructors receiving compensation from textbook publishers. Other institutions have less formal restrictions on instructor compensation ranging from filing Conflict of Interest forms to relying on the institution’s Code of Ethics. Postsecondary education institutions have general processes regarding textbook adoption

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<sup>1</sup> U.S. Gov’t Accountability Office, College Textbooks: Enhanced Offerings Appear to Drive Recent Price Increases, GAO-05-806 (July 2005).

and affordability, however there is currently no uniformity in these processes, even between branches of the same institution.<sup>2</sup>

The State Board of Education and the Board of Governors, currently, have no policies, procedures, or guidelines regarding textbook adoption for postsecondary education institutions.

The sales tax in Florida is set at six percent of the sales price of all items sold through retail transactions.<sup>3</sup> In addition to the state sales tax, local governments are authorized to impose a discretionary sales surtax.<sup>4</sup> Sales tax exemptions exist for a range of items including general groceries, medical products and supplies, and certain farming equipment. An exemption also exists for school books used in regularly prescribed courses of study for students in kindergarten through grade 12. The exemption excludes school books sold at community colleges and other institutions of higher learning.<sup>5</sup>

### **Effect of Proposed Changes**

This bill provides a sales tax exemption for required or recommended textbooks for degree-seeking students of certain degree-granting postsecondary educational institutions in Florida. The exemption applies to required or recommended textbooks in which these students are currently enrolled. This exemption is available to students enrolled in public universities, community colleges, baccalaureate-degree granting independent nonprofit colleges or universities accredited by the Commission on Colleges of the Southern Association of Colleges and Schools and located in and chartered as a domestic corporation by the state, or independent postsecondary educational institutions in Florida that are licensed by the Commission for Independent Education and are authorized to grant degrees. Students must show valid student identification cards and documentation that the textbooks are required or recommended in order to receive the exemption.

This bill creates a new section, s. 1004.09, F.S., addressing textbook affordability and establishing requirements for the State Board of Education (SBE), the Board of Governors (BOG), state universities, community colleges, and their employees regarding this issue. This bill prohibits employees of state universities and community colleges from receiving any form of compensation for requiring a certain textbook. The only exceptions to this restriction are sample copies, instructor copies, or educational materials, and royalties from sales of textbooks that include the instructor's writing or work. This bill also requires state universities and community colleges to notify students of the required textbooks 15 days prior to the first day of classes or when the instructor or academic department identifies the required or recommended textbook. The bill requires SBE and BOG to adopt policies, procedures, and guidelines by February 1, 2008 to further efforts to minimize the cost of textbooks. These policies must provide for adopting textbooks with sufficient lead time to ensure bookstores have the textbooks and are able to have as many used textbooks as possible. The policies must include a requirement for confirmation, by the instructor or the academic department, of the intent to use all items ordered, especially bundled materials, a single package including a textbook with other materials. The policies must require the determination, by the instructor or the academic department, that the new edition of the required textbook significantly differs in a substantive way from earlier editions. The final requirement for these policies is to provide for the availability of required textbooks to students who could not otherwise afford the cost.

This bill requires the Office of Program Policy Analysis and Government Accountability (OPPAGA) to conduct a study of the rising costs of textbooks and textbook purchasing practices of public postsecondary educational institutions in the state and provide a final report to the President of the

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<sup>2</sup> See Survey on Textbook Policies and Practices at Florida's postsecondary education institutions, conducted by the Committee on Colleges and Universities in summer 2006.

<sup>3</sup> s. 212.05(1)(a), F.S.

<sup>4</sup> s. 212.055, F.S.

<sup>5</sup> s. 212.08(7)(r), F.S.

Senate and the Speaker of the House by December 1, 2007. OPPAGA is required to conduct a sample survey of students in these institutions on the cost of textbooks each semester. OPPAGA then must review and analyze the different textbook purchasing policies around the state and develop and disseminate best practices for textbook purchasing. OPPAGA must also review textbook policies and practices being considered or implemented in other states in an effort to reduce textbook costs, including, but not limited to, use of used textbooks, rental textbook systems, digital textbook subscriptions, textbook financing programs, faculty education, and standard procedures for institutions and college bookstores.

C. SECTION DIRECTORY:

- Section 1:** Amends s. 212.08, F.S., creating a tax exemption for required or recommended textbooks.
- Section 2:** Creates a new section, s. 1004.09, F. S., creating responsibilities for postsecondary education institutions, their employees, and the State Board of Education and the Board of Governors.
- Section 3:** Requires a study and report by the Office of Program Policy Analysis and Government Accountability.
- Section 4:** Provides an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Consensus Estimating Conference met on March 17, 2007, and adopted the following estimate for this bill.<sup>6</sup>

|                           | FY 2007-2008<br>Annualized | FY 2007-2008<br>Cash | FY 2009-2009<br>Cash | FY 2009-2010<br>Cash | FY 2010-2011<br>Cash |
|---------------------------|----------------------------|----------------------|----------------------|----------------------|----------------------|
| General Revenue           | (\$40.2 m)                 | (\$36.9 m)           | (\$43.2m)            | (\$46.0 m)           | (\$48.8 m)           |
| State Trust               | (\$0.1 m)                  | (\$0.1 m)            | (\$0.1 m)            | (\$0.1 m)            | (\$0.1 m)            |
| <b>Total State Impact</b> | <b>(\$40.3 m)</b>          | <b>(\$37.0 m)</b>    | <b>(\$43.3 m)</b>    | <b>(\$46.1 m)</b>    | <b>(\$48.9 m)</b>    |
| Revenue Sharing           | (\$1.3 m)                  | (\$1.2 m)            | (\$1.4 m)            | (\$1.5 m)            | (\$1.6 m)            |
| Local Gov't Half Cent     | (\$3.9 m)                  | (\$3.5 m)            | (\$4.1 m)            | (\$4.4 m)            | (\$4.7 m)            |
| Local Option              | (\$3.8 m)                  | (\$3.5 m)            | (\$4.1 m)            | (\$4.4 m)            | (\$4.6 m)            |
| <b>Total Local Impact</b> | <b>(\$9.0 m)</b>           | <b>(\$8.2 m)</b>     | <b>(\$9.6 m)</b>     | <b>(\$10.3 m)</b>    | <b>(\$10.9 m)</b>    |
| <b>Total Impact</b>       | <b>(\$49.3 m)</b>          | <b>(\$45.2 m)</b>    | <b>(\$52.9 m)</b>    | <b>(\$56.4 m)</b>    | <b>(\$59.8 m)</b>    |

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Please refer to the above table.

2. Expenditures:

None.

<sup>6</sup> <http://edr.state.fl.us/conferences/revenueimpact/impact.htm>

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill may reduce the cost students in postsecondary education institutions pay for textbooks by creating a tax exemption for certain textbooks.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The provisions of this bill appear to reduce the authority that cities and counties have to raise revenue through local options sales taxes. The bill does not appear to qualify for an exemption or exception. Therefore, the constitutional mandate provision may be applicable and this bill may require a two - thirds vote of the membership of each chamber for passage.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill does not create any rule-making authority; however this bill does require the adoption of policies, procedures and guidelines, requiring less time for implementation.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Department of Education recommends considering clarification of the following<sup>7</sup>:

- This bill appears to be applicable to all bookstores in Florida, not just those on college and university campuses. If that is not the intent, then further clarification is needed.
- If the exemption applies to textbooks that are purchased from a vendor over the telephone or on the Internet, it is unclear how student, institution, or textbook eligibility would be provided or verified.
- If there was more time between release of the OPPAGA report and the deadline for State Board of Education procedures and guidelines development, the benefits of that research might inform a better policy

This bill is applicable to required or recommended textbooks, regardless of the location of the bookstore. However, identification must be checked by the bookstore to ensure the purchaser is a degree seeking student at certain degree granting postsecondary educational institutions in Florida. Therefore, it appears that the exemption does not apply to telephone or internet vendors.

D. STATEMENT OF THE SPONSOR

No statement submitted.

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<sup>7</sup> Florida Department of Education, Governmental Relations Office, 2007 Legislative Bill Analysis on HB 289: An act relating to textbook affordability.

#### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

1                                   A bill to be entitled  
 2           An act relating to textbook affordability; amending s.  
 3           212.08, F.S.; exempting certain textbooks from the tax on  
 4           sales, use, and other transactions; providing  
 5           requirements; providing a definition; creating s. 1004.09,  
 6           F.S.; prohibiting certain actions of community college or  
 7           state university employees that relate to student purchase  
 8           of required textbooks; requiring student notification of  
 9           assigned textbooks; requiring adoption of specified  
 10          policies and practices to minimize the cost of textbooks;  
 11          requiring a study and report by the Office of Program  
 12          Policy Analysis and Government Accountability; providing  
 13          an effective date.

14  
 15          WHEREAS, textbooks are an essential part of a comprehensive  
 16          and high-quality postsecondary education, and

17          WHEREAS, the availability and affordability of textbooks  
 18          directly impact the quality and affordability of postsecondary  
 19          education, and

20          WHEREAS, the United States Government Accountability Office  
 21          recently reported that in the last two decades college textbook  
 22          prices have increased at twice the rate of inflation, and

23          WHEREAS, the United States Government Accountability Office  
 24          reported that, while many factors affect textbook pricing, the  
 25          increasing costs associated with developing instructional  
 26          supplements to accompany textbooks best explain price increases  
 27          in recent years, and

28 WHEREAS, the United States Government Accountability Office  
29 reported that college textbook prices in the United States may  
30 exceed prices in other countries because prices reflect market  
31 conditions found in each country, such as the willingness and  
32 ability of students to purchase the textbook, and

33 WHEREAS, the cost of textbooks is one component considered  
34 in making federal and state-funded financial aid awards, and as  
35 such, escalating textbook prices can impact federal and state  
36 spending, and

37 WHEREAS, state universities and community colleges should  
38 consider the least costly practices in assigning textbooks when  
39 such practices are educationally sound, NOW, THEREFORE,

40

41 Be It Enacted by the Legislature of the State of Florida:

42

43 Section 1. Paragraph (r) of subsection (7) of section  
44 212.08, Florida Statutes, is amended, and paragraph (eee) is  
45 added to that subsection, to read:

46 212.08 Sales, rental, use, consumption, distribution, and  
47 storage tax; specified exemptions.--The sale at retail, the  
48 rental, the use, the consumption, the distribution, and the  
49 storage to be used or consumed in this state of the following  
50 are hereby specifically exempt from the tax imposed by this  
51 chapter.

52 (7) MISCELLANEOUS EXEMPTIONS.--Exemptions provided to any  
53 entity by this chapter do not inure to any transaction that is  
54 otherwise taxable under this chapter when payment is made by a  
55 representative or employee of the entity by any means,

56 including, but not limited to, cash, check, or credit card, even  
 57 when that representative or employee is subsequently reimbursed  
 58 by the entity. In addition, exemptions provided to any entity by  
 59 this subsection do not inure to any transaction that is  
 60 otherwise taxable under this chapter unless the entity has  
 61 obtained a sales tax exemption certificate from the department  
 62 or the entity obtains or provides other documentation as  
 63 required by the department. Eligible purchases or leases made  
 64 with such a certificate must be in strict compliance with this  
 65 subsection and departmental rules, and any person who makes an  
 66 exempt purchase with a certificate that is not in strict  
 67 compliance with this subsection and the rules is liable for and  
 68 shall pay the tax. The department may adopt rules to administer  
 69 this subsection.

70 (r) School books and school lunches.--This exemption  
 71 applies to school books used in regularly prescribed courses of  
 72 study, and to school lunches served in public, parochial, or  
 73 nonprofit schools operated for and attended by pupils of grades  
 74 K through 12. Yearbooks, magazines, newspapers, directories,  
 75 bulletins, and similar publications distributed by such  
 76 educational institutions to their students are also exempt.  
 77 ~~School~~ Books, other than those provided for in paragraph (eee),  
 78 and food sold or served at community colleges and other  
 79 institutions of higher learning are taxable.

80 (eee) Textbooks.--Also exempt from the tax imposed by this  
 81 chapter are textbooks purchased by postsecondary degree-seeking  
 82 students for their courses. This exemption applies only to  
 83 textbooks that are required or recommended for a course in which



84 such student is enrolled at an eligible institution of higher  
 85 education. Upon purchase of such textbooks, the student shall  
 86 present a valid student identification card from an eligible  
 87 institution of higher education and documentation that confirms  
 88 such textbooks are required or recommended for the course in  
 89 which the student is enrolled. For purposes of this paragraph,  
 90 the term "eligible institution of higher education" means:

91 1. A state university or public community college in the  
 92 state;

93 2. A baccalaureate-degree granting independent nonprofit  
 94 college or university that is accredited by the Commission on  
 95 Colleges of the Southern Association of Colleges and Schools and  
 96 is located in and chartered as a domestic corporation by the  
 97 state; or

98 3. An independent postsecondary educational institution in  
 99 the state that is licensed by the Commission for Independent  
 100 Education and is authorized to grant degrees.

101 Section 2. Section 1004.09, Florida Statutes, is created  
 102 to read:

103 1004.09 Textbook affordability.--

104 (1) No employee of a community college or state university  
 105 may demand or receive any payment, loan, subscription, advance,  
 106 deposit of money, service, or anything of value, present or  
 107 promised, as an inducement for requiring students to purchase a  
 108 specific textbook for coursework or instruction, with the  
 109 exception that an employee may receive:

110 (a) Sample copies, instructor copies, or instructional  
 111 materials, not to be sold.

112 (b) Royalties or other compensation from sales of  
113 textbooks that include the instructor's own writing or work.

114 (2) No later than 15 days prior to the first day of  
115 classes or at the time a course instructor or the academic  
116 department offering a course identifies a textbook for order and  
117 subsequent student purchase, whichever is earlier, community  
118 colleges and state universities shall notify students of the  
119 textbooks assigned for each course offered at the institution by  
120 listing each assigned textbook on the website of the  
121 institution. The notification shall include the International  
122 Standard Book Number (ISBN) for each textbook along with other  
123 relevant information.

124 (3) By February 1, 2008, the State Board of Education and  
125 the Board of Governors each shall adopt policies, procedures,  
126 and guidelines for implementation by community colleges and  
127 state universities, respectively, that further efforts to  
128 minimize the cost of textbooks for students attending such  
129 institutions while maintaining the quality of education and  
130 academic freedom. The policies, procedures, and guidelines shall  
131 provide for the following:

132 (a) That textbook adoptions are made with sufficient lead  
133 time to bookstores so as to confirm availability of the  
134 requested materials and, where possible, ensure maximum  
135 availability of used books.

136 (b) That, in the textbook adoption process, the intent to  
137 use all items ordered, particularly each individual item sold as  
138 part of a bundle package, is confirmed by the course instructor

139 | or the academic department offering the course before the  
 140 | adoption is finalized.

141 | (c) That a course instructor or the academic department  
 142 | offering the course confirms before an adoption is finalized  
 143 | that the selection of a new edition textbook is based on a  
 144 | determination by the academic department offering the course  
 145 | that the new edition differs significantly in a substantive way  
 146 | from earlier versions.

147 | (d) That the establishment of policies shall include  
 148 | provisions for the availability of required textbooks to  
 149 | students otherwise unable to afford the cost.

150 | Section 3. (1) The Office of Program Policy Analysis and  
 151 | Government Accountability shall conduct a study of the rising  
 152 | costs of college textbooks and textbook purchasing practices of  
 153 | public postsecondary educational institutions in the state. In  
 154 | conducting the study, the Office of Program Planning and Policy  
 155 | Analysis shall:

156 | (a) Conduct a sample survey of students in community  
 157 | colleges and state universities regarding the costs of textbooks  
 158 | each semester.

159 | (b) Review and analyze the textbook purchasing policies of  
 160 | community colleges and state universities to develop and  
 161 | disseminate best practices for textbook purchasing.

162 | (c) Review policies and practices that are being  
 163 | considered or have been implemented by institutions of higher  
 164 | education in this state and other states to reduce the financial  
 165 | burden of textbook costs to students and their families,  
 166 | including, but not limited to, use of used textbooks, rental

167 textbook systems, digital textbook subscriptions, textbook  
 168 financing programs, faculty education, and standard procedures  
 169 for institutions and college bookstores.

170 (2) A final report, including recommendations, shall be  
 171 submitted to the President of the Senate and the Speaker of the  
 172 House of Representatives by December 1, 2007.

173 Section 4. This act shall take effect July 1, 2007.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **HB 289**

COUNCIL/COMMITTEE ACTION

|                       |       |       |
|-----------------------|-------|-------|
| ADOPTED               | ___   | (Y/N) |
| ADOPTED AS AMENDED    | ___   | (Y/N) |
| ADOPTED W/O OBJECTION | ___   | (Y/N) |
| FAILED TO ADOPT       | ___   | (Y/N) |
| WITHDRAWN             | ___   | (Y/N) |
| OTHER                 | _____ |       |

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1 Council/Committee hearing bill: Schools & Learning Council  
2 Representative(s) Flores offered the following:

**Amendment (with title amendment)**

5 Remove everything after the enacting clause and insert:  
6 Section 1. Section 1004.09, Florida Statutes, is created  
7 to read:

8 1004.09 Textbook affordability.--

9 (1) No employee of a community college or state university  
10 may demand or receive any payment, loan, subscription, advance,  
11 deposit of money, service, or anything of value, present or  
12 promised, as an inducement for requiring students to purchase a  
13 specific textbook for coursework or instruction, with the  
14 exception that an employee may receive:

15 (a) Sample copies, instructor copies, or instructional  
16 materials, not to be sold.

17 (b) Royalties or other compensation from sales of  
18 textbooks that include the instructor's own writing or work.

19 (2) No later than 45 days prior to the first day of  
20 classes or at the time a course instructor or the academic  
21 department offering a course identifies a textbook for order and  
22 subsequent student purchase, whichever is earlier, community

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

23 colleges and state universities shall notify students of the  
24 textbooks assigned for each course offered at the institution by  
25 listing each assigned textbook on the website of the  
26 institution. The notification shall include the International  
27 Standard Book Number (ISBN) for each textbook along with other  
28 relevant information.

29 (3) By March 1, 2008, the State Board of Education and the  
30 Board of Governors each shall adopt policies, procedures, and  
31 guidelines for implementation by community colleges and state  
32 universities, respectively, that further efforts to minimize the  
33 cost of textbooks for students attending such institutions while  
34 maintaining the quality of education and academic freedom. The  
35 policies, procedures, and guidelines shall provide for the  
36 following:

37 (a) That textbook adoptions are made with sufficient lead  
38 time to bookstores so as to confirm availability of the  
39 requested materials and, where possible, ensure maximum  
40 availability of used books.

41 (b) That, in the textbook adoption process, the intent to  
42 use all items ordered, particularly each individual item sold as  
43 part of a bundle package, is confirmed by the course instructor  
44 or the academic department offering the course before the  
45 adoption is finalized.

46 (c) That a course instructor or the academic department  
47 offering the course confirms before an adoption is finalized  
48 that the selection of a new edition textbook is based on a  
49 determination by the academic department offering the course  
50 that the new edition differs significantly in a substantive way  
51 from earlier versions.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

52        (d) That the establishment of policies shall include  
53 provisions for the availability of required textbooks to  
54 students otherwise unable to afford the cost.

55        Section 2. (1) The Office of Program Policy Analysis and  
56 Government Accountability shall conduct a study of the rising  
57 costs of college textbooks and textbook purchasing practices of  
58 public postsecondary educational institutions in the state. In  
59 conducting the study, the Office of Program Planning and Policy  
60 Analysis shall:

61        (a) Conduct a sample survey of students in community  
62 colleges and state universities regarding the costs of textbooks  
63 each semester.

64        (b) Review and analyze the textbook purchasing policies of  
65 community colleges and state universities to develop and  
66 disseminate best practices for textbook purchasing.

67        (c) Review policies and practices that are being  
68 considered or have been implemented by institutions of higher  
69 education in this state and other states to reduce the financial  
70 burden of textbook costs to students and their families,  
71 including, but not limited to, use of used textbooks, rental  
72 textbook systems, digital textbook subscriptions, textbook  
73 financing programs, faculty education, and standard procedures  
74 for institutions and college bookstores.

75        (2) A final report, including recommendations, shall be  
76 submitted to the President of the Senate and the Speaker of the  
77 House of Representatives by December 1, 2007.

78        Section 3. This act shall take effect July 1, 2007.

79  
80

81 ===== T I T L E   A M E N D M E N T =====

82        Remove the entire title and insert:

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

83  
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A bill to be entitled  
An act relating to textbook affordability; creating s.  
1004.09, F.S.; prohibiting certain actions of community  
college or state university employees that relate to  
student purchase of required textbooks; requiring student  
notification of assigned textbooks; requiring adoption of  
specified policies and practices to minimize the cost of  
textbooks; requiring a study and report by the Office of  
Program Policy Analysis and Government Accountability;  
providing an effective date.





HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 355 Florida Teachers Lead Program Stipend
SPONSOR(S): Vana and others
TIED BILLS: IDEN./SIM. BILLS:

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Committee on K-12, 7 Y, 0 N, Barnhill (with initials JB), Ahearn. Row 2: Schools & Learning Council, Barnhill (with initials yB), Cobb (with signature).

SUMMARY ANALYSIS

The Teachers Lead Program Stipend (the stipend) provides teachers with an annual stipend to reimburse their purchases of classroom materials made throughout the year. This bill increases the number of teachers eligible for receiving the stipend, by expanding the stipend to include prekindergarten teachers.

This bill does not appear to have a fiscal impact on state or local governments. However, the stipend amount teachers receive is dependent on the 2007-2008 General Appropriations Act.

The constitutional concern related to the scope of this bill has been addressed by an amendment adopted in the Committee on K-12. This amendment clarifies that although the bill extends the stipend to include prekindergarten classroom teachers, that extension does not include VPK teachers. VPK teachers are not funded through the Florida Education Finance Program, but are funded through a separate allocation in the budget. The amendment also includes job share teachers and charter school teachers in those eligible to receive the stipend. Please see AMENDMENTS, section IV.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

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

#### B. EFFECT OF PROPOSED CHANGES:

##### Present Situation

The Teachers Lead Program Stipend, created in 1997, provides an annual stipend to certified, regular full-time kindergarten through grade 12 (K-12) teachers, media specialists, and guidance counselors (collectively referred to as "teachers") employed on or before September 1. This stipend provides reimbursement to teachers for their purchase of classroom materials and supplies. Such purchases are not subject to state or local competitive bidding requirements. Funding for this program is determined by the Legislature in the General Appropriations Act. The Commissioner of Education calculates an amount for each school district by prorating each school district's share of the total K-12 unweighted full time equivalent student enrollment.<sup>1</sup>

Eligible teachers must sign an affidavit acknowledging receipt of funds and agreeing to use the funds for the purchase of classroom materials only. Funds must be distributed by the school districts by September 30.<sup>2</sup>

The Teachers Lead Program Stipend was amended in 2000 to provide direct compensation to teachers for their purchases of classroom materials and supplies. Prior to this amendment, the funds were distributed to each school's internal account and teachers could spend the funds on classroom materials and supplies until their allocation was fully expended.

##### Effects of Proposed Changes

This bill expands the number of teachers eligible for the Teachers Lead Program Stipend from teachers serving children in kindergarten through grade 12 (K-12) to teachers serving children in prekindergarten (PreK) through grade 12. In 2006-07, there were 169,106 public K-12 teachers, media specialists, and guidance counselors. There were 9,261 public PreK teachers. If public PreK teachers were included, the number of eligible teachers would increase to 178,367 Prek-12 teachers.

The bill may be construed to include private PreK teachers in the number of eligible teachers to receive the stipend. If construed to include private PreK teachers, the number of eligible teachers will increase to an indeterminate number.

#### C. SECTION DIRECTORY:

**Section 1.** Amends s. 1012.71, F.S., expanding the eligible stipend recipients to include prekindergarten teachers.

**Section 2.** Provides an effective date of July 1, 2007.

### II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

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<sup>1</sup> section 1012.71, F.S.

<sup>2</sup> section 1012.71(3), F.S.

1. Revenues:

The bill does not appear to have a fiscal impact on state government revenues.

2. Expenditures:

This bill does not require the expenditure of state funds. However, in order to maintain the current stipend amount of approximately \$266, if only public prekindergarten teachers were included in the number of eligible teachers, the allocation would need to increase by \$2,467,173, making the total allocation \$47,488,579 (from 169,106 K-12 classroom teachers to 178,367 public PreK-12 classroom teachers).<sup>3</sup>

In 2006-07, the Legislature appropriated \$45,021,406<sup>4</sup> for an average K-12 Teachers Lead Stipend of approximately \$266 per recipient.<sup>5</sup> In 2006-07, if public prekindergarten teachers (9,261 such teachers) were included without an increase in the 2006-07 allocation, the average teacher's stipend would decrease by approximately \$14. If the bill is construed to include private school PreK teachers, the number of eligible teachers will increase to an indeterminate number, and the stipend would be reduced accordingly.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

The bill does not appear to have a fiscal impact on local government expenditures.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill, as filed, could allow all voluntary prekindergarten (PreK) teachers to receive the Teacher Lead Program Stipend, thus benefiting PreK teachers working in the private sector, as well as in the public sector.

**D. FISCAL COMMENTS:**

Current funding for this program is \$45,021,406, as specified in the 2006-2007 General Appropriations Act, specific appropriation 97.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

This bill does not require a city or county to expend funds or to take any action requiring the expenditure of funds.

The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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<sup>3</sup> Florida Department of Education, Governmental Relations Office, 2007 Legislative Bill Analysis on HB 355: Teachers Lead Program Stipend/PreK.

<sup>4</sup> Specific Appropriation 97, ch. 2006-25, L.O.F.

<sup>5</sup> Florida Department of Education, Governmental Relations Office, 2007 Legislative Bill Analysis on HB 355: Teachers Lead Program Stipend/PreK.

This bill does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

This bill may raise a constitutional concern by providing state funds to prekindergarten teachers in private schools (i.e., private sector VPK providers). See Fla. Const. art. IX, s. 1(a). However, the amendment adopted in the Committee on K-12 addresses this issue. The amendment clarifies that the bill is not intended to include VPK teachers. The amendment expressly requires the distribution of funds to classroom teachers serving only Florida Education Finance Program (FEFP) funded students. VPK students are not funded through the FEFP, but receive a separate allocation in the General Appropriation Act.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

This stipend is not currently provided to charter school classroom teachers; however, the students attending charter schools are included in the calculation of a district's unweighted full time equivalent enrollment, thus increasing the amount of funds disbursed to a district. Accordingly, it would appear more equitable if charter school classroom teachers receive this stipend, given that their students are included in the calculation of a district's share of the appropriation.

This stipend is also unavailable to regular, part-time teachers whose full-time job responsibility is the classroom instruction of students in K-12, e.g., job share teachers. However, the students of these teachers are included in the calculation of districts' unweighted full time equivalent enrollment, thus increasing the amount of funds disbursed to the district.

The amendment adopted in the Committee on K-12 addresses these issues.

D. STATEMENT OF THE SPONSOR

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

On March 13, 2007, the Committee on K-12 adopted one amendment. The amendment by Representative Flores, clarifies that although the bill extends the stipend to include prekindergarten classroom teachers, that extension does not include VPK teachers. The amendment also includes job share teachers and charter school classroom teachers in those eligible for the stipend.

1                                   A bill to be entitled  
 2           An act relating to the Florida Teachers Lead Program  
 3           Stipend; amending s. 1012.71, F.S.; extending the stipend  
 4           to teachers of prekindergarten students; providing an  
 5           effective date.

6  
 7   Be It Enacted by the Legislature of the State of Florida:

8  
 9           Section 1. Subsections (1) and (6) of section 1012.71,  
 10          Florida Statutes, are amended to read:

11           1012.71 The Florida Teachers Lead Program Stipend.--

12           (1) Funding for the Florida Teachers Lead Program Stipend  
 13          shall be as determined by the Legislature in the General  
 14          Appropriations Act. Funds appropriated for the Florida Teachers  
 15          Lead Program Stipend are provided to purchase classroom  
 16          materials and supplies used in the instruction of students in  
 17          prekindergarten ~~kindergarten~~ through grade 12 of the public  
 18          school system. From the funds appropriated, the Commissioner of  
 19          Education shall calculate an amount for each school district by  
 20          prorating the total of each school district's share of the total  
 21          ~~K-12~~ unweighted FTE student enrollment in prekindergarten  
 22          through grade 12.

23           (6) For purposes of this section, the term "classroom  
 24          teacher" includes certified teachers employed on or before  
 25          September 1 of each year whose full-time job responsibility is  
 26          the classroom instruction of students in prekindergarten  
 27          ~~kindergarten~~ through grade 12, and full-time media specialists  
 28          and guidance counselors who serve students in prekindergarten

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29 | ~~kindergarten~~ through grade 12. Only school district personnel  
30 | employed in these positions are eligible for the classroom  
31 | materials and supply stipend from funds appropriated to  
32 | implement the provisions of this section.

33 |       Section 2. This act shall take effect July 1, 2007.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. **HB 355**

COUNCIL/COMMITTEE ACTION

ADOPTED                                        (Y/N)  
ADOPTED AS AMENDED                        (Y/N)  
ADOPTED W/O OBJECTION                  **y**   (Y/N)  
FAILED TO ADOPT                            (Y/N)  
WITHDRAWN                                    (Y/N)  
OTHER                                            

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1 Council/Committee hearing bill: K-12

2 Representative(s) Flores offered the following:

3  
4        **Amendment (with title amendment)**

5        Remove everything after the enacting clause and insert:

6        Section 1. Section 1012.71, Florida Statutes, is amended to  
7 read:

8        1012.71 The Florida Teachers Lead Program Stipend.--

9        (1) Funding for the Florida Teachers Lead Program Stipend  
10 shall be as determined by the Legislature in the General  
11 Appropriations Act. Funds appropriated for the Florida Teachers  
12 Lead Program Stipend are provided to purchase classroom  
13 materials and supplies used in the instruction of students in  
14 ~~kindergarten~~ prekindergarten through grade 12 of the public  
15 school system who are funded through the Florida Education  
16 Finance Program, including charter schools. From the funds  
17 appropriated, the Commissioner of Education shall calculate an  
18 amount for each school district by prorating the total of each  
19 school district's share of the total ~~K-12~~ unweighted FTE student  
20 enrollment in prekindergarten through grade 12, who are funded  
21 through the Florida Education Finance Program.



HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

22 (2) From the funds allocated to each district, the  
23 district school board shall calculate an identical amount for  
24 each classroom teacher which is his or her proportionate share  
25 of the amount allocated to the district for the total number of  
26 classroom teachers in the district, including charter schools.  
27 A job-share classroom teacher is to receive his or her prorated  
28 share of a regular full time classroom teacher's proportionate  
29 share of the stipend. The district school board shall provide  
30 the funds no later than September 30 of each year directly to  
31 each classroom teacher or charter school as a stipend to  
32 purchase, on behalf of the school district or charter school,  
33 classroom materials and supplies to be used in the instruction  
34 of students assigned to the teacher. Each classroom teacher  
35 shall have sole discretion regarding which classroom materials  
36 and supplies best meet the needs of the students, when they are  
37 needed, and where they are acquired. The funds expended by  
38 individual classroom teachers shall not be subject to state or  
39 local competitive bidding requirements. Disbursement of Florida  
40 Teachers Lead Program Stipend funds directly to each classroom  
41 teacher, or charter school, shall complete the school district's  
42 expenditure of these funds, and disbursement to the charter  
43 school classroom teacher shall complete the charter school's  
44 expenditure of these funds.

45 (3) Each classroom teacher shall sign a statement  
46 acknowledging receipt of the funds, agreeing to keep receipts to  
47 show the expenditure of the funds used to purchase classroom  
48 materials and supplies for use in the instruction of the  
49 students assigned to them, and agreeing to return any unused  
50 funds by the end of the regular school year. The statement to be  
51 signed and dated by each classroom teacher for receipt of the  
52 Florida Teachers Lead Program Stipend shall include the wording:

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

53 "I, (Name of teacher) , am employed by the \_\_\_\_\_ County District  
54 School Board or by the \_\_\_\_\_ Charter School as a regular full-  
55 time or job-share classroom teacher. I acknowledge that Florida  
56 Teachers Lead Program Stipend funds are appropriated by the  
57 Legislature for the sole purpose of purchasing classroom  
58 materials and supplies to be used in the instruction of students  
59 assigned to me. In accepting custody of these funds, I agree to  
60 keep receipts for all expenditures. I understand that if I do  
61 not keep receipts showing these funds were spent to purchase  
62 classroom materials and supplies for use with my students, it  
63 will be my personal responsibility to pay any federal taxes due  
64 on these funds. I also agree to return any unused funds to the  
65 district school board at the end of the regular school year for  
66 deposit into the School Advisory Council account of the school  
67 at which I was employed at the time of the receipt of the  
68 funds." or for deposit into the district's Teachers Lead Program  
69 account of the district in which the charter school is  
70 sponsored, as applicable."

71 (4) Florida Teachers Lead Program Stipend funds shall be  
72 provided to each classroom teacher in addition to any other  
73 funds appropriated for public school operations.

74 (5) Any unused funds which are returned to the district  
75 school board shall be deposited into the School Advisory Council  
76 account of the school at which the classroom teacher returning  
77 the funds was employed at the time of the receipt of the  
78 funds, or deposited into the Teachers Lead Program account of  
79 the district in which the charter school is sponsored, as  
80 applicable.

81 (6) For purposes of this section, the term "classroom  
82 teacher" includes certified teachers employed on or before  
83 September 1 of each year whose regular full-time or job-share

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

84 ~~job~~ responsibility is the classroom instruction of students in  
85 ~~kindergarten~~ prekindergarten through grade 12, who are funded  
86 through the Florida Education Finance Program, and full-time  
87 media specialists and guidance counselors who serve such  
88 students, including charter schools. A job-share classroom  
89 teacher is a teacher who shares a full-time position with two or  
90 more other classroom teachers. ~~in kindergarten through grade 12.~~  
91 Only school district and charter school personnel employed in  
92 these positions are eligible for the classroom materials and  
93 supply stipend from funds appropriated to implement the  
94 provisions of this section.

95

96 Section 2. This act shall take effect July 1, 2007.

97 ===== T I T L E A M E N D M E N T =====

98 Remove the entire title and insert:

99 An act relating to the Florida Teachers Lead Program Stipend;  
100 amending s. 1012.71, F.S.; extending the stipend to certain  
101 teachers of prekindergarten students, job-share classroom  
102 teachers, and charter school teachers; providing an effective  
103 date.



HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1)

23 (2) From the funds allocated to each district, the  
24 district school board shall calculate an identical amount for  
25 each classroom teacher which is his or her proportionate share  
26 of the amount allocated to the district for the total number of  
27 classroom teachers in the district. A job-share classroom  
28 teacher shall receive his or her prorated share of a regular  
29 full-time classroom teacher's proportionate share of the  
30 stipend. The district school board shall provide the funds no  
31 later than September 30 of each year directly to each classroom  
32 teacher or charter school for its classroom teachers as a  
33 stipend to purchase, on behalf of the school district or charter  
34 school, classroom materials and supplies to be used in the  
35 instruction of students assigned to the teacher. Each classroom  
36 teacher shall have sole discretion regarding which classroom  
37 materials and supplies best meet the needs of the students, when  
38 they are needed, and where they are acquired. The funds expended  
39 by individual classroom teachers shall not be subject to state  
40 or local competitive bidding requirements. Disbursement of  
41 Florida Teachers Lead Program Stipend funds directly to each  
42 classroom teacher or charter school shall complete the school  
43 district's expenditure of these funds and disbursement of such  
44 funds by the charter school to each charter school classroom  
45 teacher shall complete the charter school's expenditure of these  
46 funds.

47 (3) Each classroom teacher shall sign a statement  
48 acknowledging receipt of the funds, agreeing to keep receipts to  
49 show the expenditure of the funds used to purchase classroom  
50 materials and supplies for use in the instruction of the  
51 students assigned to them, and agreeing to return any unused  
52 funds by the end of the regular school year. The statement to be  
53 signed and dated by each classroom teacher for receipt of the

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1)

54 Florida Teachers Lead Program Stipend shall include the wording:  
55 "I, (Name of teacher) , am employed by the \_\_\_\_\_ County  
56 District School Board or by the \_\_\_\_\_ Charter School as a  
57 regular full-time or job-share classroom teacher. I acknowledge  
58 that Florida Teachers Lead Program Stipend funds are  
59 appropriated by the Legislature for the sole purpose of  
60 purchasing classroom materials and supplies to be used in the  
61 instruction of students assigned to me. In accepting custody of  
62 these funds, I agree to keep receipts for all expenditures. I  
63 understand that if I do not keep receipts showing these funds  
64 were spent to purchase classroom materials and supplies for use  
65 with my students, it will be my personal responsibility to pay  
66 any federal taxes due on these funds. I also agree to return any  
67 unused funds to the district school board at the end of the  
68 regular school year for deposit into the School Advisory Council  
69 account of the school at which I was employed at the time of the  
70 receipt of the funds or for deposit into the Florida Teachers  
71 Lead Program account of the district in which the charter school  
72 is sponsored, as applicable."

73 (4) Florida Teachers Lead Program Stipend funds shall be  
74 provided to each classroom teacher in addition to any other  
75 funds appropriated for public school operations.

76 (5) Any unused funds which are returned to the district  
77 school board shall be deposited into the School Advisory Council  
78 account of the school at which the classroom teacher returning  
79 the funds was employed at the time of the receipt of the funds  
80 or into the Florida Teachers Lead Program account of the  
81 district in which the charter school is sponsored, as  
82 applicable.

83 (6) For purposes of this section, the term "classroom  
84 teacher" includes certified teachers, and also includes charter

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1)

85 school teachers, employed on or before September 1 of each year  
86 whose regular full-time or job-share job responsibility is the  
87 classroom instruction of students who are funded through the  
88 Florida Education Finance Program, including charter school  
89 students, in prekindergarten kindergarten through grade 12, and  
90 full-time media specialists and guidance counselors who serve  
91 such students. A job-share classroom teacher is a teacher who  
92 shares a full-time position with two or more other classroom  
93 teachers in kindergarten through grade 12. Only school district  
94 and charter school personnel employed in these positions are  
95 eligible for the classroom materials and supply stipend from  
96 funds appropriated to implement the provisions of this section.

97 Section 2. This act shall take effect July 1, 2007.

98  
99 ===== T I T L E A M E N D M E N T =====

100 Remove the entire title and insert:

101 A bill to be entitled

102 An act relating to the Florida Teachers Lead Program  
103 Stipend; amending s. 1012.71, F.S.; extending the stipend  
104 to teachers of prekindergarten students, charter school  
105 teachers, and job-share classroom teachers; revising  
106 provisions relating to the calculation, deposit, and  
107 disbursement of stipend funds; revising definition of the  
108 term "classroom teacher" to conform; providing an  
109 effective date.





HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 491 Tuition Waivers  
SPONSOR(S): Scionti and others  
TIED BILLS: IDEN./SIM. BILLS: SB 2006

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| REFERENCE                                      | ACTION          | ANALYST                 | STAFF DIRECTOR        |
|--|-----------------|-------------------------|-----------------------|
| 1) <u>Committee on Postsecondary Education</u> | <u>7 Y, 0 N</u> | <u>Thomas</u>           | <u>Tilton</u>         |
| 2) <u>Schools &amp; Learning Council</u>       | <u></u>         | <u>Thomas <i>MT</i></u> | <u>Cobb <i>CC</i></u> |
| 3) <u>Policy &amp; Budget Council</u>          | <u></u>         | <u></u>                 | <u></u>               |
| 4) <u></u>                                     | <u></u>         | <u></u>                 | <u></u>               |
| 5) <u></u>                                     | <u></u>         | <u></u>                 | <u></u>               |

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SUMMARY ANALYSIS

HB 491 creates the "Veterans' Tuition Assistance Act".

The bill requires state universities and community colleges to waive 50 percent of the in-state tuition rate for veterans who enroll as full-time, part-time, or summer-school students in any vocational or career course, undergraduate course, or graduate course.

The bill also defines a "veteran" for the purposes of the Act as a person who currently serves, or who has served and was discharged under honorable conditions, in active military service during one of the periods of wartime service as defined by the United States Department of Veterans Affairs.

The effective date provided is July 1, 2007.

The fiscal impact of the bill is indeterminate. (See Fiscal Comments)

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Ensure Lower Taxes** – The bill waives a portion of the in-state tuition for veterans who enroll as full-time, part-time, or summer-school students in any vocational or career education course, undergraduate course, or graduate course at a state university or community college. This would provide an education at a reduced cost to the veterans.

**Empower Families** – The bill increases the opportunities for veterans who currently serve, or who have served and were discharged under honorable conditions, to learn a new skill if necessary.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Background**

###### *Fee waivers*

Section 1009.26, F.S., authorizes school districts, community colleges, and state universities to provide a number of different fee waivers. Persons who may be eligible for fee waivers under this section include: persons who supervise student interns for a state university; full-time university employees; Florida residents 60 years of age or older; graduate students enrolled in certain state-approved school psychology training programs; certain out-of-state nondegree-seeking students; certain spouses of deceased state employees; and some active members of the Florida National Guard and recipients of the Purple Heart.

###### *Tuition Assistance for Veterans*

The 2006 Legislature authorized state universities and community colleges to waive undergraduate tuition for recipients of the Purple Heart or other combat decoration superior in precedence. In order to receive an undergraduate tuition waiver, a recipient of the Purple Heart or other qualified combat decoration must:

- Enroll as a full-time, part-time, or summer-school student in an undergraduate program of study leading to a degree or certification.
- Reside currently in the State of Florida, and have been a Florida resident at the time of the military action that resulted in them receiving the award.
- Submit to the state university or community college the DD-214 form issued at the time of separation from service as documentation verifying that they are a recipient of an award.

The waiver covers 110 percent of the number of required credit hours of the degree or certificate program in which the student is enrolled.

###### *Montgomery G.I Bill*

The Montgomery G.I. bill allows enlistees to buy into an educational plan that could pay up to \$1,075<sup>1</sup> a month and can be used for a number of educational programs. Veterans have up to 10 years after they leave active duty to use their GI bill.

###### *National Guard*

In Florida, certain active members<sup>2</sup> of the National Guard qualify for a 100-percent tuition waiver under s. 1009.26(8), F.S. Once a person leaves the National Guard due to separation or retirement, they no longer qualify for the waiver.

<sup>1</sup> Montgomery GI Bill (Chapter 30) Increased Educational Assistance Allowance. United States Department of Veterans Affairs. Accessed: February 27, 2007. Available at: [http://www.gibill.va.gov/GI\\_Bill\\_Info/rates/CH30/ch30rates100106.htm](http://www.gibill.va.gov/GI_Bill_Info/rates/CH30/ch30rates100106.htm).

United States Department of Veterans Affairs

Veterans of the United States Armed Forces may be eligible for a broad range of programs and services provided by the federal Department of Veterans Affairs (VA). In order to qualify for certain VA benefits, service during wartime may be required. In order to determine eligibility for certain federal benefits, Congress and the President define service during periods of wartime in Title 38 of the United States Code.<sup>3</sup> The latest available figures from the VA and the US census estimate that 296,000 veterans lived in Florida in 2004,<sup>4</sup>

**Effect of Proposed Changes**

HB 491 creates the “Veterans’ Tuition Assistance Act”.

The bill requires state universities and community colleges to waive 50 percent of the in-state tuition rate for veterans who enroll as full-time, part-time, or summer-school students in any vocational or career course, undergraduate course, or graduate course.

The bill also defines a “veteran” for the purposes of the Act as a person who currently serves, or who has served and was discharged under honorable conditions, in active military service during one of the periods of wartime service as defined by the United States Department of Veterans Affairs.

The effective date provided is July 1, 2007.

C. SECTION DIRECTORY:

**Section 1.** Provides a short title.

**Section 2.** Amends s. 1009.26, F.S., requiring state universities and community colleges to waive a percentage of the in-state tuition rate for veterans; providing a definition.

**Section 3.** Provides an effective date of July 1, 2007.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

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<sup>2</sup> The phrase “active members of the National Guard” is not to be confused with active duty member of US Armed Forces. Active duty generally means federal active duty. A member of the National Guard is typically called to state active duty, such as natural disaster missions, but in times of war, the federal government may call the National Guard up for federal active duty.

<sup>3</sup> 5 U.S.C.A. § 2108

<sup>4</sup> U.S. Census Bureau. Statistical Abstract of the United States, National Security and Veterans Affairs, 2007. Table 507. Accessed February 27, 2007. Available at: <http://www.census.gov/compendia/statab/tables/07s0507.xls>.

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The waivers will provide eligible veterans opportunities for a postsecondary education at a reduced cost.

D. FISCAL COMMENTS:

The fiscal impact is indeterminate due to the uncertainty of the number veterans who would take advantage of the 50 percent fee waiver. The Florida Department of Veterans Affairs estimates that there are 975,000 veterans in Florida between the ages of 18-and 64.<sup>5</sup>

According to the Department of Education veterans typically enroll in the summer term and complete at least 36 credit hours per year. The following fiscal estimate is based upon 36 credit hours and tuition of \$73.71 per credit hour at state universities and \$54.24 per credit hour at community colleges.<sup>6</sup>

2006-2007: 50 percent of cost of tuition for full-time student (36 semester credit hours per year)<sup>7</sup>

|                   | In-State Tuition Only | Number of Potentially Eligible Veterans | Estimated System Cost |
|-------------------|-----------------------|---|-----------------------|
| Community College | \$976                 | 9,382                                   | \$9,156,832           |
| State University  | \$1,326               | 2,360                                   | \$3,129,360           |

According to the Board of Governors, community colleges and state universities would face a loss of revenue because the bill does not provide a funding source or specific appropriation to offset the fees waived.<sup>8</sup>

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require a city or county to expend funds or to take any action requiring the expenditure of funds

The bill does not appear to reduce the authority that municipalities or counties have to raise revenues in the aggregate.

This bill does not appear to reduce the percentage of state tax shared with counties or municipalities

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill does not create any rule-making authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

<sup>5</sup> Conversation with Florida Department of Veterans Affairs, March 14, 2007.

<sup>6</sup> Department of Education Analysis of House Bill 491.

<sup>7</sup> Id.

<sup>8</sup> Board of Governors Analysis of House Bill 491

The bill provides a definition of “veteran” as one who currently serves or has served and been discharged under honorable conditions in active military service during one of the periods of wartime service defined by the United States Department of Veterans Affairs. An identical definition already exists in the Florida Statutes. For consistency with other educational programs affecting Florida veterans, the bill could provide a cross reference to the existing definition of *veteran* in section 1.01(14), Florida Statutes.<sup>9</sup>

The bill does not require Florida residency for eligibility for this waiver.<sup>10</sup>

The sponsor of the bill has filled a strike-all amendment with committee staff. The strike-all amendment:

- Requires state universities and community colleges to waive 50 percent of the in-state tuition rate for a veteran who:
  - Is a wartime veteran as defined in s.1.01(14), F.S.;
  - Received an honorable discharge;
  - Is enrolled as full-time, part-time, or summer-school student in any vocational or career course, or undergraduate course that terminates in a degree or certificate;
  - Is a resident of Florida at the time he or she applies for the waiver and was a Florida resident for one year prior to such application; and
  - Submits to the state university and community college the DD-214 form issued at the time of separation from service or military order or other documentation issued regarding return from active duty as defined in 250.01(1), F.S.
- Sets the waiver to cover 110 percent of the number of required credit hours of the degree or certificate program in which the student is enrolled.

#### D. STATEMENT OF THE SPONSOR

No statement submitted

### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 20, 2007, the Committee on Postsecondary Education adopted a strike-all amendment to HB 491. The strike-all amendment:

- Requires state universities and community colleges to waive 50 percent of the in-state tuition rate for a veteran who:
  - Is a wartime veteran as defined in s.1.01(14), F.S.;
  - Received an honorable discharge;
  - Is enrolled as full-time, part-time, or summer-school student in any vocational or career course, or undergraduate course that terminates in a degree or certificate;
  - Is a resident of Florida at the time he or she applies for the waiver and was a Florida resident for one year prior to such application; and
  - Submits to the state university and community college the DD-214 form issued at the time of separation from service or military order or other documentation issued regarding return from active duty as defined in 250.01(1), F.S.
- Sets the waiver to cover 110 percent of the number of required credit hours of the degree or certificate program in which the student is enrolled.

<sup>9</sup> Department of Education Analysis of House Bill 491.

<sup>10</sup> Id.

1                                   A bill to be entitled  
 2           An act relating to tuition waivers; providing a short  
 3           title; amending s. 1009.26, F.S.; requiring state  
 4           universities and community colleges to waive a percentage  
 5           of the in-state tuition rate for veterans; providing a  
 6           definition; providing an effective date.

7  
 8   Be It Enacted by the Legislature of the State of Florida:

9  
 10           Section 1. This act may be cited as the "Veterans' Tuition  
 11 Assistance Act."

12           Section 2. Subsection (10) is added to section 1009.26,  
 13 Florida Statutes, to read:

14           1009.26 Fee waivers.--

15           (10) A state university or community college shall waive  
 16 50 percent of the in-state tuition rate for a veteran who  
 17 enrolls as a full-time, part-time, or summer-school student in  
 18 any vocational or career education course, undergraduate course,  
 19 or graduate course. For the purpose of this subsection,  
 20 "veteran" is defined as a person who currently serves, or who  
 21 has served and was discharged under honorable conditions, in  
 22 active military service during one of the periods of wartime  
 23 service as defined by the United States Department of Veterans  
 24 Affairs.

25           Section 3. This act shall take effect July 1, 2007.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **HB 491**

COUNCIL/COMMITTEE ACTION

ADOPTED  (Y/N)  
ADOPTED AS AMENDED  (Y/N)  
ADOPTED W/O OBJECTION  (Y/N)  
FAILED TO ADOPT  (Y/N)  
WITHDRAWN  (Y/N)  
OTHER \_\_\_\_\_

1 Council/Committee hearing bill: Committee on Postsecondary  
2 Education  
3 Representative(s) Scionti offered the following:

**Amendment (with title amendment)**

Remove everything after the enacting clause and insert:

7 Section 1. This act may be cited as the "Veterans' Tuition  
8 Assistance Act."

9 Section 2. Subsection (10) is added to section 1009.26,  
10 Florida Statutes to read:

11 1009.26 Fee Waivers.--

12 (10) A state university or community college shall waive  
13 50 percent of the in-state tuition rate for a person who:

14 (a) Is a wartime veteran as defined in s. 1.01(14);

15 (b) Received an honorable discharge;

16 (c) Is enrolled as a full-time, part-time, or summer  
17 school student in any vocational or career education course or  
18 undergraduate program that terminates in a degree or  
19 certificate;

20 (d) Is a resident of Florida at the time he or she applies  
21 for the waiver and was a Florida resident for one year prior to  
22 such application; and

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

23       (e) Submits to the state university or the community  
24 college the DD-214 form issued at the time of separation from  
25 service or military orders or other documentation issued  
26 regarding return from active duty as defined in s. 250.01(1).

27  
28 Such a waiver shall be applicable for 110 percent of the number  
29 of required credit hours of the degree or certificate program  
30 for which the student is enrolled.

31       Section 3. This act shall take effect July 1, 2007.

32 ===== T I T L E   A M E N D M E N T =====

33       Remove the entire title and insert:

34                       A bill to be entitled

35 An act relating to tuition waivers; providing a short title;  
36 amending s. 1009.26; requiring state universities and community  
37 colleges to waive a percentage of the in-state tuition rate for  
38 certain veterans who meet specified criteria; providing a  
39 percentage cap on the number of required hours for which a  
40 tuition waiver may be received; providing an effective date.





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 561 Human Papillomavirus  
**SPONSOR(S):** Homan and others  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 660

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| REFERENCE                                | ACTION | ANALYST       | STAFF DIRECTOR |
|--|--------|---------------|----------------|
| 1) <u>Committee on K-12</u>              | _____  | <u>Ahearn</u> | <u>Ahearn</u>  |
| 2) <u>Schools &amp; Learning Council</u> | _____  | <u>Ahearn</u> | <u>Cobb</u>    |
| 3) <u>Policy &amp; Budget Council</u>    | _____  | _____         | _____          |
| 4) _____                                 | _____  | _____         | _____          |
| 5) _____                                 | _____  | _____         | _____          |

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### SUMMARY ANALYSIS

The human papillomavirus (HPV) is the most common sexually transmitted virus in the United States. By age 50, at least 80 percent of women will have acquired the HPV infection at some point in their lives of at least one or more of the 30 known strains of HPV. The HPV vaccine was released in June by the FDA for use in girls age 9-26. The Advisory Committee on Immunization Practices recommended the vaccine for 11 to 12 year old girls. Gardasil (a vaccine produced by Merck & Co., Inc.) protects against 4 of the most common strains of HPV.

The bill requires, beginning with the 2008-2009 school year, that each public and private middle school in Florida provide each student, age 11 or 12, and the parent or guardian, information regarding the connection between HPV and cervical cancer as well as the "availability of a vaccine preventing HPV". The vaccine does not, however, prevent all strains of HPV. The Department of Education, in consultation with Department of Health, must prescribe the content of the HPV information provided to the students and their parents or guardians.

The bill provides that, beginning with the 2008-2009 school year, a student who is 11 or 12 years of age may not be admitted to any school in Florida, public or private, until the student provides evidence of vaccination for HPV, or proof that the parent or guardian, after receiving the required HPV information, has elected for the student to not receive the vaccine. To date, however, the vaccine is only approved for use in girls.

The bill has a fiscal impact; see Section II of this analysis for additional details.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government, Safeguard Individual Liberty, Empower Families: The bill requires that as of the 2008-2009 school year, a student who is 11 or 12 years of age may not be admitted to any private or public school in this state until that student submits to the school acceptable evidence of vaccination for the human papillomavirus (HPV) or proof that, after receiving information concerning HPV and cervical cancer and the availability of a vaccine preventing HPV, the parent or guardian has elected that the student not receive the vaccine.

Requires the Department of Education (DOE), in consultation with the Department of Health (DOH), to determine the content of the information the parent is to receive.

#### B. EFFECT OF PROPOSED CHANGES:

##### Current Law

Section 1003.22(3), F.S., requires students to receive seven named immunizations: poliomyelitis, diphtheria, rubeola, rubella, pertussis, mumps, tetanus; and, allows the Department of Health to supplement the list with immunizations for other communicable diseases, as adopted in rule. The DOH, in consultation with the DOE, has adopted rules governing the immunization of children against, the testing for, and the control of preventable communicable diseases. The rules include procedures for exempting a child from immunization requirements.

The Department of Health supervises and secures the enforcement of the required immunizations. *Immunizations required by s. 1003.22(3), F.S., must be made available at no cost from the county health departments.*

Neither s. 1003.22(3), F.S., or the agency rules, require immunization for HPV. However, the DOH "routinely informs the parents or guardians of female patients in the age range of 11-12 years of age who present for services at county health department that the HPV vaccine is available [at no cost] for those who are eligible under the federal Vaccines for Children Program (VFC). Children age 0-18 are eligible for the VPC Program if they meet one of the following criteria: Medicaid covered, uninsured, underinsured (insurance does not cover immunization), Alaskan Native or American Indian."<sup>1</sup>

##### Proposed Changes

"HPV is the most common sexually transmitted virus in the United States. By age 50, at least 80% of women will have acquired the HPV infection at some point in their lives of at least one or more of the 30 known strains of HPV that infect the genital tract. The HPV vaccine was released in June by the FDA **for use in girls** age 9-26. The Advisory Committee on Immunization Practices, a panel of expert advisors to the Centers for Disease Control, recommended the vaccine for 11 to 12 year old girls. Gardasil (Merek & Co., Inc.) **protects against 4 strains of HPV.**"<sup>2</sup>

The bill requires that beginning with the 2008-2009 school year and extending to each subsequent school year thereafter, each public and private school in Florida will be required "to provide each 11 or 12 year old student, and the parent or guardian, information regarding the connection between [HPV] and cervical cancer, as well as the availability of a vaccine to prevent HPV", a sexually transmitted

<sup>1</sup> DOH analysis, HB 561, Feb. 13, 2007

<sup>2</sup> HB 561 Vaccination for Cervical Cancer by Rep. Ed Homan, MD, March 2007.

disease (STD). However, as indicated in the above-quoted material, the vaccine does not totally “prevent HPV”; the vaccine protects against 4 of the most common 30 strains of the virus.

The bill further requires that beginning with the 2008-2009 school year and extending to each subsequent school year thereafter, *students* who are 11 or 12 years of age are excluded from admission to any school in the state, public or private, until *each student* provides evidence of vaccination for HPV, or proof that the parent or guardian has elected for the student not to receive HPV vaccine after receiving the HPV information required to be given to the student and parent by the school.

The HPV vaccine on the market, at this time, is gender specific and is licensed for *females only*. Nonetheless, the bill requires boys to receive the vaccine as well.

The bill requires a principal or other person in charge of a public and private school to prohibit the admission of students to school who are 11 or 12 years of age until the student provides evidence of vaccination for the HPV series, or proof that the parent or guardian has elected for the student to not receive HPV vaccine after receiving the HPV information required to be provided by the school. This requires each public and private school with students that are 11 or 12 years of age to develop policy and procedures to implement the provisions of this proposal.

Since the HPV vaccine is given in a series of three injections over a 6-month period, schools (public and private) and district school boards will need to develop and implement an ongoing immunization tracking system to monitor students’ completion of the three dose series over a six-month timeframe.

Finally, the bill requires that the DOE, in consultation with the DOH, prescribe the content of the HPV information requirement to students who are 11 or 12 years of age and their parents or guardians.

This bill takes effect July 1, 2008.

#### C. SECTION DIRECTORY:

Section 1. Creates an unnumbered section regarding required information and immunization for HPV.

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

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

This bill does not appear to have a fiscal impact on state government revenues.

#### 2. Expenditures:

DOH has provided a fiscal analysis, which is based on the cost of the vaccine as well as the additional staffing needed to provide the services at the county health departments.

DOH construed the bill literally to mean that whether a student is 11 or 12 years old, the student is to receive the vaccine: “provide to each **student** who is 11 years of age **or** 12 years of age.” However, DOH did not include boys in its calculations, despite the fact that a literal interpretation of the bill includes boys. DOH did not include boys because the vaccine is not approved for boys, at this time. Irrespective of what may have been intended by a bill, an analysis of a bill must address the provisions of the bill. Accordingly, a literal interpretation of the bill would increase the fiscal impact over the DOH projections for the cost of the vaccine.

Currently, according to DOH, there are approximately 257,563 girls that are 11 or 12 years old. The Vaccines for Children (VFC) program, a federally funded program, will cover the cost of vaccinating approximately 116,660 of these girls<sup>3</sup>. The remaining 140,903 females will be eligible to be vaccinated at the county health departments, free of charge. Some of these girls will be vaccinated in private health care clinics and thus covered by private health care insurance. However, DOH estimates, from experience, that approximately 30% of girls who normally receive services in the private health care sector will be referred to county health departments for service. Thus, approximately 42,271 girls will need to be served by the county health departments.

DOH will have to purchase 126,813 doses of the HPV vaccine (42,271 x 3 injections) at \$96 per dose for a total of \$12,174,048 – girls only.

In addition, more staff would be needed to administer the additional service in the 67 county health departments. DOH projects the need for 100 additional nurses; and, including overhead, the cost would be approximately \$3.8 million (without factoring in annualization or recurring costs). Without administrative overhead, and with a more conservative assessment of staff needed, the cost would be closer to approximately \$1.5 million. However, these estimates only relate to the provision of the vaccines to girls, not boys. Including boys, would substantially increase the cost.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

This bill does not appear to have a fiscal impact on local government revenues.

##### 2. Expenditures:

This bill does not appear to be a fiscal impact on local government expenditures.

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<sup>3</sup> Children age 0-18 are eligible for the VFC program if they meet one of the following criteria: Medicaid covered, uninsured, underinsured (insurance does not cover immunization), Alaskan Native or American Indian.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The private health care sector will assume some burden for the costs of implementing the required vaccinations through administration of additional required vaccinations and the provision of information dissemination and documentation of any exemptions for school attendance. Private health care insurers will also bear the costs of covering the vaccine.

1. Private Sector Costs: Private health insurers who cover the vaccination will be affected by the costs of implementing the bill.
2. Private Sector Benefits: The primary benefits of the bill include potentially lowering the number of cases of cervical cancer due to the increase in HPV vaccinations administered in 11 or 12 year olds.<sup>4</sup>

D. FISCAL COMMENTS:

Public and private schools must disseminate information "to each student who is 11 years of age or 12 years of age and to the parents or guardian regarding the connection between the HPV and cervical cancer and the availability of a vaccine preventing HPV." (Please note discussion above: the vaccine does not prevent all strains of HPV.) The cost of production and dissemination of such information is indeterminate.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to apply to counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill does not create rule-making authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

The discovery of a vaccine to prevent the HPV infection that causes most cases of cervical cancer is one of the greatest advances in women's health in the last century.

When the vaccine to prevent Hepatitis B became available it was incorporated into the schools immunization program without hesitation or controversy, despite the fact that Hepatitis B is a sexually transmitted disease just like the HPV virus. The difference being that the Hepatitis B virus is uncommon, but 44% of women and 59% of men in the 20-24 year age group harbor the HPV virus. We need to get this problem under control and we have a vaccine to do it. The fiscal impact in the analysis is overstated because it was done on the original bill that has been rewritten in the strike all

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<sup>4</sup> DOE analysis, HB 561, Feb. 13, 2007  
STORAGE NAME: h0561a.SLC.doc  
DATE: 3/23/2007

amendment. This bill is a true representative of IDEA # 88, i.e. better health care through prevention. An up front investment to prevent disease saves many more dollars than treating the disease, in addition to saving lives as well.

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

1                                   A bill to be entitled  
 2           An act relating to the human papillomavirus; requiring  
 3           public and private middle schools in the state to provide  
 4           to certain students and their parents or guardians  
 5           information concerning the human papillomavirus, its  
 6           vaccine, and cervical cancer; prohibiting certain students  
 7           from admission into school without providing evidence of  
 8           vaccination for the human papillomavirus; providing an  
 9           exception; prohibiting a principal from knowingly  
 10          admitting a student into school without evidence of  
 11          vaccination for the human papillomavirus; providing an  
 12          exception; requiring the Department of Education, in  
 13          consultation with the Department of Health, to prescribe  
 14          the content of the information regarding the connection  
 15          between the human papillomavirus and cervical cancer and  
 16          the availability of a vaccine preventing human  
 17          papillomavirus; providing an effective date.

18  
 19   Be It Enacted by the Legislature of the State of Florida:

20  
 21           Section 1.   (1) Beginning with the 2008-2009 school year,  
 22           each public or private middle school in this state shall provide  
 23           to each student who is 11 years of age or 12 years of age and to  
 24           the parents or guardian of such student information concerning  
 25           the connection between the human papillomavirus (HPV) and  
 26           cervical cancer and the availability of a vaccine preventing  
 27           human papillomavirus.

28           (2) Beginning with the 2008-2009 school year:



29        (a) A student who is 11 years of age or 12 years of age  
 30 may not be admitted to any private or public school in this  
 31 state until that student submits to the school acceptable  
 32 evidence of vaccination for the human papillomavirus or proof  
 33 that, after receiving the information required in subsection  
 34 (1), the student's parent or guardian has elected that the  
 35 student not receive the vaccine.

36        (b) A principal or any other person in charge of a public  
 37 or private school may not knowingly admit a student who is 11  
 38 years of age or 12 years of age until that student submits to  
 39 the school acceptable evidence of vaccination for the human  
 40 papillomavirus or proof that, after receiving the information  
 41 required in subsection (1), the student's parent or guardian has  
 42 elected that the student not receive the vaccine.

43        (3) The Department of Education, in consultation with the  
 44 Department of Health, shall prescribe the content of the  
 45 information required in subsection (1).

46        Section 2. This act shall take effect July 1, 2008.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1)

Bill No. 561

COUNCIL/COMMITTEE ACTION

ADOPTED                                   \_\_\_ (Y/N)  
ADOPTED AS AMENDED                   \_\_\_ (Y/N)  
ADOPTED W/O OBJECTION               \_\_\_ (Y/N)  
FAILED TO ADOPT                       \_\_\_ (Y/N)  
WITHDRAWN                              \_\_\_ (Y/N)  
OTHER                                    \_\_\_\_\_

1 Council/Committee hearing bill: Schools & Learning Council  
2 Representative(s) Homan offered the following:

3  
4 **Amendment (with title amendment)**

5 Remove everything after the enacting clause and insert:

6 Section 1. (1)(a) No later than January 1, 2009, the  
7 Department of Health shall adopt a rule adding the human  
8 papillomavirus to the list of communicable diseases set forth in  
9 s. 1003.22, Florida statues, for which immunizations are  
10 required.

11 (b) The rule must include procedures for exempting a  
12 student from this immunization requirement without requiring a  
13 reason for doing so.

14 (2) Beginning with the 2009-2010 school year, each public  
15 and private school in this state must provide to each student  
16 who is entering the 6<sup>th</sup> grade and for whom the human  
17 papillomavirus vaccine is approved by the United States Food and  
18 Drug Administration, and to his or her parent or guardian,  
19 information by the school concerning the connection between the  
20 human papillomavirus and cervical cancer and that a vaccine for  
21 preventing human papillomavirus infection is available and is  
22 recommended to be given before entering the 7<sup>th</sup> grade.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1)

23       (3) Beginning with the 2010-2011 school year, each student  
24 who is entering the 7<sup>th</sup> grade and for whom the human  
25 papillomavirus vaccine is approved by the United States Food and  
26 Drug Administration shall submit to the school an immunization  
27 certificate showing that the student has commenced or completed  
28 the immunization protocol for the human papillomavirus or a  
29 written statement, signed by a parent or guardian of the  
30 student, that after receiving the information about the human  
31 papillomavirus and its vaccine, the parent or guardian has  
32 elected that the student not receive the vaccine, reason not  
33 required.

34       (4) Beginning with the 2010-2011 school year, a principal  
35 or any other person in charge of a public or private school in  
36 this state may not knowingly admit students for whom the human  
37 papillomavirus vaccine is approved by the United States Food and  
38 Drug Administration into the 7<sup>th</sup> grade until that student submits  
39 to the school a certificate of immunization showing the  
40 commencement or completion of the immunization protocol for the  
41 human papillomavirus or a written statement, signed by a parent  
42 or guardian of the student, that after receiving the information  
43 about the human papillomavirus and its vaccine, the parent or  
44 guardian has elected that the student not receive the vaccine,  
45 reason not required.

46       (5) The Department of Health, in consultation with the  
47 Department of Education, shall prescribe the content of the  
48 information required in this section and for which students the  
49 vaccine is recommended.

50       Section 2. This act shall take effect July 1, 2007.

51  
52       ===== T I T L E   A M E N D M E N T =====

53       Remove the entire title and insert:



HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (2)

Bill No. 561

COUNCIL/COMMITTEE ACTION

ADOPTED                                   \_\_\_ (Y/N)  
ADOPTED AS AMENDED                   \_\_\_ (Y/N)  
ADOPTED W/O OBJECTION               \_\_\_ (Y/N)  
FAILED TO ADOPT                       \_\_\_ (Y/N)  
WITHDRAWN                              \_\_\_ (Y/N)  
OTHER                                    \_\_\_\_\_

1 Council/Committee hearing bill: Schools & Learning Council  
2 Representative(s) Pickens & Traviesa offered the following:

3  
4           **Substitute Amendment for Amendment (1) by Representative**  
5 **Homan (with directory and title amendments)**

6           Remove everything after the enacting clause and insert:

7  
8           Section 1. (1) No later than January 1, 2008, the  
9 Department of Health shall adopt a rule adding the human  
10 papillomavirus to the list of communicable diseases for which  
11 immunizations are recommended.

12           (2) Beginning with the 2008-2009 school year, the parent  
13 or guardian of each student entering grade 6 for whom the human  
14 papillomavirus vaccine is approved by the United States Food and  
15 Drug Administration, must be provided information by the school  
16 concerning the connection between the human papillomavirus and  
17 cervical cancer and that a vaccine which helps prevent human  
18 papillomavirus infection is available and recommended to be  
19 given to females before they enter grade 8.

20           (3) The information required to be provided to the parents  
21 or guardians of the students for whom the human papillomavirus

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (2)

22 vaccine is approved and recommended shall be prescribed by the  
23 Department of Health.

24 Section 2. This act shall take effect July 1, 2007.

25

26 ===== T I T L E A M E N D M E N T =====

27 Remove the entire title and insert:

28 A bill to be entitled

29 An act relating to the human papillomavirus; requiring the  
30 Department of Health to adopt a rule adding the human  
31 papillomavirus to the list of communicable diseases for  
32 which immunization is recommended; requiring that certain  
33 parents or guardians must be provided information  
34 concerning the human papillomavirus; requiring the  
35 Department of Health to prescribe the information;  
36 providing an effective date.

37

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## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Safeguard Individual Liberty: The bill prohibits bullying and harassment of students and school employees and establishes measures to prevent the substantial interference with a student's educational performance.

Empower Families: The bill requires a school district to regularly report to a victim's parents on the actions taken to protect the victim and to immediately notify a victim's parents of the local agencies where criminal charges may be filed against the offender.

Maintain Public Security: The bill prohibits bullying and harassment of students and school employees.

#### B. EFFECT OF PROPOSED CHANGES:

##### Present Situation:

Current research presents various definitions of the term "bullying." For example:

- *"Bullying includes a wide variety of behaviors, but all involve a person or a group repeatedly trying to harm someone who is weaker or more vulnerable. It can involve direct attacks (such as hitting, threatening or intimidating, maliciously teasing and taunting, name-calling, making sexual remarks, and stealing or damaging belongings) or more subtle, indirect attacks (such as spreading rumors or encouraging others to reject or exclude someone);"*<sup>1</sup> and
- *Bullying is a "specific type of aggression in which:*
  - 1) *The behavior is intended to harm or disturb;*
  - 2) *There is an imbalance of power, with a more powerful person or group attacking a less powerful one, and;*
  - 3) *The behavior occurs repeatedly over time."*<sup>2</sup>

The United States Department of Education reports that, in 2005, 28 percent of students ages 12 to 18 reported having been bullied at school during the previous 6 months.<sup>3</sup> Of these students, 58 percent said that the bullying had happened once or twice during the period, 25 percent had experienced bullying once or twice a month, 11 percent reported having been bullied once or twice a week, and 8 percent said they had been bullied almost daily.<sup>4</sup>

Following a series of school shootings in the late 1990s, in which the shooters were reported to be victims of bullying at school, at least 29 states have enacted anti-bullying legislation: Alaska, Arkansas, California, Colorado, Connecticut, Georgia, Idaho, Illinois, Indiana, Louisiana, Maine, Minnesota,

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<sup>1</sup> National Youth Violence Prevention Resource Center, *Facts for Teens: Bullying 1* (2002), available at <http://hamfish.org/newsroom/bullying411.pdf>.

<sup>2</sup> Hamilton Fish Institute, George Washington University, *The 4-1-1 on Bullying 6* (September 2004) (citing the Mayo Clinic and the Journal of the American Medical Association), available at <http://hamfish.org/newsroom/bullying411.pdf>.

<sup>3</sup> U.S. Department of Education, National Center for Education Statistics, *Indicators of School Crime and Safety: 2007, NCES 2007-003*, vi-vii (December 2006), available at <http://nces.ed.gov/pubs2007/2007003.pdf>.

<sup>4</sup> *Id.*

Missouri, Nevada, New Hampshire, New Jersey, New York, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, and West Virginia.<sup>5</sup>

The Florida Department of Education reports that it conducted a poll of school districts to determine which districts have an anti-bullying policy. Forty-two districts (approximately 58 percent) responded that they have an anti-bullying policy. The department reports that the general trend among the districts is not to adopt a separate anti-bullying policy but to include bullying as a violation of the code of student conduct and provide for disciplinary action. The department also reports that 24 school districts provide some definition of bullying. In addition, 35 school districts are implementing various bullying prevention programs.<sup>6</sup>

#### Current Law:

Under current law, a district school board must adopt rules for the control and discipline of students.<sup>7</sup> A district school board must also adopt two codes of student conduct, one for elementary schools and another for middle and high schools.<sup>8</sup> A code of student conduct must be based on the school district's rules governing student conduct and discipline; must be organized and written in language understandable to students and parents; and, among other things, must contain:<sup>9</sup>

- Consistent policies, specific grounds for disciplinary action, and disciplinary procedures;
- Explanation of a student's rights and responsibilities;
- Notice that violence against district school board personnel, disruptive behavior on a school bus or at a bus stop, or sexual harassment are grounds for disciplinary action;
- Notice that a student possessing a firearm or weapon at school, at a school function, or on school-sponsored transportation will be expelled; and
- Notice that a student making a threat or false report involving school or school personnel's property, school transportation, or a school-sponsored activity will be expelled.

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<sup>5</sup> Jennifer Dounay, Education Commission of the States, *State Anti-Bullying Statutes* (April 2005), available at <http://www.ecs.org/clearinghouse/60/41/6041.htm>; Education Commission of the States, *Recent State Policies/Activities: Safety/Student Discipline—Bullying/Conflict Resolution*, available at <http://www.ecs.org/ecs/ecscat.nsf/WebTopicView?OpenView&RestrictToCategory=Safety/Student+Discipline--Bullying/Conflict+Resolution> (last visited February 28, 2007).

<sup>6</sup> The Department of Education reports that the following bullying prevention programs are being implemented in the following school districts:

- Aggression Replacement Training (ART): Hernando and Indian River;
- Aggressors, Victims, Bystanders: Brevard, Collier, Columbia, DeSoto, Dixie, Escambia, Flagler, Glades, Lafayette, Levy, Manatee, Okaloosa, Palm Beach, Pinellas, Santa Rosa, Sarasota, St. Lucie, Union, and Volusia;
- Bullying Prevention (Olweus): Marion, Orange, Pasco, Pinellas, Sarasota, Seminole, and Sumter;
- Bullying Safe: Lee;
- Bully-Proofing Your School: Brevard and Volusia;
- Foundations: Creating Safe and Civil Schools: Clay and Duval;
- PATHS: Madison and Okaloosa;
- PeaceBuilders: Franklin and Gulf;
- Positive Action: Charlotte and Leon;
- Project ACHIEVE: Charlotte;
- Safe Schools Ambassadors: Seminole;
- Success in Stages: Build Respect, Stop Bullying: Union; and
- TRUST: Miami-Dade.

Florida Department of Education, *Bullying Programs in Florida Districts*, at [http://www.firn.edu/doe/besss/bull\\_fl.html](http://www.firn.edu/doe/besss/bull_fl.html) (last visited March 1, 2007)

<sup>7</sup> Section 1006.07(1)(a), Florida Statutes.

<sup>8</sup> Section 1006.07(2), Florida Statutes.

<sup>9</sup> *Id.*

In addition, current law and rules adopted by the State Board of Education require a district school board to adopt a zero-tolerance policy on school violence, crime, the use of weapons, substance abuse, and the victimization of students.<sup>10</sup>

A school district's code of student conduct may assign more severe disciplinary actions when the offender appears motivated by hostility toward the victim's real or perceived gender, race, religion, color, sexual orientation, ethnicity, ancestry, national origin, political beliefs, marital status, age, social and family background, linguistic preference, or disability.<sup>11</sup>

Further, current law prohibits discrimination on the basis of race, ethnicity, national origin, gender, disability, or marital status against a student or an employee in the state system of public K-20 education.<sup>12</sup> The Department of Education requires educational institutions to create an educational and work environment free of harassment on the basis of race, sex, national origin or handicap.<sup>13</sup> The department specifies that an institution is responsible for all acts of harassment between fellow employees, fellow students, or by nonemployees, if the institution knew or should have known of the harassment and failed to take corrective action.<sup>14</sup>

A district school board is required to protect a student victimized by a violent crime from further victimization.<sup>15</sup> Except under certain circumstances, a student committing specified violent offenses is prohibited from attending the school attended by, or riding the school bus ridden by, the victim or the victim's sibling.<sup>16</sup> In addition, if a violent offense involves a victim, school officials are required to notify the victim, and the victim's parents or legal guardian if the victim is a minor, of the offense and of the victim's right to press charges against the offender.<sup>17</sup>

Current law assigns specific duties for student discipline and school safety to certain school district personnel. The duties include:

- A district school superintendent recommends student discipline and school safety plans to the district school board.<sup>18</sup>
- A school principal or designee develops policies for delegating to teachers, instructional staff, and school bus drivers the school's responsibility for control of students.<sup>19</sup> A school principal is directed to fully support the authority of a teacher or school bus driver to remove disobedient, disrespectful, violent, abusive, uncontrollable, or disruptive students from the classroom or school bus.<sup>20</sup>
- A school principal must also submit reports to the Department of Education on student discipline and school safety.<sup>21</sup> The Department of Education compiles the reports and publicly reports the data through the School Environmental Safety Incident Reporting (SESIR) system.<sup>22</sup> The SESIR system collects data on 22 incidents of crime, violence, and disruptive behaviors that occur on school grounds, on school transportation, and at off-campus, school-sponsored events.

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<sup>10</sup> Section 1006.13(1), Florida Statutes; rule 6A-1.0404(1), Florida Administrative Code.

<sup>11</sup> Rule 6A-1.0404(5), Florida Administrative Code.

<sup>12</sup> Section 1000.05(2)(a), Florida Statutes.

<sup>13</sup> Rule 6A-19.008, Florida Administrative Code.

<sup>14</sup> *Id.*

<sup>15</sup> Section 1006.13(1)(b), Florida Statutes.

<sup>16</sup> Section 1006.13(5)(b) and (c), Florida Statutes.

<sup>17</sup> Rule 6A-1.0404(6), Florida Administrative Code.

<sup>18</sup> Section 1006.08(1), Florida Statutes.

<sup>19</sup> Section 1006.09(1)(a), Florida Statutes.

<sup>20</sup> *Id.*

<sup>21</sup> Sections 1001.54(3) and 1006.09(6), Florida Statutes.

<sup>22</sup> Florida Department of Education, *Statewide Report on School Safety and Discipline Data*, at

<http://www.firn.edu/doe/besss/sesir.htm>.

- A school bus driver is responsible for keeping order on the school bus and requiring good behavior from, and protecting, the students on the bus.<sup>23</sup>

#### Safe Schools Funding:

Funding for Safe Schools is included in the Florida Education Finance Program (FEFP) as a categorical fund<sup>24</sup> and is appropriated by the Legislature through proviso language in the General Appropriations Act.<sup>25</sup> The Legislature appropriated \$75,350,000 for Safe Schools activities for the 2006-2007 school year. The Safe Schools funds are allocated as follows:

- Each school district receives a \$50,000 base allocation for Safe Schools;
- Two-thirds of the remaining balance is allocated based on the latest official Florida Crime Index provided by the Florida Department of Law Enforcement; and
- One-third is allocated based on each district's share of the state's total unweighted student enrollment.<sup>26</sup>

School districts may use Safe Schools funds for various activities, including:

- After-school programs for middle school students;
- Other improvements to enhance the learning environment, including implementation of conflict-resolution strategies;
- Alternative school programs for adjudicated youth;
- Suicide prevention programs; and
- Other improvements to make the school a safe place to learn.<sup>27</sup>

#### Proposed Changes:

The bill creates the "Jeffrey Johnston Stand Up for All Students Act."<sup>28</sup> The bill prohibits the bullying or harassment of any student or school employee during a public K-12 education program or activity, during a school-related or school-sponsored program or activity, on a public K-12 school bus, or through a public K-12 computer, computer system, or computer network.

#### Definitions:

The bill provides definitions of the terms "bullying" and "harassment":

- **Bullying:** Systematically and chronically inflicting physical hurt or psychological distress on one or more students, which may involve teasing; social exclusion; threat; intimidation; stalking; physical violence; theft; sexual, religious, or racial harassment; public humiliation; or destruction of property.
- **Harassment:** Threatening, insulting, or dehumanizing gesture, use of computers, or written, verbal, or physical conduct directed against a student or school employee that causes reasonable fear of harm to person or property; substantially interferes with a student's educational performance, opportunities, or benefits; or substantially disrupts the orderly operation of a school.

The bill further specifies that bullying and harassment include:

- Retaliating against a student or school employee for reporting bullying or harassment;

<sup>23</sup> Section 1006.10(1) and (4), Florida Statutes.

<sup>24</sup> Section 1011.62(6)(b)3., Florida Statutes.

<sup>25</sup> Specific Appropriation 91, General Appropriations Act for Fiscal Year 2006-2007, chapter 2006-25, Laws of Florida.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> In 2005, Jeffrey Johnson of Cape Coral, a victim of bullying and harassment from his classmates at Ida S. Baker High School in Lee County, committed suicide at the age of 15 years. See <http://jeffreyjohnston.org> (last visited March 1, 2007).

- Reporting bullying or harassment, which reporting is not made in good faith;
- Perpetuating bullying or harassment with the intent to demean, dehumanize, embarrass, or cause physical harm to a student or school employee by incitement or coercion; use of (or providing access to) a school district's computer, computer system, or computer network; or conduct substantially similar to bullying or harassment.

The bill also provides that existing statutory definitions for computer crimes<sup>29</sup> and stalking apply to the bill.

#### School District Policies:

The bill requires a school district, by December 1, 2007, to adopt a policy prohibiting bullying and harassment on school property, at a school-related or school-sponsored program or activity, on a school bus, or through a district school system's computer, computer system, or computer network. The policy must:

#### *Enforcement:*

- Define and prohibit "bullying" and "harassment";
- Establish procedures for reporting and investigating a report of bullying or harassment, including anonymous reporting (the bill prohibits disciplinary action based solely on anonymous reports);
- Prescribe standards of conduct for students and school employees, disciplinary actions for a person who engages in bullying or harassment, and disciplinary actions for a person who wrongfully and intentionally accuses another of bullying or harassment; and
- Establish procedures for referring bullying and harassment reports outside of the school district's authority to the appropriate officials (the bill specifies that a reported act of bullying or harassment is deemed to be a school-related activity).

#### *Victim Services and Prevention:*

- Establish procedures for:
  - Referring victims and offenders of bullying or harassment to counseling;
  - Regular reporting to a victim's parents on the actions taken to protect the victim;
  - Immediate notification of a victim's parents of the local agencies where criminal charges may be filed against the offender; and
  - Training students, parents, teachers, school administrators, counseling staff, and volunteers to identify, prevent, and respond to bullying and harassment.

#### *Statewide Reporting:*

- Establish procedures for including bullying and harassment in the school district's student discipline and school safety reports submitted to the Department of Education (currently through the School Environmental Safety Incident Reporting (SESIR) system).

The bill allows a school district to adopt separate discrimination policies for different categories of students but requires that all students have the same protection from bullying and harassment. The bill requires a school district to include students, parents, teachers, administrators, school staff, volunteers, community representatives, and local law enforcement agencies in the development of the bullying and harassment policy.

The bill requires the policy to be included in the district's codes of student conduct and employee handbooks and requires ongoing implementation throughout the school year, integrated with a school's curriculum, discipline policies, and violence prevention efforts.

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<sup>29</sup> Section 815.03, Florida Statutes, defines terms used to proscribe computer-related crimes throughout chapter 815, Florida Statutes. Of the defined terms, "access," "computer," "computer network," "computer software," "computer system," and "data" are among the terms used in the bill.

Model Policies:

The bill requires the Department of Education to develop and provide to the school districts by October 1, 2007, model policies prohibiting bullying and harassment.

Immunity for Reporting:

The bill provides limited civil immunity to a school employee, volunteer, student, or parent who reports bullying or harassment in good faith and according to the school district's policy. The immunity applies for both reporting and failing to stop the bullying or harassment.

Computer Issues:

The bill prohibits a person charged with a disciplinary action under a school district's policy or other prosecution from raising the "physical location" or "time of access" of a computer-related incident as a defense to the charges. The bill also exempts a person who uses a computer, computer system, or computer network from violations of the bullying and harassment policies, when the person acts within the scope of lawful employment or investigates a bullying or harassment violation under the school district's policy.

Contingency of Safe Schools Funds:

The bill provides that, for the 2008-2009 school year, a school district's Safe Schools funding is contingent upon the Department of Education's approval of the district's bullying and harassment policy. The bill also specifies that, each year beginning with the 2009-2010 school year, a school district's Safe Schools funding is contingent upon the district's compliance with "all reporting procedures" in the bill.<sup>30</sup>

Annual Report to Governor and Legislature:

The bill requires the Commissioner of Education to report to the Governor and presiding officers of the Legislature by January 1 of each year<sup>31</sup> on the implementation of policies prohibiting bullying and harassment, including student discipline and school safety data.

First Amendment:

The bill requires construction of its provisions consistent with the First Amendment to the United States Constitution.

Effective Date:

The bill provides that it takes effect upon becoming a law.

C. SECTION DIRECTORY:

Section 1. Creates section 1006.147, Florida Statutes, which prohibits bullying and harassment of students and school employees.

Section 2. Provides an effective date.

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<sup>30</sup> In paragraph (4)(k), a school district is required to submit student discipline and school safety reports to the Department of Education (currently through the School Environmental Safety Incident Reporting (SESIR) system). The bill appears to make Safe Schools funding contingent upon the submission of these reports.

<sup>31</sup> The Department of Education notes that the first annual report to the Governor and Legislature is due one month after the school districts are required to submit their bullying and harassment policies to the department. The department recommends that the Legislature amend the bill to allow more time for the department to prepare its first annual report.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

According to the Department of Education, the department would need approval for one additional full-time-equivalent position (FTE) and \$71,487 for salary, benefits, and related expenses. The department estimates that the position is needed for the developing, monitoring, training, and reporting requirements of the bill.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not impact the revenues of counties or municipalities. See FISCAL COMMENTS for the revenue impact on school districts.

2. Expenditures:

The bill does not impact the expenditures of counties or municipalities. See FISCAL COMMENTS for the impact on school district expenditures.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

The Legislature appropriated \$75,350,000 for Safe Schools for fiscal year 2006-2007. The appropriation included an allocation formula that guaranteed a school district at least \$50,000. The bill requires the withholding of Safe Schools funds for noncompliance with reporting requirements. The withholding of Safe Schools funds may adversely affect other district safety and security activities

The bill requires school districts to adopt policies, revise codes of student conduct and employee handbooks, train employees, and revise reporting of student discipline and school safety data. The Department of Education estimates that there would be administrative and programming costs of implementing these requirements but does not quantify the estimate.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill 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:

The bill requires that a school district's 2008-2009 Safe Schools funding is contingent upon approval of the district's bullying and harassment policy by the Department of Education. The bill does not provide criteria for the department's approval of a district's policy, nor does the bill establish a

process or timelines for a school district to submit its policy for approval or to seek review of an adverse decision by the department. The bill accordingly gives the department unlimited discretion in determining whether to approve, disapprove, or take no action on a district's policy. Without minimal standards for these actions, the bill may raise a constitutional concern.<sup>32</sup>

#### B. RULE-MAKING AUTHORITY:

The bill does not create new authority for rulemaking; however, the State Board of Education and district school boards have authority to adopt rules to implement provisions of law conferring duties upon them.<sup>33</sup> In addition, a district school board is required to adopt rules for the control and discipline of students.<sup>34</sup>

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

Section 1 of the bill includes several drafting issues, which are summarized as follows:

- The bill uses different language to express the locations where bullying and harassment are prohibited in subsection (2) compared to the locations where a school district's policy is required to prohibit bullying and harassment in subsection (4). The difference in the language may create a misunderstanding of the intended application of the bill.
- In paragraph (3)(c), the bill specifies that definitions relating to stalking in section 784.048, Florida Statutes, are applicable to the bill. Section 784.048, Florida Statutes, provides various criminal penalties for stalking and defines four terms: "harass," "course of conduct," "credible threat" and "cyberstalk." Of these terms, none is used in the bill. However, the bill uses the similar term, "harassment," but provides a definition for the term in paragraph (3)(b). The bill uses the term "stalking," but the term is not defined. Throughout section 784.048, Florida Statutes, several crimes are designated as the "offense of stalking" or "offense of aggravated stalking."
- In subsection (3), the bill defines the terms "bullying" and "harassment." In paragraph (4)(b), the bill also directs school districts to establish their own definitions. The bill does not specify whether school districts are required to incorporate the definitions in subsection (3) within their definitions or whether the definitions in subsection (3) provide nonbinding guidance for school districts.
- In subsection (4), the bill requires a school district to adopt a "policy prohibiting bullying and harassment" and authorizes a district to establish separate "discrimination policies" that include categories of students. Since current law prohibits discrimination on the basis of race, ethnicity, national origin, gender, disability, or marital status against a student or employee in the state system of public K-20 education,<sup>35</sup> the bill is unclear whether it authorizes school districts to prohibit discrimination against new categories of students or whether it allows a school district to establish separate bullying and harassment policies for different categories of students (e.g., one policy for elementary school, a second policy for middle school, and a third policy for high school).
- In paragraphs (4)(d) and (e), the bill requires a school district's bullying and harassment policy to establish consequences for a "person" who commits violations of the bill's provisions. The bill does not specify the universe of persons who would be subject to the policy (e.g., students, school district personnel, volunteers).

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<sup>32</sup> Unlawful delegation of legislative authority to the Department of Education in violation of Section 3, Article II of the State Constitution, which provides as follows:

Branches of government.—The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.

<sup>33</sup> Sections 1001.02(1) and 1001.41(2), Florida Statutes.

<sup>34</sup> Section 1006.07(1)(a), Florida Statutes.

<sup>35</sup> Section 1000.05(2)(a), Florida Statutes.



- In subsection (7)(a), the bill prohibits a person charged with a disciplinary action under a school district's policy or other "prosecution initiated under this section" from raising certain defenses to the charges. Although the bill prohibits bullying and harassment in subsection (2), and a school district's policies are required to prohibit bullying and harassment under subsection (4), the bill does not provide criminal penalties that would be subject to prosecution.
- In subsection (8), the bill requires that a school district's 2008-2009 Safe Schools funding is contingent upon approval of the district's bullying and harassment policy by the Department of Education. The bill does not otherwise specify that a district is required to submit its policy to the Department of Education (See A.2. above).

#### D. STATEMENT OF THE SPONSOR

No statement submitted.

### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 13, 2007, the Committee on K-12 adopted one amendment by Representative N. Thompson (remove everything after the enacting clause). The amendment is substantially similar to the original bill, except that the amendment:

- Requires a school district's bullying and harassment policy to substantially conform to the model policy developed by the Department of Education;
- Requires a school district's bullying and harassment policy to include the bill's definitions of "bullying" and "harassment"; and
- Requires the Department of Education to certify that a school district's bullying and harassment policy substantially complies with the department's model policy as the basis for the department's approval of the district's policy.

1                                   A bill to be entitled  
 2           An act relating to school safety; creating s. 1006.147,  
 3           F.S.; providing a short title; prohibiting bullying and  
 4           harassment during education programs and activities, on  
 5           school buses, or through use of data or computer software  
 6           accessed through computer systems of certain educational  
 7           institutions; providing definitions; requiring each school  
 8           district to adopt a policy prohibiting such bullying and  
 9           harassment; providing minimum requirements for the  
 10          contents of the policy; requiring the Department of  
 11          Education to develop model policies; providing immunity;  
 12          providing restrictions with respect to defense of an  
 13          action and application of the section; requiring  
 14          department approval of a school district's policy and  
 15          school district compliance with reporting procedures as  
 16          prerequisites to receipt of safe schools funds; requiring  
 17          a report on implementation; providing an effective date.

18  
 19   Be It Enacted by the Legislature of the State of Florida:

20  
 21           Section 1.   Section 1006.147, Florida Statutes, is created  
 22   to read:

23           1006.147   Bullying and harassment prohibited.--

24           (1)   This section may be cited as the "Jeffrey Johnston  
 25   Stand Up for All Students Act."

26           (2)   Bullying or harassment of any student or school  
 27   employee is prohibited:

28           (a)   During any education program or activity conducted by

29 | a public K-12 educational institution;

30 |       **(b) During any school-related or school-sponsored program**  
31 | **or activity or on a school bus of a public K-12 educational**  
32 | **institution; or**

33 |       **(c) Through the use of data or computer software that is**  
34 | **accessed through a computer, computer system, or computer**  
35 | **network of a public K-12 educational institution.**

36 |       **(3) For purposes of this section:**

37 |       **(a) "Bullying" means systematically and chronically**  
38 | **inflicting physical hurt or psychological distress on one or**  
39 | **more students and may involve:**

- 40 |       **1. Teasing;**
- 41 |       **2. Social exclusion;**
- 42 |       **3. Threat;**
- 43 |       **4. Intimidation;**
- 44 |       **5. Stalking;**
- 45 |       **6. Physical violence;**
- 46 |       **7. Theft;**
- 47 |       **8. Sexual, religious, or racial harassment;**
- 48 |       **9. Public humiliation; or**
- 49 |       **10. Destruction of property.**

50 |       **(b) "Harassment" means any threatening, insulting, or**  
51 | **dehumanizing gesture, use of data or computer software, or**  
52 | **written, verbal, or physical conduct directed against a student**  
53 | **or school employee that:**

- 54 |       **1. Places a student or school employee in reasonable fear**  
55 | **of harm to his or her person or damage to his or her property;**
- 56 |       **2. Has the effect of substantially interfering with a**

57 student's educational performance, opportunities, or benefits;  
 58 or

59 3. Has the effect of substantially disrupting the orderly  
 60 operation of a school.

61 (c) Definitions in s. 815.03 relating to computer crimes  
 62 and s. 784.048 relating to stalking are applicable to this  
 63 section.

64 (d) The terms "bullying" and "harassment" include:

65 1. Retaliation against a student or school employee by  
 66 another student or school employee for asserting or alleging an  
 67 act of bullying or harassment. Reporting an act of bullying or  
 68 harassment that is not made in good faith is considered  
 69 retaliation.

70 2. Perpetuation of conduct listed in paragraph (a) or  
 71 paragraph (b) by an individual or group with intent to demean,  
 72 dehumanize, embarrass, or cause physical harm to a student or  
 73 school employee by:

74 a. Incitement or coercion;

75 b. Accessing or knowingly causing or providing access to  
 76 data or computer software through a computer, computer system,  
 77 or computer network within the scope of the district school  
 78 system; or

79 c. Acting in a manner that has an effect substantially  
 80 similar to the effect of bullying or harassment.

81 (4) By December 1, 2007, each school district shall adopt  
 82 a policy prohibiting bullying and harassment on school property,  
 83 at a school-related or school-sponsored program or activity, on  
 84 a school bus, or through the use of data or computer software

85 that is accessed through a computer, computer system, or  
86 computer network within the scope of the district school system.  
87 The school district bullying and harassment policy shall afford  
88 all students the same protection regardless of their status  
89 under the law. The school district may establish separate  
90 discrimination policies that include categories of students. The  
91 school district shall involve students, parents, teachers,  
92 administrators, school staff, school volunteers, community  
93 representatives, and local law enforcement agencies in the  
94 process of adopting the policy. The school district policy must  
95 be implemented in a manner that is ongoing throughout the school  
96 year and integrated with a school's curriculum, a school's  
97 discipline policies, and other violence prevention efforts. The  
98 school district policy must contain, at a minimum, the following  
99 components:

100 (a) A statement prohibiting bullying and harassment.  
101 (b) A definition of bullying and a definition of  
102 harassment.

103 (c) A description of the type of behavior expected from  
104 each student and school employee.

105 (d) The consequences for a person who commits an act of  
106 bullying or harassment.

107 (e) The consequences for a person who is found to have  
108 wrongfully and intentionally accused another of an act of  
109 bullying or harassment.

110 (f) A procedure for reporting an act of bullying or  
111 harassment, including provisions that permit a person to  
112 anonymously report such an act. However, this paragraph does not

113 permit formal disciplinary action to be based solely on an  
 114 anonymous report.

115 (g) A procedure for the prompt investigation of a report  
 116 of bullying or harassment and the persons responsible for the  
 117 investigation. The investigation of a reported act of bullying  
 118 or harassment is deemed to be a school-related activity and  
 119 begins with a report of such an act.

120 (h) A process to investigate whether a reported act of  
 121 bullying or harassment is within the scope of the district  
 122 school system and, if not, a process for referral of such an act  
 123 to the appropriate jurisdiction.

124 (i) A procedure for providing immediate notification to  
 125 the parents of a victim of bullying or harassment of all local  
 126 agencies where criminal charges may be pursued against the  
 127 perpetrator.

128 (j) A procedure to refer victims and perpetrators of  
 129 bullying or harassment for counseling.

130 (k) A procedure for including incidents of bullying or  
 131 harassment in the school's report of safety and discipline data  
 132 required under s. 1006.09(6). The report must include each  
 133 incident of bullying or harassment and the resulting  
 134 consequences, including discipline and referrals. The report  
 135 must include in a separate section each reported incident of  
 136 bullying or harassment that does not meet the criteria of a  
 137 prohibited act under this section with recommendations regarding  
 138 such incidents. The Department of Education shall aggregate  
 139 information contained in the reports.

140 (l) A procedure for providing instruction to students,

141 parents, teachers, school administrators, counseling staff, and  
142 school volunteers on identifying, preventing, and responding to  
143 bullying or harassment.

144 (m) A procedure for regularly reporting to a victim's  
145 parents the actions taken to protect the victim.

146 (n) A procedure for publicizing the policy, which must  
147 include its publication in the code of student conduct required  
148 under s. 1006.07(2) and in all employee handbooks.

149 (5) To assist school districts in developing policies  
150 prohibiting bullying and harassment, the Department of Education  
151 shall develop model policies, which must be provided to school  
152 districts no later than October 1, 2007.

153 (6) A school employee, school volunteer, student, or  
154 parent who promptly reports in good faith an act of bullying or  
155 harassment to the appropriate school official designated in the  
156 school district's policy and who makes this report in compliance  
157 with the procedures set forth in the policy is immune from a  
158 cause of action for damages arising out of the reporting itself  
159 or any failure to remedy the reported incident.

160 (7) (a) The physical location or time of access of a  
161 computer-related incident cannot be raised as a defense in any  
162 disciplinary action or prosecution initiated under this section.

163 (b) This section does not apply to any person who uses  
164 data or computer software that is accessed through a computer,  
165 computer system, or computer network when acting within the  
166 scope of his or her lawful employment or investigating a  
167 violation of this section in accordance with school district  
168 policy.

169       (8) Distribution of safe schools funds to a school  
 170 district provided in the 2008-2009 General Appropriations Act is  
 171 contingent upon Department of Education approval of the school  
 172 district's bullying and harassment policy. Distribution of safe  
 173 schools funds provided to a school district in fiscal year 2009-  
 174 2010 and thereafter shall be contingent upon the school  
 175 district's compliance with all reporting procedures contained in  
 176 this section.

177       (9) On or before January 1 of each year, the Commissioner  
 178 of Education shall report to the Governor, the President of the  
 179 Senate, and the Speaker of the House of Representatives on the  
 180 implementation of this section. The report shall include data  
 181 collected pursuant to paragraph (4) (k).

182       (10) Nothing in this section shall be construed to abridge  
 183 the rights of students or school employees that are protected by  
 184 the First Amendment to the Constitution of the United States.

185       Section 2. This act shall take effect upon becoming a law.



HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1)

Bill No. 0575

COUNCIL/COMMITTEE ACTION

ADOPTED                                   \_\_\_ (Y/N)  
ADOPTED AS AMENDED                   \_\_\_ (Y/N)  
ADOPTED W/O OBJECTION               Y (Y/N)  
FAILED TO ADOPT                       \_\_\_ (Y/N)  
WITHDRAWN                               \_\_\_ (Y/N)  
OTHER                                     \_\_\_\_\_

1 Council/Committee hearing bill: Committee on K-12  
2 Representative(s) N. Thompson offered the following:

**Amendment (with title amendment)**

Remove everything after the enacting clause and insert:

6 Section 1. Section 1006.147, Florida Statutes, is created  
7 to read:

8 1006.147 Bullying and harassment prohibited.--

9 (1) This section may be cited as the "Jeffrey Johnston  
10 Stand Up for All Students Act."

11 (2) Bullying or harassment is prohibited:

12 (a) Against any student or employee of a public K-12  
13 educational institution.

14 (b) During any education program or activity conducted by  
15 a public K-12 educational institution;

16 (c) During any school-related or school-sponsored program  
17 or activity or on a school bus of a public K-12 educational  
18 institution; or

19 (d) Through the use of data or computer software that is  
20 accessed through a computer, computer system, or computer  
21 network of a public K-12 educational institution.

22 (3) For purposes of this section:

3-12-07 4:04 pm

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1)

23 (a) "Bullying" means systematically and chronically  
24 inflicting physical hurt or psychological distress on one or  
25 more students and may involve:

- 26 1. Teasing;
- 27 2. Social exclusion;
- 28 3. Threat;
- 29 4. Intimidation;
- 30 5. Stalking;
- 31 6. Physical violence;
- 32 7. Theft;
- 33 8. Sexual, religious, or racial harassment;
- 34 9. Public humiliation; or
- 35 10. Destruction of property.

36 (b) "Harassment" means any threatening, insulting, or  
37 dehumanizing gesture, use of data or computer software, or  
38 written, verbal, or physical conduct directed against a student  
39 or school employee that:

- 40 1. Places a student or school employee in reasonable fear  
41 of harm to his or her person or damage to his or her property;
- 42 2. Has the effect of substantially interfering with a  
43 student's educational performance, opportunities, or benefits;  
44 or
- 45 3. Has the effect of substantially disrupting the orderly  
46 operation of a school.

47 (c) Definitions in s. 815.03 relating to computer crimes  
48 and s. 784.048 relating to stalking are applicable to this  
49 section.

50 (d) The definitions of "bullying" and "harassment"  
51 include:

- 52 1. Retaliation against a student or school employee by  
53 another student or school employee for asserting or alleging an

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1)

54 act of bullying or harassment. Reporting an act of bullying or  
55 harassment that is not made in good faith is considered  
56 retaliation.

57 2. Perpetuation of conduct listed in paragraph (a) or  
58 paragraph (b) by an individual or group with intent to demean,  
59 dehumanize, embarrass, or cause physical harm to a student or  
60 school employee by:

61 a. Incitement or coercion;

62 b. Accessing or knowingly causing or providing access to  
63 data or computer software through a computer, computer system,  
64 or computer network within the scope of the district school  
65 system; or

66 c. Acting in a manner that has an effect substantially  
67 similar to the effect of bullying or harassment.

68 (4) By December 1, 2007, each school district shall adopt  
69 a policy prohibiting bullying and harassment against any student  
70 or employee of a public K-12 educational institution. Each  
71 school district's policy shall be in substantial conformity with  
72 the Department of Education's model policy mandated in  
73 subsection (5). The school district bullying and harassment  
74 policy shall afford all students the same protection regardless  
75 of their status under the law. The school district may establish  
76 separate discrimination policies that include categories of  
77 students. The school district shall involve students, parents,  
78 teachers, administrators, school staff, school volunteers,  
79 community representatives, and local law enforcement agencies in  
80 the process of adopting the policy. The school district policy  
81 must be implemented in a manner that is ongoing throughout the  
82 school year and integrated with a school's curriculum, a  
83 school's discipline policies, and other violence prevention

3-12-07 4:04 pm

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1)

84 efforts. The school district policy must contain, at a minimum,  
85 the following components:

86 (a) A statement prohibiting bullying and harassment.

87 (b) A definition of bullying and a definition of  
88 harassment that include the definitions listed in this section.

89 (c) A description of the type of behavior expected from  
90 each student and school employee.

91 (d) The consequences for a student or employee of a public  
92 K-12 educational institution who commits an act of bullying or  
93 harassment.

94 (e) The consequences for a student or employee of a public  
95 K-12 educational institution who is found to have wrongfully and  
96 intentionally accused another of an act of bullying or  
97 harassment.

98 (f) A procedure for reporting an act of bullying or  
99 harassment, including provisions that permit a person to  
100 anonymously report such an act. However, this paragraph does not  
101 permit formal disciplinary action to be based solely on an  
102 anonymous report.

103 (g) A procedure for the prompt investigation of a report  
104 of bullying or harassment and the persons responsible for the  
105 investigation. The investigation of a reported act of bullying  
106 or harassment is deemed to be a school-related activity and  
107 begins with a report of such an act.

108 (h) A process to investigate whether a reported act of  
109 bullying or harassment is within the scope of the district  
110 school system and, if not, a process for referral of such an act  
111 to the appropriate jurisdiction.

112 (i) A procedure for providing immediate notification to  
113 the parents of a victim of bullying or harassment of all local

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Amendment 1- HB 575.doc

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1)

114 agencies where criminal charges may be pursued against the  
115 perpetrator.

116 (j) A procedure to refer victims and perpetrators of  
117 bullying or harassment for counseling.

118 (k) A procedure for including incidents of bullying or  
119 harassment in the school's report of safety and discipline data  
120 required under s. 1006.09(6). The report must include each  
121 incident of bullying or harassment and the resulting  
122 consequences, including discipline and referrals. The report  
123 must include in a separate section each reported incident of  
124 bullying or harassment that does not meet the criteria of a  
125 prohibited act under this section with recommendations regarding  
126 such incidents. The Department of Education shall aggregate  
127 information contained in the reports.

128 (l) A procedure for providing instruction to students,  
129 parents, teachers, school administrators, counseling staff, and  
130 school volunteers on identifying, preventing, and responding to  
131 bullying or harassment.

132 (m) A procedure for regularly reporting to a victim's  
133 parents the actions taken to protect the victim.

134 (n) A procedure for publicizing the policy, which must  
135 include its publication in the code of student conduct required  
136 under s. 1006.07(2) and in all employee handbooks.

137 (5) To assist school districts in developing policies  
138 prohibiting bullying and harassment, the Department of Education  
139 shall develop a model policy that shall be provided to school  
140 districts no later than October 1, 2007.

141 (6) A school employee, school volunteer, student, or  
142 parent who promptly reports in good faith an act of bullying or  
143 harassment to the appropriate school official designated in the  
144 school district's policy and who makes this report in compliance

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Amendment 1- HB 575.doc

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1)

145 with the procedures set forth in the policy is immune from a  
146 cause of action for damages arising out of the reporting itself  
147 or any failure to remedy the reported incident.

148 (7)(a) The physical location or time of access of a  
149 computer-related incident cannot be raised as a defense in any  
150 disciplinary action initiated under this section.

151 (b) This section does not apply to any person who uses  
152 data or computer software that is accessed through a computer,  
153 computer system, or computer network when acting within the  
154 scope of his or her lawful employment or investigating a  
155 violation of this section in accordance with school district  
156 policy.

157 (8) Distribution of safe schools funds to a school  
158 district provided in the 2008-2009 General Appropriations Act is  
159 contingent upon and payable to the school district upon the  
160 Department of Education's approval of the school district's  
161 bullying and harassment policy. The department's approval of  
162 each school district's bullying and harassment policy shall be  
163 granted upon certification by the department that the school  
164 district's policy has been submitted to the department and is in  
165 substantial conformity with the department's model bullying and  
166 harassment policy as mandated in subsection (5). Distribution of  
167 safe schools funds provided to a school district in fiscal year  
168 2009-2010 and thereafter shall be contingent upon and payable to  
169 the school district upon the school district's compliance with  
170 all reporting procedures contained in this section.

171 (9) On or before January 1 of each year, the Commissioner  
172 of Education shall report to the Governor, the President of the  
173 Senate, and the Speaker of the House of Representatives on the  
174 implementation of this section. The report shall include data  
175 collected pursuant to paragraph (4)(k).

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Amendment 1- HB 575.doc

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1)

176       (10) Nothing in this section shall be construed to abridge  
177 the rights of students or school employees that are protected by  
178 the First Amendment to the Constitution of the United States.

179       Section 2. This act shall take effect upon becoming a law.  
180  
181

182 ===== T I T L E   A M E N D M E N T =====

183       Remove the entire title and insert:

184                       A bill to be entitled  
185       An act relating to school safety; creating s. 1006.147,  
186       F.S.; providing a short title; prohibiting bullying and  
187       harassment against any student or employee of a public K-  
188       12 educational institution; providing definitions;  
189       requiring each school district to adopt a policy  
190       prohibiting such bullying and harassment; providing  
191       minimum requirements for the contents of the policy;  
192       requiring the Department of Education to develop a model  
193       policy; providing immunity; providing restrictions with  
194       respect to defense of an action and application of the  
195       section; requiring department approval of a school  
196       district's policy and school district compliance with  
197       reporting procedures as prerequisites to receipt of safe  
198       schools funds; requiring a report on implementation;  
199       providing an effective date.





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 645

Growth Management

**SPONSOR(S):** Hays

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 680

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| REFERENCE                     | ACTION | ANALYST          | STAFF DIRECTOR |
|-------------------------------|--------|------------------|----------------|
| 1) Schools & Learning Council |        | Eggers <i>ME</i> | Cobb <i>CC</i> |
| 2) Policy & Budget Council    |        |                  |                |
| 3) _____                      |        |                  |                |
| 4) _____                      |        |                  |                |
| 5) _____                      |        |                  |                |

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### SUMMARY ANALYSIS

The bill revises eligibility criteria and allocation methodology for the High Growth District Capital Outlay Assistance Grant Program.

The bill deletes the \$41.75 million appropriation for the Classrooms for Kids Program through the Public Education Capital Outlay and Debt Service Trust Fund.

The bill has an effective date upon becoming law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

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

#### B. EFFECT OF PROPOSED CHANGES:

##### **Educational Facilities Funding**

Funding for educational facilities is addressed in Part IV of Chapter 1013, F.S. Each district school board is required to adopt a capital outlay budget for the upcoming year, as part of the annual budget.<sup>1</sup> The board is prohibited from expending any funds on any project that is not included in the budget. Prior to adoption of the capital outlay budget, each district school board is required to prepare its tentative district educational facilities plan.<sup>2</sup>

Section 1013.64, F.S., addresses funds for comprehensive educational plant needs, and provides for specific allocations from the Public Education Capital Outlay and Debt Service Trust Fund (PECO). The Legislature is required to give priority consideration to remodeling, renovation, maintenance, repairs, and site improvement for existing satisfactory facilities for appropriations allocated to district school boards from the total amount of PECO.<sup>3</sup>

Each district school board is required to meet all educational plant space needs of its elementary, middle, and high schools, prior to spending funds from PECO or the School District and Community College District Capital Outlay and Debt Service Trust Fund for any ancillary plant or any other new construction, renovation, or remodeling of ancillary space.<sup>4</sup>

PECO consists of the following sources:

- Proceeds, premiums, and accrued interest from the sale of public education bonds and that portion of revenues accruing from the gross receipts tax, investment interest, and federal interest subsidies;
- General revenue funds appropriated to the fund for educational capital outlay purposes;
- All capital outlay funds previously appropriated and certified forward; and
- Funds paid pursuant to the excise tax on documents.<sup>5</sup>

Section 1013.64(3)(a)2., F.S., directs that 60 percent of each year's appropriation for new public school construction facilities be allocated to districts based on growth in capital outlay full-time equivalent (FTE) student membership and 40 percent allocated on base capital outlay FTE. State PECO funds are only one portion of the funds available to a district for its school facility construction needs. For most districts, the majority of the capital outlay funds are generated at the local level.

Section 1013.64(2)(a), F.S., authorizes as a part of the PECO Trust Fund, a separate account, in an amount determined by the Legislature, for the "Special Facility Construction Account" program, which is used to provide construction funds to school districts with urgent construction needs and insufficient local resources to meet those needs. The district must also pledge to use all of the school district's

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<sup>1</sup> s. 1013.64, F.S.

<sup>2</sup> *Id.*

<sup>3</sup> s. 1013.64(1)(a), F.S.

<sup>4</sup> s. 1013.64(6)(a), F.S.

<sup>5</sup> s. 1013.65(s)(a), F.S.

other capital outlay resources toward the project, with the understanding that the state will provide the remaining unfunded portion of the cost of the project.

### **Classrooms for Kids Program**

Section 1013.735, F.S., provides for the allocation of funds for the Classrooms for Kids Program, the purpose of which is to increase capacity to reduce class size.<sup>6</sup> The 2005 Legislature provided for an annual appropriation of \$41.75 million of PECO funds emanating from the excise tax to fund the Classrooms for Kids Program. A specific formula is provided in statute representing each district school board's share of the annual appropriation for the Classroom for Kids Program.<sup>7</sup> To be eligible to participate in the Program, a district school board is required to enter into an interlocal agreement; and certify that the district's inventory of facilities listed in the Florida Inventory of School Houses is accurate and current. Funds received are limited to certain expenditures involving construction, purchase, or lease-purchase.<sup>8</sup>

### **High Growth District Capital Outlay Assistance Grant Program**

The 2005 Legislature established the High Growth District Capital Outlay Assistance Grant Program to provide additional money to high growth districts without sufficient capital outlay revenue<sup>9</sup> for the construction of student stations needed due to the rapid increase in the student population. The high growth districts targeted have comparatively low property tax bases. The program is funded through moneys provided in the General Appropriations Act.

To be eligible to participate in the Program, a school district must comply with the following:

- The district must have levied the full two mills of nonvoted discretionary capital outlay millage for each of the past four fiscal years;
- Fifty percent of the revenue derived from the two mill nonvoted discretionary capital outlay millage for the past four fiscal years, when divided by the district's growth in capital outlay FTE students over this period, produces a value that is less than the average cost per student station and weighted by statewide growth in capital outlay FTE students in elementary, middle, and high schools for the past four fiscal years;
- The district must have reached at least twice the statewide average of growth in capital outlay FTE students over this same four year period;
- The Commissioner of Education must have released all funds allocated to the district from the Classrooms First Program, which were fully expended by the district as of February 1 of the current fiscal year; and
- The total capital outlay FTE students of the district are more than 15,000 students.<sup>10</sup>

A \$30 million appropriation in the 2005-06 fiscal year, subsequently vetoed by the Governor, was allocated based on the following methodology:

- For each eligible district, the Department of Education is required to calculate the value of 50 percent of the revenue derived from the two mill nonvoted discretionary capital outlay millage for the previous four fiscal years, divided by the increase in capital outlay FTE students for the same period;
- The Department of Education is required to determine, for each eligible district, the amount that must be added to the calculated value to produce the weighted average value per student station;

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<sup>6</sup> The Legislation established the Program in 2003 (Chapter 2003-391, L.O.F.)

<sup>7</sup> s. 1013.735(1), F.S.

<sup>8</sup> s. 1013.735(3), F.S.

<sup>9</sup> Chapter 2005-290, L.O.F.

<sup>10</sup> s. 1013.738(2), F.S.

- The value calculated for each eligible district is to be multiplied by the average increase in capital outlay FTE students for the previous four fiscal years to determine the maximum grant award; and
- If the funds are insufficient to fully fund the maximum grants calculation, the Department is required to allocate the funds based on each district's prorated share of the total maximum award amount calculated for all eligible districts.<sup>11</sup>

Seven districts, Clay, Hernando, Hillsborough, Lake, Osceola, St. Johns, and St. Lucie qualified for the grant. In terms of capital outlay FTE growth, the districts ranked 2<sup>nd</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup>, and 17<sup>th</sup> among the 67 school districts. Of the top twenty growth districts, ten districts did not qualify due to the two mill revenue and average cost per student station requirement, two districts did not qualify due to not levying the full two mills, and one district did not qualify due to having less than 15,000 students.

Legislation to revise the methodology and establish an appropriation for the 2006-07 fiscal year was not successful.

Proposed Changes:

This bill deletes the \$41.75 million annual appropriation to the Public Education Capital Outlay and Debt Service Trust Fund (PECO) authorized to fund the Classrooms for Kids Program.

This bill additionally amends the qualifying formula for school district eligibility for High Growth District Capital Outlay Assistance Grants as follows:

- Regarding the nonvoted discretionary capital outlay criteria, the bill shortens the fiscal year requirement to the past three years, and offers the following alternative: where the district can show that it currently receives an amount from the school capital outlay surtax, that, when added to the nonvoted discretionary capital outlay millage, equals the amount that would be generated if the full 2 mills of nondiscretionary capital outlay millage had been collected over the past 3 fiscal years;
- The district must have received revenue in the prior fiscal year from the collection of a school impact fee and revenue collected from:
  - Local government infrastructure sales surtax in which a portion is dedicated for the construction of schools in the such prior fiscal year;
  - School capital outlay surtax, subject to certain requirements; or
  - Local bond referendum;
- The district must have equaled or exceeded three times the statewide average of growth in capital outlay FTE students over the prior three fiscal years; and
- The district must not have received an appropriation from the special facilities construction program in the current fiscal year or any of the two fiscal years prior to the current fiscal year.

The allocation formula is revised as follows:

- Each eligible district school board shall receive an amount from the Public Education Capital Outlay and Debt Service Trust Fund to be calculated by computing the capital outlay full-time equivalent membership as determined by the department. Such membership must include, but is not limited to:
  - K-12 students except hospital and homebound part-time students; and
  - Students who are career education students and adult disabled students, who are enrolled in school district career centers.
- The capital outlay full-time equivalent membership shall be determined for kindergarten through grade 12 and for career centers by averaging the unweighted full-time equivalent student

<sup>11</sup> s. 1013.738(3), F.S.

membership for the second and third surveys and comparing the results on a school-by-school basis with the Florida Inventory for School Houses. The capital outlay full-time equivalent membership by grade-level organization shall be used in making the following calculation: the capital outlay full-time equivalent membership by grade-level organization for the prior year must be used to compute the growth over the highest of the 3 years preceding the prior year.

- The total amount appropriated by the Legislature pursuant to this subsection shall be allocated among the growth capital outlay full-time equivalent membership. The allocation shall be prorated to the districts based upon each district's percentage of growth capital outlay full-time membership. The most recent 4-year capital outlay full-time equivalent membership data shall be used in each subsequent year's calculation for the allocation of funds pursuant to this subsection. If a change, correction, or recomputation of data during any year results in a reduction or increase of the calculated amount previously allocated to a district, the allocation to that district shall be adjusted correspondingly. If such recomputation results in an increase or decrease of the calculated amount, such additional or reduced amounts shall be added to or reduced from the districts's future appropriations. However, no change, correction, or recomputation of data shall be made subsequent to 2 years following the initial annual allocation.

Based on the most recent information available, the following 11 districts would receive grants under the new methodology: Clay, Flagler, Hernando, Hillsborough, Lake, Manatee, Osceola, Orange, Pasco, Polk, and St. Lucie. It is important to note that district allocations for an appropriation made in the 2007-08 fiscal year would be based on data that is updated one year to include data from the 2006-07 fiscal year, which may result in the same or different districts receiving the grants.

#### C. SECTION DIRECTORY:

**Section 1.** Amends section 1013.65(2)(a)4.a., F.S., revising the appropriation for the Classrooms for Kids Program.

**Section 2.** Amends section 1013.738 F.S., revising the eligibility criteria and funding methodology for the High Growth District Capital Outlay Assistance Grant Program.

**Section 3.** Provides an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill does not appear to have a fiscal impact on the private sector.

**D. FISCAL COMMENTS:**

This bill deletes the \$41.75 million annual appropriation to the Public Education Capital Outlay and Debt Service Trust Fund (PECO) authorized to fund the Classrooms for Kids Program.

The bill revises eligibility criteria and allocation methodology for the High Growth District Capital Outlay Assistance Grant Program. Based on the revised criteria proposed by the bill, the following districts would qualify for the program: Clay, Flagler, Hernando, Hillsborough, Lake, Manatee, Osceola, Orange, Pasco, Polk, and St. Lucie.

It is important to note that district allocations for an appropriation, if any, made in the 2007-08 fiscal year would be based on data that is updated one year to include the 2006-07 fiscal year, which may result in the same or different districts receiving the grant.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

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

The bill does not require a city or county to spend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not reduce the percentage of state tax shared with counties or municipalities.

**2. Other:**

None.

**B. RULE-MAKING AUTHORITY:**

None.

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

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

1                                   A bill to be entitled  
 2           An act relating to growth management; amending s. 1013.65,  
 3           F.S.; revising the sum appropriated for the Classrooms for  
 4           Kids Program; amending s. 1013.738, F.S.; revising the  
 5           eligibility criteria for the High Growth District Capital  
 6           Outlay Assistance Grant Program; revising provisions for  
 7           allocating funds provided by the General Appropriations  
 8           Act to the Public Education Capital Outlay and Debt  
 9           Service Trust Fund; providing an effective date.

10

11   Be It Enacted by the Legislature of the State of Florida:

12

13           Section 1. Paragraph (a) of subsection (2) of section  
 14   1013.65, Florida Statutes, is amended to read:

15           1013.65 Educational and ancillary plant construction  
 16   funds; Public Education Capital Outlay and Debt Service Trust  
 17   Fund; allocation of funds.--

18           (2) (a) The Public Education Capital Outlay and Debt  
 19   Service Trust Fund shall be comprised of the following sources,  
 20   which are hereby appropriated to the trust fund:

21           1. Proceeds, premiums, and accrued interest from the sale  
 22   of public education bonds and that portion of the revenues  
 23   accruing from the gross receipts tax as provided by s. 9(a)(2),  
 24   Art. XII of the State Constitution, as amended, interest on  
 25   investments, and federal interest subsidies.

26           2. General revenue funds appropriated to the fund for  
 27   educational capital outlay purposes.

28           3. All capital outlay funds previously appropriated and

29 certified forward pursuant to s. 216.301.

30 4.a. Funds paid pursuant to s. 201.15(1)(d).

31 b. The sum of \$75 ~~\$41.75~~ million of such funds shall be  
 32 appropriated annually for expenditure to fund the Classrooms for  
 33 Kids Program created in s. 1013.735 and shall be distributed as  
 34 provided by that section.

35 Section 2. Subsections (2) and (3) of section 1013.738,  
 36 Florida Statutes, are amended to read:

37 1013.738 High Growth District Capital Outlay Assistance  
 38 Grant Program.--

39 (2) In order to qualify for a grant, a school district  
 40 must meet the following criteria:

41 (a) The district must have levied the full 2 mills of  
 42 nonvoted discretionary capital outlay millage authorized in s.  
 43 1011.71(2) for each of the past 3 ~~4~~ fiscal years or receive an  
 44 amount from the school capital outlay surtax authorized in s.  
 45 212.055(6) which, when added to the nonvoted discretionary  
 46 capital outlay millage collected, equals the amount that would  
 47 be generated if the full 2 mills of nonvoted discretionary  
 48 capital outlay millage had been collected over the past 3 fiscal  
 49 years.

50 (b) The district must have received in the prior fiscal  
 51 year revenue from the collection of an impact fee specifically  
 52 for schools and revenue from the collection of one of the  
 53 following:

54 1. A local government infrastructure sales surtax  
 55 authorized in s. 212.055(2) in which a portion is dedicated for  
 56 the construction of schools in such prior fiscal year or for



57 satisfaction of debt service pledged for the construction of  
 58 schools.

59 2. A school capital outlay surtax authorized in s.  
 60 212.055(6). If the school capital outlay surtax is used to meet  
 61 the conditions of paragraph (a), the amount of the school  
 62 capital outlay surtax collected must be in excess of the amount  
 63 in paragraph (a).

64 3. A local bond referendum as authorized in ss. 1010.40-  
 65 1010.55. Fifty percent of the revenue derived from the 2 mill  
 66 nonvoted discretionary capital outlay millage for the past 4  
 67 fiscal years, when divided by the district's growth in capital  
 68 outlay FTE students over this period, produces a value that is  
 69 less than the average cost per student station calculated  
 70 pursuant to s. 1013.72(2), and weighted by statewide growth in  
 71 capital outlay FTE students in elementary, middle, and high  
 72 schools for the past 4 fiscal years.

73 (c) The district must have equaled or exceeded three times  
 74 twice the statewide average of growth in capital outlay FTE  
 75 students over the prior 3 fiscal years. Growth in any one year  
 76 must be determined by calculating the increase in students over  
 77 the prior year this same 4 year period.

78 (d) The district must not have received an appropriation  
 79 from the special facilities construction program in the current  
 80 fiscal year or any of the 2 fiscal years prior to the current  
 81 fiscal year. The Commissioner of Education must have released  
 82 all funds allocated to the district from the Classrooms First  
 83 Program authorized in s. 1013.68, and these funds were fully  
 84 expended by the district as of February 1 of the current fiscal

85 | ~~year.~~

86 |       ~~(c) The total capital outlay FTE students of the district~~  
 87 | ~~is greater than 15,000 students.~~

88 |       (3) The funds provided in the General Appropriations Act  
 89 | shall be allocated pursuant to the following methodology:

90 |       (a) Each eligible district school board shall receive an  
 91 | amount from the Public Education Capital Outlay and Debt Service  
 92 | Trust Fund to be calculated by computing the capital outlay  
 93 | full-time equivalent membership as determined by the Department  
 94 | of Education. Such membership must include, but is not limited  
 95 | to, kindergarten through 12th grade students, except hospital  
 96 | and homebound part-time students, students who are career  
 97 | education students, and adult disabled students who are enrolled  
 98 | in school district career centers. ~~For each eligible district,~~  
 99 | ~~the Department of Education shall calculate the value of 50~~  
 100 | ~~percent of the revenue derived from the 2 mill nonvoted~~  
 101 | ~~discretionary capital outlay millage for the past 4 fiscal years~~  
 102 | ~~divided by the increase in capital outlay FTE students for the~~  
 103 | ~~same period.~~

104 |       (b) The capital outlay full-time equivalent membership  
 105 | shall be determined for kindergarten through the 12th grade and  
 106 | for career centers by averaging the unweighted full-time  
 107 | equivalent student membership for the second and third surveys  
 108 | and comparing the results on a school-by-school basis with the  
 109 | Florida Inventory for School Houses. The capital outlay full-  
 110 | time equivalent membership by grade level organization shall be  
 111 | used in making the following calculation: the capital outlay  
 112 | full-time equivalent membership by grade-level organization for

113 the prior year must be used to compute the growth over the  
 114 highest of the 3 years preceding the prior year. The Department  
 115 of Education shall determine, for each eligible district, the  
 116 amount that must be added to the value calculated pursuant to  
 117 paragraph (a) to produce the weighted average value per student  
 118 station calculated pursuant to paragraph (2) (b).

119 (c) The total amount appropriated by the Legislature  
 120 pursuant to this subsection shall be allocated among the growth  
 121 capital outlay full-time equivalent membership. The allocation  
 122 shall be prorated to the districts based upon each district's  
 123 percentage of growth capital outlay full-time membership. The  
 124 most recent 4-year capital outlay full-time equivalent  
 125 membership data shall be used in each subsequent year's  
 126 calculation for the allocation of funds pursuant to this  
 127 subsection. The value calculated for each eligible district  
 128 pursuant to paragraph (b) shall be multiplied by the average  
 129 increase in capital outlay FTE students for the past 4 fiscal  
 130 years to determine the maximum amount of a grant that may be  
 131 awarded to a district pursuant to this section.

132 (d) If a change, correction, or recomputation of data  
 133 during any year results in a reduction or increase of the  
 134 calculated amount previously allocated to a district, the  
 135 allocation to that district shall be adjusted correspondingly.  
 136 If such recomputation results in an increase or decrease of the  
 137 calculated amount, such additional or reduced amounts shall be  
 138 added to or reduced from the district's future appropriations.  
 139 However, no change, correction, or recomputation of data shall  
 140 be made subsequent to 2 years following the initial annual

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141 | allocation. ~~In the event the funds provided in the General~~  
 142 | ~~Appropriations Act are insufficient to fully fund the maximum~~  
 143 | ~~grants calculated pursuant to paragraph (c), the Department of~~  
 144 | ~~Education shall allocate the funds based on each district's~~  
 145 | ~~prorated share of the total maximum award amount calculated for~~  
 146 | ~~all eligible districts.~~

147 |       Section 3. This act shall take effect upon becoming a law.



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 721  
**SPONSOR(S):** Proctor  
**TIED BILLS:**

Tax on Sales, Use, and Other Transactions

**IDEN./SIM. BILLS:** SB 2102

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| REFERENCE                                      | ACTION          | ANALYST            | STAFF DIRECTOR  |
|--|-----------------|--------------------|-----------------|
| 1) <u>Committee on Postsecondary Education</u> | <u>7 Y, 0 N</u> | Barnhill <i>JB</i> | Tilton          |
| 2) <u>Schools &amp; Learning Council</u>       |                 | Barnhill <i>JB</i> | Cobb <i>lcc</i> |
| 3) <u>Policy &amp; Budget Council</u>          |                 |                    |                 |
| 4) _____                                       |                 |                    |                 |
| 5) _____                                       |                 |                    |                 |

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**SUMMARY ANALYSIS**

Currently, Florida law requires any person engaging in the business of renting, leasing, letting, or granting a license for the use of any real property to pay a tax for the use of real property.

This bill creates a tax exemption for bookstores operated on behalf of postsecondary educational institutions. This exemption will eliminate the taxes imposed on the rent, lease, or other utilization of the property paid by the bookstore operators to postsecondary educational institutions for the use of that property.

The fiscal impact of this bill is indeterminate at this time. The bill does not clarify the type of payment to a university from a bookstore that would be exempt; it does not specifically identify the type of bookstore operation that would qualify for the exemption; it does not clearly state what the phrase "or otherwise operated on behalf of the institution" means; and, it is unclear whether the retroactive operation of the act is intended to provide forgiveness for unpaid tax or to create a right to a refund of taxes paid during this period. Please see the FISCAL ANALYSIS section and the DRAFTING ISSUES section of this analysis.

This bill takes effect upon becoming a law and is required to operate retroactively to amounts paid on or after January 1, 2006.

The Committee on Postsecondary Education adopted two amendments on March 20, 2007. The first amendment clarifies the language in the bill regarding the exemptions of taxes applied to bookstore operations at a postsecondary educational institution and also includes a definition of bookstore operations. The second amendment clarifies that the retroactive application is remedial in nature, and is not to be construed as a right to a refund. The second amendment also clarifies that the bill does not require a government entity to provide a refund of any tax, penalty, or interest paid to the Department of Revenue prior to the effective date of this act. Please see AMENDMENT SECTION, section IV.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

*Ensure lower taxes* – This bill creates a tax exemption for bookstores operated on behalf of postsecondary educational institutions.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Present Situation:**

Currently, Florida law requires any person engaging in the business of renting, leasing, letting, or granting a license<sup>1</sup> for the use of any real property to pay a tax for the use of real property.<sup>2</sup> The tax for the use of real property is six percent (6%) of the total rent or license fee charged for such property by the person charging or collecting the rental or license fee, plus any applicable local discretionary sales surtax.<sup>3</sup> The tax collected is remitted to the Department of Revenue and the local discretionary sales surtax is then distributed back to the counties that levy the surtax.

Local governments are authorized to levy several types of local discretionary sales surtaxes pursuant to s. 212.055, F.S. The maximum they may levy in total is 2.5 percent. Under the provisions of s.212.054, F.S., the local discretionary sales surtaxes apply to all transactions “subject to the state tax imposed on sales, use, services, rentals, admissions, and other transaction” by ch. 212, F.S. and on communications services by ch. 202, F.S. The surtax does not apply to any sales amount above \$5,000 on any item of tangible personal property. This \$5,000 cap does not apply to the sale of any service. As of November 2006, 59 counties levied at least one discretionary sales surtax.

##### **Effects of Proposed Changes:**

This bill creates a tax exemption for bookstores operated on behalf of postsecondary educational institutions. This exemption will eliminate the taxes imposed on the rent, lease, or other utilization of the property paid by the bookstore operators to postsecondary educational institutions for the use of that property.

#### C. SECTION DIRECTORY:

**Section 1:** Amends s. 212.08, F.S., exempting payments to postsecondary educational institutions made by certain bookstore operators.

**Section 2:** Provides an effective date of upon becoming a law and provides retroactive application to amounts paid on or after January 1, 2006.

### II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

---

<sup>1</sup> section 212.02(10)(i), F.S., defines license as the granting of a privilege to use or occupy a building or parcel of real property for any purpose.

<sup>2</sup> section 212.031(1)(a), F.S.

<sup>3</sup> sections 212.031(1)(c), 212.054(2)(a), F.S.

The fiscal impact on state revenues is indeterminate at this time. See the Fiscal Comments and Drafting Issues section of this analysis.

2. Expenditures:

The fiscal impact on state expenditures is indeterminate at this time. See the Fiscal Comments and Drafting Issues section of this analysis.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The fiscal impact on local government revenues is indeterminate at this time. See the Fiscal Comments and Drafting Issues section of this analysis.

2. Expenditures:

The fiscal impact on local government expenditures is indeterminate at this time. See the Fiscal Comments and Drafting Issues section of this analysis.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Taxes on money paid for the utilization of real property would not be paid by the individual operating the bookstore.

**D. FISCAL COMMENTS:**

On March 2, 2007, the Revenue Estimating Conference (REC) adopted an estimate of - \$1.7 million in fiscal year 2007-2008 and - \$0.7 million thereafter.

The REC assumed the following:

- A 6% increase in colleges that change their bookstore operations for middle estimate. (Historical growth 2000- 2005)
- A 15% increase in colleges that change their bookstore operations. (High Estimate)
- A 5% growth in gross sales.
- The intent of the bill was to refund taxes paid retroactive to January 1, 2006.

|                          | FY 2007-08<br>Annualized | FY 2007-08<br>Cash | FY 2008-09<br>Cash | FY 2009-10<br>Cash | FY 2010-11<br>Cash |
|--------------------------|--------------------------|--------------------|--------------------|--------------------|--------------------|
| General Revenue          | (.6)                     | (1.5)              | (.6)               | (.6)               | (.6)               |
| State Trust              | (Insignificant)          | (Insignificant)    | (Insignificant)    | (Insignificant)    | (Insignificant)    |
| Total State Impact       | (.6)                     | (1.5)              | (.6)               | (.6)               | (.6)               |
| Revenue Sharing          | (Insignificant)          | (.1)               | (Insignificant)    | (Insignificant)    | (Insignificant)    |
| Local Gov't Half<br>Cent | (.1)                     | (.1)               | (.1)               | (.1)               | (.1)               |
| Local Option             | (.1)                     | (.1)               | (.1)               | (.1)               | (.1)               |
| Total Local Impact       | (.2)                     | (.3)               | (.2)               | (.2)               | (.2)               |
| Total Impact             | (.8)                     | (1.8)              | (.8)               | (.8)               | (.8)               |

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:



Subsection (b) of s. 18, Art. VII, Fla. Const., provides that except upon approval of each house of the Legislature by 2/3 vote of the membership, the Legislature may not enact, amend or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority exists as of February 1, 1989.

A bill that reduces the authority of cities and counties to raise revenues in the aggregate, as such authority existed on February 1, 1989, is exempt if it is:

- a law adopted to require funding of pension benefits existing on January 8, 1991;
- a criminal law;
- an election law;
- the General Appropriations Act;
- a special appropriations act;
- a law reauthorizing but not expanding then-existing statutory authority;
- A law having an insignificant fiscal impact; or
- A law creating, modifying, or repealing a noncriminal infraction.

By expanding sales tax exemptions, the bill reduces the sales tax base of municipalities and counties, thus reducing their revenue-raising authority. The Revenue Estimating Conference estimated that the fiscal impact of the tax exemption proposed by this bill is an estimated cost of \$1.8 million in fiscal year 2007-2008, and a cost of \$800,000 on a recurring basis. The estimated local fiscal impact is \$300,000 in fiscal year 2007-2008, representing an insignificant reduction in revenue raising authority in the form of discretionary sales surtax revenues. This bill appears to reduce the revenue raising authority of municipalities and cities, however, the fiscal impact is insignificant. Therefore, this bill is exempt from the mandates provision of the Constitution.

2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

This bill does not create any rule-making authority.

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

The Revenue Estimating Conference<sup>4</sup> and the Board of Governors<sup>5</sup> suggest clarification on what is meant by "...or otherwise operated on behalf of that institution" as this language is unclear.

The Department of Revenue recommended three possible amendments in an effort to clarify the intent and scope of the proposed exemption. (1) Define "bookstore operations" to mean the sale, distribution, and provision of textbooks, merchandise, and services traditionally offered in college and university bookstores for the benefit of the institution's students, faculty, and staff. (2) Amend s. 212.031(1), F.S. rather than s. 212.08, F.S., and include the same definition of bookstore. (3) Clarify the retroactive operation of the act and state that the application is remedial, not a right to a refund or to require a refund prior to the effective date of the act.<sup>6</sup>

#### D. STATEMENT OF THE SPONSOR

No statement submitted.

### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 20, 2007, the Committee on Postsecondary Education adopted two amendments. Representative Proctor proposed both amendments. The first amendment clarifies the language in the bill regarding the

<sup>4</sup> Revenue Estimating Conference, March 2, 2007.

<sup>5</sup> Board of Governors, 2007 Legislative Bill Analysis on HB 721: Sales Tax/Postsecondary Education Bookstores.

<sup>6</sup> Department of Revenue, 2007 Legislative Bill Analysis on BH 721: Sales Tax/Postsecondary Education Bookstores.

exemptions of taxes applied to bookstore operations at a postsecondary educational institution and also includes a definition of bookstore operations. The second amendment clarifies that the retroactive application is remedial in nature, and is not to be construed as a right to a refund. The second amendment also clarifies that the bill does not require a government entity to provide a refund of any tax, penalty, or interest paid to the Department of Revenue prior to the effective date of this act.

1                                   A bill to be entitled  
 2           An act relating to the tax on sales, use, and other  
 3           transactions; amending s. 212.08, F.S.; exempting payments  
 4           to postsecondary educational institutions made by certain  
 5           bookstore operators; providing for retroactive  
 6           application; providing an effective date.

7  
 8   Be It Enacted by the Legislature of the State of Florida:

9  
 10           Section 1. Paragraph (eee) is added to subsection (7) of  
 11           section 212.08, Florida Statutes, to read:

12           212.08 Sales, rental, use, consumption, distribution, and  
 13           storage tax; specified exemptions.--The sale at retail, the  
 14           rental, the use, the consumption, the distribution, and the  
 15           storage to be used or consumed in this state of the following  
 16           are hereby specifically exempt from the tax imposed by this  
 17           chapter.

18           (7) MISCELLANEOUS EXEMPTIONS.--Exemptions provided to any  
 19           entity by this chapter do not inure to any transaction that is  
 20           otherwise taxable under this chapter when payment is made by a  
 21           representative or employee of the entity by any means,  
 22           including, but not limited to, cash, check, or credit card, even  
 23           when that representative or employee is subsequently reimbursed  
 24           by the entity. In addition, exemptions provided to any entity by  
 25           this subsection do not inure to any transaction that is  
 26           otherwise taxable under this chapter unless the entity has  
 27           obtained a sales tax exemption certificate from the department  
 28           or the entity obtains or provides other documentation as

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29 required by the department. Eligible purchases or leases made  
 30 with such a certificate must be in strict compliance with this  
 31 subsection and departmental rules, and any person who makes an  
 32 exempt purchase with a certificate that is not in strict  
 33 compliance with this subsection and the rules is liable for and  
 34 shall pay the tax. The department may adopt rules to administer  
 35 this subsection.

36 (eee) School bookstores.--Also exempt from the tax imposed  
 37 by this chapter are payments to a postsecondary educational  
 38 institution by a person who operates a bookstore at a location  
 39 owned, leased, or otherwise operated on behalf of that  
 40 institution.

41 Section 2. This act shall take effect upon becoming a law  
 42 and shall operate retroactively to amounts paid on or after  
 43 January 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Bill No. 0721

COUNCIL/COMMITTEE ACTION

|                       |                                     |       |
|-----------------------|-------------------------------------|-------|
| ADOPTED               | <input type="checkbox"/>            | (Y/N) |
| ADOPTED AS AMENDED    | <input type="checkbox"/>            | (Y/N) |
| ADOPTED W/O OBJECTION | <input checked="" type="checkbox"/> | (Y/N) |
| FAILED TO ADOPT       | <input type="checkbox"/>            | (Y/N) |
| WITHDRAWN             | <input type="checkbox"/>            | (Y/N) |
| OTHER                 | <input type="checkbox"/>            |       |

1 Council/Committee hearing bill: Committee on Postsecondary  
 2 Education  
 3 Representative(s) Proctor offered the following:  
 4

**Amendment (with title amendment)**

Remove line(s) 36-40, and insert:

7 (eee) Bookstore operations at a postsecondary educational  
 8 institution.--Also exempt from payment of the tax imposed by  
 9 this chapter on renting, leasing, letting, or granting a license  
 10 for the use of any real property are payments to a postsecondary  
 11 educational institution made by any person pursuant to a grant  
 12 of the right to conduct bookstore operations on real property  
 13 owned or leased by the postsecondary educational institution. As  
 14 used in this paragraph, the term "bookstore operations" means  
 15 the sale, distribution, and provision of textbooks, merchandise,  
 16 and services traditionally offered in college and university  
 17 bookstores for the benefit of the institution's students,  
 18 faculty, and staff.

===== T I T L E A M E N D M E N T =====

Remove line 5 and insert:

000000

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

22 bookstore operators; providing a definition; providing for  
23 retroactive

000000

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.2 (for drafter's use only)

Bill No. 0721

COUNCIL/COMMITTEE ACTION

|                       |          |       |
|-----------------------|----------|-------|
| ADOPTED               | ___      | (Y/N) |
| ADOPTED AS AMENDED    | ___      | (Y/N) |
| ADOPTED W/O OBJECTION | <u>✓</u> | (Y/N) |
| FAILED TO ADOPT       | ___      | (Y/N) |
| WITHDRAWN             | ___      | (Y/N) |
| OTHER                 | _____    |       |

1 Council/Committee hearing bill: Committee on Postsecondary  
 2 Education  
 3 Representative(s) Proctor offered the following:

**Amendment (with title amendment)**

Between lines 40 and 41, insert:

7 Section 2. The retroactive application of the provisions  
 8 of this act are remedial in nature and shall not be construed to  
 9 create a right to a refund or to require a refund by any  
 10 governmental entity of any tax, penalty, or interest remitted to  
 11 the Department of Revenue prior to the effective date of this  
 12 act.

===== T I T L E A M E N D M E N T =====

Remove line 5 and insert:

16 bookstore operators; providing construction; providing for  
 17 retroactive

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**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 967                      Public School Physical Education  
**SPONSOR(S):** Weatherford and others  
**TIED BILLS:**                              **IDEN./SIM. BILLS:**

| REFERENCE                                | ACTION          | ANALYST            | STAFF DIRECTOR  |
|--|-----------------|--------------------|-----------------|
| 1) <u>Committee on K-12</u>              | <u>8 Y, 0 N</u> | Barnhill <i>JB</i> | Ahearn          |
| 2) <u>Schools &amp; Learning Council</u> |                 | Barnhill <i>JB</i> | Cobb <i>lcc</i> |
| 3) <u>Policy &amp; Budget Council</u>    |                 |                    |                 |
| 4) _____                                 |                 |                    |                 |
| 5) _____                                 |                 |                    |                 |

**SUMMARY ANALYSIS**

Currently, Florida law *encourages* all students in prekindergarten through grade 12 to participate in physical education. More particularly, school boards are *encouraged* to provide 150 minutes of physical education each week to students in kindergarten through grade 5 and to provide 225 minutes of physical education each week to students in grades 6 through 8. Students in grades 9 through 12 are encouraged to participate in physical education, although no amount of time is suggested. However, high school graduation requirements require one credit of physical education.

This bill *requires* all students in kindergarten through grade 5 to participate in physical education. The bill *requires* these students to participate in a total of 150 minutes of physical education each week. This bill encourages students in grades 6 through 12 to participate in 225 minutes of physical education each week, thus providing students in grades 9 through 12 a suggested amount of time each week to spend on physical education.

This bill also requires the State Board of Education to review, and revise as necessary, the Sunshine State Standards to ensure the standards reflect the state-of-the-art physical education philosophy and practice in this state.

This bill also requires the Department of Education and the district school boards to provide a professional development program for physical education instructors and developers of physical education curricula.

This bill does not appear to have a significant fiscal impact on state government. This bill does not appear to have an impact on local governments. Please see FISCAL ANALYSIS, section II.

The Committee on K-12 adopted one amendment on March 20, 2007, which retained the bill's provision requiring 150 minutes of physical education for students in kindergarten through grade 5, but also provided a definition of "physical education" to include a wide variety of activity and knowledge, thus providing school districts greater flexibility in meeting the 150 minute requirement. Please see AMENDMENT SECTION, section IV.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. HOUSE PRINCIPLES ANALYSIS:

*Provide limited government* – This bill requires the State Board of Education to revise the Sunshine State Standards to reflect Florida’s state-of-the-art physical education philosophy and practice. This bill also requires the Department of Education and district school boards to provide a professional development program for physical education instructors and developers of physical education curricula.

### B. EFFECT OF PROPOSED CHANGES:

#### **Background**

Obesity is a growing concern across the country and in this state. Overweight rates have doubled among children and tripled among adolescents in the last 25 years.<sup>1</sup> Obesity has been linked to inactivity, yet schools have reduced or completely excluded physical education from the curriculum in an effort to spend more time in the classroom.

#### **Present Situation**

Currently, Florida law *encourages* all students in prekindergarten through grade 12 to participate in physical education.<sup>2</sup> Section 1003.455(2), F.S., states the district school boards are responsible for developing a physical education program that stresses physical fitness and encourages healthy, active lifestyles. Physical education must include physical activities of moderate intensity, for enough time to provide a significant health benefit to students. Differing capabilities of students must be considered in the development of the physical education program.

Each school board must adopt a written policy for physical education. This policy must detail the school district’s physical education program and include the district’s expected program outcomes.

Current law *encourages* district school boards to provide 150 minutes of physical education each week for students in kindergarten through grade 5. District school boards are encouraged to provide 225 minutes of physical education each week to students in grades 6 through 8. Students in grades 9 through 12 are encouraged to participate in physical education, although no amount of time is suggested. However, high school graduation requirements require one credit of physical education.<sup>3</sup>

There are currently 6,233 physical education teachers employed in Florida. There are also an unknown number of additional teachers involved in physical education.

#### **Effects of Proposed Changes**

This bill changes the law from requiring school districts to *encourage* student participation in physical education, to requiring school districts to *require* students in kindergarten through grade 5 to participate in physical education and *encourage* students in grades 6 through 12 to participate in physical education.

More particularly, district school boards must require students in kindergarten through grade 5 to participate in daily physical activity, for a total of 150 minutes per week. The district school board must encourage students in grades 6 through 12 to participate in physical activity for a total of 225 minutes

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<sup>1</sup> <http://www.cdc.gov/HealthyYouth/index.htm>

<sup>2</sup> s. 1003.455(1), F.S.

<sup>3</sup> s. 1003.428(2)(a)(6), F.S.

per week, thus providing school boards a suggested amount of time each week students in grades 9 through 12 should spend on physical education.

This bill requires the State Board of Education to review and revise as necessary the Sunshine State Standards for physical education. These standards should reflect Florida's state-of-the-art physical education philosophy and practice.

This bill requires the Department of Education and each school district to provide a professional development program for physical education instructors and developers of physical education curricula. Physical education instructors include elementary and secondary school teachers whose responsibilities include teaching physical education classes.

**C. SECTION DIRECTORY:**

**Section 1.** Amends s. 1003.455, F.S., providing requirements for student participation in physical education and requiring review and revision of the Sunshine State Standards for physical education.

**Section 2.** Amends s. 1012.98, F.S., requiring the Department of Education to develop and school districts to provide a professional development program.

**Section 3.** Provides an effective date of July 1, 2007.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

This bill does not appear to have a fiscal impact on state government revenues.

2. Expenditures:

This bill has an indeterminate fiscal impact on the Department of Education (DOE). This bill requires the DOE to provide a professional development program for physical education instructors and developers of physical education curricula. These costs depend on availability of existing material and professional analysis of needed content.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

This bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

This bill does not appear to have a fiscal impact on local government expenditures.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

Each school district may experience additional costs to provide the required professional development program for physical education instructors and developers of physical education curricula. Costs will vary depending on the method of delivery (e.g., online, demonstration) and the duration of the program.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

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

This bill does not appear to require a city or county to expend funds or to take any action requiring the expenditure of funds.

This bill does not appear to reduce the authority that municipalities or counties have to raise revenues in the aggregate.

This bill does not appear to reduce the percentage of state tax shared with counties or municipalities.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

This bill does not raise the need for rules or rulemaking authority or direct an agency to adopt rules.

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

This bill will have an impact on daily instructional time for elementary schools. Districts that do not currently follow the recommendations in statute will have to eliminate instruction time in other areas.

This bill will have an impact on teacher certification requirements. Enrollment in physical education classes will increase significantly, causing a need for more teachers.

The language of this bill requires an actual physical *education* class. This is different from required physical *activity* (i.e., recess).

The bill does not provide for exemptions that will be needed for some students.

#### D. STATEMENT OF THE SPONSOR

No statement submitted.

### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

The Committee on K-12 adopted one amendment on March 20, 2007. Representative Weatherford's amendment retained the new requirement as provided in the bill that children in kindergarten through grade 5 take 150 minutes of physical education per week, but provided a definition of "physical education" to include the development or maintenance of skills related to strength, agility, flexibility, movement, and stamina; the development of knowledge and skills regarding teamwork and fair play and nutrition and physical fitness; and the development of positive attitudes regarding nutrition and physical activity. Thus, the amendment allows greater flexibility in meeting the 150 minute requirement.

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A bill to be entitled  
An act relating to public school physical education;  
amending s. 1003.455, F.S.; providing requirements for  
student participation in physical education; requiring  
review and revision of the Sunshine State Standards for  
physical education; amending s. 1012.98, F.S.; requiring  
the Department of Education to develop and school  
districts to provide a professional development program;  
providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 1003.455, Florida Statutes, is amended  
to read:

1003.455 Physical education programs, ~~assessment~~.--

(1) It is the responsibility of each district school board  
to develop a physical education program that stresses physical  
fitness and encourages healthful, active lifestyles. Each  
district school board shall require all students in kindergarten  
through grade 5, and to encourage all students in grades 6  
through ~~prekindergarten through grade 12,~~ to participate in  
physical education. Physical education shall consist of physical  
activities of at least a moderate intensity level and for a  
duration sufficient to provide a significant health benefit to  
students, subject to the differing capabilities of students. All  
physical education programs and curricula must be reviewed by a  
certified physical education instructor.

28 (2) Each district school board shall adopt a written  
 29 physical education policy that details the school district's  
 30 physical education program and expected program outcomes.

31 (3) Each district school board shall require each  
 32 kindergarten through grade 5 student to participate in physical  
 33 education daily to consist of ~~is encouraged to provide~~ 150  
 34 minutes of physical education each week ~~for students in~~  
 35 ~~kindergarten through grade 5~~ and shall encourage each student in  
 36 grades 6 through 12 to participate in physical education for 225  
 37 minutes each week ~~for students in grades 6 through 8.~~

38 (4) The State Board of Education shall review and revise  
 39 as necessary the Sunshine State Standards for physical education  
 40 to ensure that the standards reflect state-of-the-art physical  
 41 education philosophy and practice.

42 Section 2. Paragraph (c) of subsection (4) of section  
 43 1012.98, Florida Statutes, is redesignated as paragraph (d) and  
 44 a new paragraph (c) is added to that subsection to read:

45 1012.98 School Community Professional Development Act.--

46 (4) The Department of Education, school districts,  
 47 schools, community colleges, and state universities share the  
 48 responsibilities described in this section. These  
 49 responsibilities include the following:

50 (c) The department shall develop and each school district  
 51 shall provide a professional development program for physical  
 52 education instructors, elementary and secondary school teachers  
 53 whose responsibilities include teaching physical education  
 54 classes, and developers of physical education curricula.

55 Section 3. This act shall take effect July 1, 2007.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1)

Bill No. 0967

COUNCIL/COMMITTEE ACTION

ADOPTED                            \_\_\_ (Y/N)  
ADOPTED AS AMENDED               \_\_\_ (Y/N)  
ADOPTED W/O OBJECTION           Y (Y/N)  
FAILED TO ADOPT                   \_\_\_ (Y/N)  
WITHDRAWN                         \_\_\_ (Y/N)  
OTHER                              \_\_\_\_\_

1 Council/Committee hearing bill:     Committee on K-12  
2 Representative(s) Weatherford offered the following:

3  
4       **Amendment (with title amendment)**

5       Remove everything after the enacting clause and insert:

6       Section 1. Subsection (7) is added to section 1001.11,  
7 Florida Statutes, to read:

8       1001.11 Commissioner of Education; other duties.--

9       (7) The commissioner shall dedicate financial and  
10 departmental staff resources to provide professional development  
11 to physical education teachers; elementary and secondary  
12 teachers whose assignments include physical education courses;  
13 and developers of physical education curricula. Such  
14 professional development shall incorporate current physical  
15 education and nutrition philosophy and best practices that  
16 result in student participation in physical activities that  
17 promote lifelong physical and mental well-being.

18       Section 2. Subsection (16) is added to section 1003.01,  
19 Florida Statutes, to read:

20       1003.01 Definitions.--As used in this chapter, the term:

3-15-07 7:25 pm

Page 1 of 3

Amendment 1 by Weatherford - HB 967 (2).doc

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1)

21       (16) "Physical education" means the development or  
22 maintenance of skills related to strength, agility, flexibility,  
23 movement, and stamina; the development of knowledge and skills  
24 regarding teamwork and fair play; the development of knowledge  
25 and skills regarding nutrition and physical fitness as part of a  
26 healthy lifestyle; and the development of positive attitudes  
27 regarding sound nutrition and physical activity as a component  
28 of personal well-being.

29       Section 3. Subsection (3) of section 1003.455, Florida  
30 Statutes, is amended to read:

31       1003.455 Physical education; assessment.--

32       (3) Each district school board shall provide 150 minutes  
33 of physical education each week for students in kindergarten  
34 through grade 5. Students enrolled in such instruction shall be  
35 reported separately through the Florida Education Finance  
36 Program, and records of such enrollment shall be audited  
37 pursuant to s. 1010.305. Each district school board is  
38 encouraged to provide ~~150 minutes of physical education each~~  
39 ~~week for students in kindergarten through grade 5 and 225~~  
40 minutes of physical education each week for students in grades 6  
41 through 8.

42       Section 4. During the 2007-2008 school year, the State  
43 Board of Education shall review and revise the Sunshine State  
44 Standards related to physical education to reflect state-of-the-  
45 art philosophy and practice. The revised standards shall  
46 emphasize the role of physical education in promoting the  
47 knowledge, skills, and attitudes that prepare students to make  
48 healthy lifelong nutrition and physical fitness choices.

49       Section 5. This act shall take effect upon becoming a law.

50       ===== T I T L E A M E N D M E N T =====

3-15-07 7:25 pm



HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1)

51 Remove the entire title and insert:  
52 A bill to be entitled  
53 An act relating to physical education; amending s.  
54 1001.11, F.S.; requiring the Commissioner of Education to  
55 dedicate resources to provide professional development in  
56 physical education; amending s. 1003.01, F.S.; defining  
57 the term "physical education"; amending s. 1003.455, F.S.;  
58 requiring district school boards to provide specified  
59 physical education for certain students; requiring  
60 reporting for funding purposes and auditing of records;  
61 requiring the Department of Education to review and revise  
62 the Sunshine State Standards regarding physical education;  
63 providing an effective date.

3-15-07 7:25 pm

Page 3 of 3

Amendment 1 by Weatherford - HB 967 (2).doc





**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 1107

Child Care

**SPONSOR(S):** Ausley

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 2226

| REFERENCE                                | ACTION          | ANALYST                             | STAFF DIRECTOR                 |
|--|-----------------|-------------------------------------|--------------------------------|
| 1) <u>Committee on K-12</u>              | <u>6 Y, 0 N</u> | <u>Gillespie</u>                    | <u>Ahearn</u>                  |
| 2) <u>Schools &amp; Learning Council</u> | <u></u>         | <u>Gillespie</u> <i>[Signature]</i> | <u>Cobb</u> <i>[Signature]</i> |
| 3) <u>Policy &amp; Budget Council</u>    | <u></u>         | <u></u>                             | <u></u>                        |
| 4) <u></u>                               | <u></u>         | <u></u>                             | <u></u>                        |
| 5) <u></u>                               | <u></u>         | <u></u>                             | <u></u>                        |

**SUMMARY ANALYSIS**

House Bill 1107 requires the Agency for Workforce Innovation (AWI) to establish Florida's Sunshine State Stars Quality Rating System (QRS), which assesses and communicates to parents the quality of early childhood education and child care programs provided by licensed child care facilities and facilities participating in the Voluntary Prekindergarten Education (VPK) Program. The bill requires the QRS to be voluntary for facilities.

The QRS must be based on an assessment of a facility's learning environment; curricula, screening, and assessment; staff qualifications; professional development; business practices; and family involvement. The bill requires AWI to design the QRS as a five-star rating system of five tiers, each tier being represented by one to five stars. A facility is required to meet the criteria of a lower tier before advancing to the next tier.

The bill creates a 2-year voluntary pilot program to implement the QRS in eight Florida counties. The bill specifies that centers and programs rated as Tier 1, 2, or 3 are eligible for grants and awards to improve quality. The bill also provides that centers and programs rated as Tier 4 or 5 are eligible for merit awards to maintain high quality. The bill does not, however, require AWI or the early learning coalitions to provide these grants and awards or specify the amounts of the awards.

The bill requires AWI and the early learning coalitions to provide technical support for facilities in the pilot program.

The bill provides a \$25 million appropriation to AWI to fund the program, although an amendment adopted by the Committee on K-12 removes the appropriation from the bill and makes the remaining provisions subject to specific legislative appropriation.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: The bill creates a new program and accordingly increases government duties and the number of government employees responsible for carrying out those duties.

Empower Families: The bill establishes a system that assesses the quality of early childhood education and child care programs and communicates that information to parents, thereby empowering parents to make an informed choice about the appropriate child care settings for their children.

#### B. EFFECT OF PROPOSED CHANGES:

##### Present Situation:

According to the National Child Care Information Center (NCCIC)<sup>1</sup>, a “quality rating system” (QRS) is a method to assess, improve, and communicate the level of quality in early childhood education and child care settings.<sup>2</sup> A QRS typically includes five common elements:<sup>3</sup>

- Standards based on the foundation of compliance with the state’s child care licensing regulations and including two or more levels, or tiers, of quality criteria above basic licensing requirements;
- Accountability through appropriate means of assessment and monitoring for compliance with the specific criteria of the standards;
- Program and practitioner outreach and support including efforts to promote participation in the QRS, as well as technical assistance, training, mentoring, and other supports;
- Financing incentives specifically linked to compliance with quality standards, such as quality bonus payments, tiered reimbursement rates, contracts, quality grants, and wage supplements; and
- Parent education designed to ensure that parents understand the QRS and how it benefits children, families, and the early childhood education and child care system as a whole. Parent education includes the development of a quality rating indicator or symbol that parents use as a consumer guide. These symbols, which represent varying quality rating levels, are easy-to-understand indicators of quality, such as a “three-star” or “gold level” that parents can use when making decisions about the care and education of their children.

NCCIC reports that, as of March 2006, 13 states have a QRS: Colorado, District of Columbia, Iowa, Kentucky, Maryland, Montana, New Hampshire, New Mexico, North Carolina, Oklahoma, Pennsylvania, Tennessee, and Vermont.<sup>4</sup>

##### Sunshine State Stars Quality Rating System:

On May 19, 2006, NCCIC presented information about quality rating systems to the Florida Early Learning Advisory Council.<sup>5</sup> At the conclusion of the presentation, the advisory council, chaired by

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<sup>1</sup> The National Child Care Information Center (NCCIC) is a national clearinghouse and technical assistance center linking parents, providers, policymakers, researchers, and the public to early childhood education and child care information. NCCIC is a partner with the federal Child Care Bureau of the United States Department of Health and Human Services.

<sup>2</sup> National Child Care Information Center, *Quality Rating Systems: Definition and Statewide Systems* (Apr. 2006), available at <http://nccic.acf.hhs.gov/pubs/qrs-defsystems.pdf>.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> The Florida Early Learning Advisory Council is composed of a chair appointed by the Governor; the chairs of the 31 early learning coalitions, who are appointed by the Governor; one member appointed by the President of the Senate; and one member appointed by the Speaker of the House of Representatives. Section 1002.79(2), Florida Statutes.

former Lieutenant Governor Toni Jennings, requested the Agency for Workforce Innovation to develop a proposal for a QRS in Florida.

On July 27 and 28, 2006, the Agency for Workforce Innovation convened a statewide meeting in Orlando of early learning coalitions, providers of early learning programs, child care advocates, and state agencies involved in early learning to discuss the development of a QRS.

On September 8, 2006, the Agency for Workforce Innovation conducted a second statewide meeting in Tampa to refine its proposal for a QRS, and, on September 28 and 29, 2006, the agency presented its final proposal to the Florida Early Learning Advisory Council, which the agency titled the "Sunshine State Stars Quality Rating System."

#### Voluntary Prekindergarten Education Program:

In 2002, the voters of Florida approved an amendment to the State Constitution, which requires the Legislature to establish an early childhood education program for every 4-year-old child in the state which is voluntary, high quality, free, and delivered according to professionally accepted standards.<sup>6</sup> In December 2004, to implement the constitutional amendment, the Legislature created the Voluntary Prekindergarten Education (VPK) Program.<sup>7</sup> The VPK program allows a parent to enroll his or her child in a voluntary, free prekindergarten program offered during the year before the child is eligible for admission to kindergarten. The program gives parents of eligible children a choice among three program options:

- A 540-instructional-hour school-year VPK program delivered by a private provider;
- A 300-instructional-hour summer VPK program delivered by a public school or private provider; or
- If offered in a school district that meets class-size reduction requirements, a 540 instructional-hour school-year VPK program delivered by a public school.

Two types of providers are eligible to deliver the VPK program:

- Private providers: Eligible private providers include licensed child care facilities, licensed family day care homes, licensed large family child care homes, private school (exempt from licensure), and faith-based child care facilities (exempt from licensure).<sup>8</sup>
- Public schools: A district school board determines which public schools in the district are eligible to participate in the VPK program.<sup>9</sup>

#### Child Care Licensing:

Florida's child care licensing regulations generally govern the health, safety, sanitation, nutrition, physical surroundings, and child development needs of children receiving child care services; child care personnel requirements (e.g., training, professional credentials, and background screening); and staff-to-children ratios.<sup>10</sup> Except for certain facilities that are exempt from licensure (i.e., faith-based child care facilities), all child care facilities in the state must be licensed.<sup>11</sup> Specialized child care facilities for the care of mildly ill children and large family child care homes must also be licensed.<sup>12</sup> Depending on local requirements, family day care homes must either be licensed or registered.<sup>13</sup>

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<sup>6</sup> Section 1(b) and (c), Article IX of the State Constitution.

<sup>7</sup> Chapter 2004-484, Laws of Florida.

<sup>8</sup> Sections 1002.55(3)(a) and 1002.61(3)(b), Florida Statutes.

<sup>9</sup> Section 1001.61(3)(a) and 1002.63(3), Florida Statutes.

<sup>10</sup> See, e.g., sections 402.305, 402.313, and 402.3131, Florida Statutes.

<sup>11</sup> Sections 402.305 and 402.312, Florida Statutes.

<sup>12</sup> Sections 402.305(17), 402.312, and 402.3131, Florida Statutes.

<sup>13</sup> Sections 402.312 and 402.313, Florida Statutes.

The licensure or registration of child care providers is administered by the Child Care Services Program Office of the Department of Children and Family Services or, in seven counties (Alachua, Brevard, Broward, Hillsborough, Palm Beach, Pinellas, and Sarasota), by local licensing agencies that have licensing standards meeting or exceeding the state's minimum standards.<sup>14</sup>

#### Inconsistent Use of "Child Care Facility":

Florida's child care licensing laws inconsistently use the term "child care facility" to mean any type of regulated child care provider or, in other contexts, a distinct license type that is distinguished from other license types (e.g., family day care homes or large family child care homes). For example, section 402.309, Florida Statutes, authorizes provisional licenses to be issued to "child care facilities." In this section, the term refers to any child care provider that is subject to licensure. Conversely, section 402.305, Florida Statutes, provides licensing standards for "child care facilities." In this section, the term refers only to the distinct license type and would not apply, for example, to family day care homes.

#### Gold Seal Quality Care Designation:

The Department of Children and Family Services (DCF) issues a "Gold Seal Quality Care" designation to child care facilities, large family child care homes, and family day care homes that are accredited by a nationally recognized accrediting association whose standards meet or exceed standards of the

- National Association for the Education of Young Children;
- National Association of Family Child Care, and
- National Early Childhood Program Accreditation Commission.

In addition to the three associations listed in law, DCF's current approved list of accrediting associations include:<sup>15</sup>

- Association of Christian Schools International;
- Association of Christian Teachers and Schools;
- Accredited Professional Preschool Learning Environment;
- Council On Accreditation;
- Montessori School Accreditation Commission;
- National After-School Association;
- National Accreditation Commission;
- National Council for Private School Accreditation;
- Southern Association of Colleges and Schools;
- United Methodist Association of Preschools; and
- National Accreditation Council for Early Childhood Professional Personnel and Programs.

Child care providers who hold a Gold Seal Quality Care designation and participate in the school readiness program<sup>16</sup> are eligible for an increased payment rate (up to 120 percent of non-Gold Seal rate).<sup>17</sup> In addition, licensed or faith-based child care facilities with the Gold Seal Quality Care

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<sup>14</sup> Sections 402.306 and 402.307, Florida Statutes.

<sup>15</sup> Florida Department of Children and Family Services, *Gold Seal Quality Care*, at <http://www.dcf.state.fl.us/childcare/goldseal.shtml> (last visited Mar. 16, 2007).

<sup>16</sup> In 1999, the Legislature enacted the School Readiness Act (section 411.01, Florida Statutes), which consolidated the state's early childhood education and child care programs into one integrated program of school readiness services. Chapter 99-357, Laws of Florida. A child whose parent receives temporary cash assistance subject to federal work requirements, who is at risk of abuse or neglect, or whose family is economically disadvantaged (family income does not exceed 150 percent of federal poverty level) is generally eligible for school readiness programs. Section 411.01(6) and (11), Florida Statutes.

<sup>17</sup> See, e.g., Specific Appropriation 2304, *General Appropriation Act for Fiscal Year 2006-2007*, chapter 2006-25, Laws of Florida ("Funds in Specific Appropriation 2304 from the Child Care and Development Block Grant Trust Fund may be used to provide a rate

designation may receive an exemption from property taxes<sup>18</sup> and a sales tax exemption for certain educational materials.<sup>19</sup>

In 2006, the Legislature authorized the DCF to temporarily revoke a provider's Gold Seal Quality Care designation based on violations of child care licensing requirements.<sup>20</sup>

#### T.E.A.C.H. Early Childhood® Project:

The Teacher Education and Compensation Helps (T.E.A.C.H.) Early Childhood® Project is a comprehensive scholarship initiative established in 1993 by the Child Care Services Association in North Carolina.<sup>21</sup> The program provides educational scholarships and salary supplements to caregivers and administrators of early childhood programs, family day care homes, and large family child care homes in order to increase the quality of instructors, to increase the compensation of early childhood providers, and to encourage a commitment to the early learning field. In the General Appropriations Act for fiscal year 2006-2007,<sup>22</sup> the Legislature enacted proviso language that authorizes AWI to contract for the T.E.A.C.H. scholarship program or, if approved by the Legislative Budget Commission, to administer or contract for a substantially similar program.<sup>23</sup>

#### Proposed Changes:

The bill requires the Agency for Workforce Innovation (AWI) to establish Florida's Sunshine State Stars Quality Rating System (QRS). The bill requires the proposed QRS to include the following:

- Voluntary: Participation by facilities is voluntary.
- Participation: Licensed early learning programs, child care facilities, and facilities participating in the VPK program may participate in the QRS.
- Tiers: Five tiers, each level of progression represents a higher level of quality.
- Symbol: Tiers are represented by one to five stars, five stars representing the highest level of quality.
- Progression: Programs must meet criteria of one tier before advancing to the next tier.

The bill appears to limit eligibility for the QRS to "child care facilities." In section 402.302, Florida Statutes, the term "child care facility" is defined as "any child care center or child care arrangement which provides child care for more than five children unrelated to the operator and which receives a payment, fee, or grant for any of the children receiving care, wherever operated, and whether or not operated for profit." The bill appears to exclude "family day care homes" and "large family child care homes" from the QRS. In addition, the bill specifies that "facilities" participating in the VPK program may participate in the QRS, which would appear to exclude providers who are not "child care facilities." For example, private schools, large family child care homes, and licensed family day care homes are eligible to participate in the VPK program, but may not be eligible for the QRS under the bill.

The bill requires AWI's Office of Early Learning to implement requirements for each tier based on recommendations from the Early Learning Advisory Council's Quality Rating System Task Force and recommendations from organized meetings to gather local input from parent and provider focus groups and interviews. The bill does not create a Quality Rating System Task Force, nor does the bill require the Florida Early Learning Advisory Council to establish a task force. As previously discussed, the

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differential or stipend to programs which reach the Gold Seal Quality Care designation. The rate differential shall not exceed twenty percent of the reimbursement rate").

<sup>18</sup> Section 402.26(6), Florida Statutes.

<sup>19</sup> Section 212.08(5)(m), Florida Statutes.

<sup>20</sup> Chapter 2006-91, Laws of Florida.

<sup>21</sup> See <http://www.childcareservices.org/ps/teach.html> (last visited Mar. 16, 2007).

<sup>22</sup> Chapter 2006-25, Laws of Florida ;part V of chapter 1002, Laws of Florida.

<sup>23</sup> Specific Appropriation 2304, *General Appropriation Act for Fiscal Year 2006-2007*, chapter 2006-25, Laws of Florida.



Agency for Workforce Innovation presented a proposal for a QRS to the Florida Early Learning Advisory Council in September 2006 based on a series of statewide meetings facilitated by the agency. The bill is unclear whether the QRS must be based on the agency's recommendations or recommendations of a task force to be established by the advisory council.

The bill requires the QRS to be based on documented research or best practices to positively impact child and family outcomes in six areas of assessment. The bill also requires that advancement through the QRS' five tiers in the six assessment areas must be verified as follows:

- Learning environment: Verified through document submission or use of an appropriate environment rating scale.
- Curricula, screening, and assessment: Verified through document review and observation.
- Staff qualifications: Verified by linkage with licensing and document review.
- Professional development for director, lead teacher, and assistant teacher: Verified by linkage with licensing and document review.
- Business practices: Verified by document review and observation.
- Family involvement: Verified through document review.

The bill specifies that a provider's learning environment must be verified through document review or use of the appropriate *Early Childhood Environment Rating Scale* (commonly called "ECERS"). This publication is one of five similar publications developed by authors Thelma Harms, Richard Clifford, and Debby Cryer. The ECERS is intended for use in child care facilities for children ages 2 1/2 through 5 years. The other environment rating scales developed by the authors include the *Family Day Care Rating Scale* (FDCRS), *Infant/Toddler Environment Rating Scale* (ITERS), and the *School-Age Care Environment Rating Scale* (SACERS). As previously discussed, the bill appears to exclude family day care homes and large family child care homes from the QRS. If they are included, use of the ECERS may not be an appropriate measure of the learning environment in that setting.

The bill also requires the QRS to give consideration to child care providers possessing a Gold Seal Quality Care designation, Head Start programs, and Early Head Start programs.

#### Pilot Program:

The bill creates a 2-year voluntary pilot program to implement a QRS in eight Florida counties: Broward, Duval, Hillsborough, Leon, Miami-Dade, Orange, Palm Beach, and Pinellas.

The bill specifies that centers and programs rated as Tier 1, 2, or 3 are eligible for grants and awards to improve quality. The bill also provides that centers and programs rated as Tier 4 or 5 are eligible for merit awards to maintain high quality. The bill does not, however, require the Agency for Workforce Innovation or early learning coalitions to provide these grants and awards or specify the amounts of the awards.

The bill requires the Agency for Workforce Innovation and early learning coalitions to provide technical support for child care facilities in the pilot program, to facilitate the providers' entry and movement through the QRS. The bill also specifies that the legislation does not preclude other learning coalitions from implementing a QRS.

The pilot program expires on July 1, 2009.

#### Workforce Development Plan:

The bill requires the Agency for Workforce Innovation to develop a workforce development plan that includes recommendations for funding and expansion of current child care professional development credentialing programs (e.g., T.E.A.C.H. program) and other programs designed to provide professional development, credentialing, and advanced education.

Appropriation:

The bill provides an appropriation of \$25 million from the General Revenue Fund to the Agency for Workforce Innovation for implementation of the bill's provisions during the 2007-2008 fiscal year.

Effective Date:

The bill specifies that the bill takes effect upon becoming a law.

C. SECTION DIRECTORY:

Section 1. Creates an unnumbered section of the Florida Statutes which requires the Agency for Workforce Innovation to establish Florida's Sunshine State Stars Quality Rating System.

Section 2. Creates an unnumbered section of the Florida Statutes which creates Florida's Sunshine State Stars Quality Rating System voluntary pilot program.

Section 3. Creates an unnumbered section of the Florida Statutes which requires the Agency for Workforce Innovation to develop a workforce development plan.

Section 4. Provides an appropriation.

Section 5. Provides an effective date.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Agency for Workforce Innovation (AWI) and early learning coalitions will incur startup costs associated with establishing a QRS and its components. These costs may include contracts with early learning consultants, travel, conducting focus groups of parents and providers, and the printing and distribution of the QRS requirements. The bill requires AWI and the coalitions to provide training and technical assistance for facilities participating in the QRS. The bill also provides for grants and awards for Tier 1, 2, and 3 facilities and merit awards for Tier 4 and 5 facilities. The amount of these grants and awards is not specified in the bill. The startup and recurring costs for establishing and operating a QRS are indeterminate at this time.

The bill provides an appropriation of \$25 million from the General Revenue Fund to the Agency for Workforce Innovation for implementation of the bill's provisions during the 2007-2008 fiscal year. The bill does not, however, specify the amount or methodology for allocating the funds among the early learning coalitions.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Child care facilities and facilities participating in the VPK program that voluntarily participate in the QRS would incur increased costs associated with meeting the QRS requirements. However, facilities earning grants and awards would have part of the costs paid by the grants and awards.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill 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 bill assigns responsibilities to the Agency for Workforce Innovation for establishing the state's quality rating system for child care facilities and facilities participating in the VPK program. Administration of the quality rating system would likely require the adoption of rules. The bill does not grant the Agency for Workforce Innovation with authority to adopt rules to implement the bill's provisions.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Department of Children and Family Services raises the question whether a quality rating system, if the pilot program is expanded statewide, will render obsolete the Gold Seal Quality Care designation.<sup>24</sup> As previously discussed, the Gold Seal Quality Care designation is granted based on accreditation. Providers granted the designation receive increased payment rates for government-funded school readiness programs, property tax exemptions, and sales tax exemptions for educational materials. Similarly, a QRS establishes standards for providers, requires assessment against the standards, and assigns a one-to-five star rating. The bill proposes to award financial grants to assist providers receiving one, two, or three stars. The bill also proposes the award of financial merit award for high-performing providers. If the QRS is successful, the Legislature may be need to readdress the Gold Seal Quality Care designation.

D. STATEMENT OF THE SPONSOR

Waived by sponsor due to time constraints.

### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 20, 2007, the Committee on K-12 adopted one amendment by Representative Flores (lines 24-120). The amendment removes the \$25 million appropriation from the bill and makes the remaining provisions subject to specific legislative appropriation. The amendment also replaces a specific reference to the *Early*

<sup>24</sup> Florida Department of Children and Family Services, *Staff Analysis and Economic Impact of HB 1107, 2* (Mar. 1, 2007).

*Childhood Environment Rating Scale* by authors Thelma Harms, Richard Clifford, and Debby Cryer with a general reference to an appropriate “environment rating scale.”

In addition, the committee adopted an amendment to the amendment by Representative Ausley. The amendment to the amendment specifies that a workforce development plan required by the bill to be developed by the Agency for Workforce Innovation is to be developed in collaboration with the Department of Education and the Department of Children and Family Services.

1                   A bill to be entitled  
2           An act relating to child care; creating s. 402.3012, F.S.;  
3           establishing the Florida's Sunshine State Stars Quality  
4           Rating System, a voluntary rating system, in the Agency  
5           for Workforce Innovation; providing quality rating  
6           requirements for early learning programs, child care  
7           facilities, and facilities participating in the Voluntary  
8           Prekindergarten Education Program; establishing a  
9           voluntary pilot program in specified counties; providing  
10          financial incentives for advancement in quality rating;  
11          providing for technical support; providing for expiration  
12          of the program; requiring the Office of Early Learning  
13          within the Agency for Workforce Innovation to develop a  
14          workforce development plan; providing an appropriation;  
15          providing an effective date.

16  
17 Be It Enacted by the Legislature of the State of Florida:

18  
19           Section 1. Section 402.3012, Florida Statutes, is created  
20 to read:

21           402.3012 Florida's Sunshine State Stars Quality Rating  
22 System.--

23           (1) FLORIDA'S SUNSHINE STATE STARS QUALITY RATING  
24 SYSTEM.--The Office of Early Learning within the Agency for  
25 Workforce Innovation shall establish the Florida's Sunshine  
26 State Stars Quality Rating System to provide a voluntary,  
27 statewide standard rating system for licensed early learning  
28 programs, child care facilities as defined in s. 402.302, and

29 facilities participating in the Voluntary Prekindergarten  
 30 Education Program created under s. 1002.53.

31 (a) The rating system shall consist of five tiers. For the  
 32 purposes of this section, a "tier" refers to each level of  
 33 progression and represents a higher level of quality within the  
 34 quality rating system. To communicate the level of quality to  
 35 parents, consumers, and the participating early learning  
 36 program, a star symbol shall be used. Programs that meet the  
 37 highest level of quality in the rating system shall be awarded  
 38 five stars.

39 (b) Programs must meet all the criteria of a tier before  
 40 advancing to the next tier. The office shall be responsible for  
 41 implementing the requirements for each tier in each category  
 42 based upon recommendations of the Early Learning Advisory  
 43 Council's Quality Rating System Task Force and recommendations  
 44 from organized meetings to gather local input from parent and  
 45 provider focus groups and interviews.

46 (2) REQUIREMENTS FOR CHILD CARE FACILITIES AND FACILITIES  
 47 PARTICIPATING IN THE VOLUNTARY PREKINDERGARTEN EDUCATION  
 48 PROGRAM.--

49 (a) Overall quality rating assessment shall be based on  
 50 the following major components that have been documented by  
 51 research or best practices to positively impact child and family  
 52 outcomes:

- 53 1. Learning environment.
- 54 2. Curricula, screening, and assessment.
- 55 3. Staff qualifications.
- 56 4. Professional development.

57           5. Business practices.  
 58           6. Family involvement.  
 59           (b) Advancement through the tiers in each major component  
 60 shall be based on the following:  
 61           1. Learning environment, verified through document  
 62 submission or use of the appropriate Early Childhood Environment  
 63 Rating Scales (Harms, Clifford, and Cryer).  
 64           2. Curricula, screening, and assessment, verified through  
 65 document review and observation.  
 66           3. Staff qualifications, verified by linkage with  
 67 licensing and document review.  
 68           4. Professional development for the director, lead  
 69 teacher, and assistant teacher, verified by linkage with  
 70 licensing and document review.  
 71           5. Business practices, verified by document review and  
 72 observation. Consideration shall be given to child care  
 73 providers possessing a Gold Seal Quality Care designation and  
 74 Head Start and Early Head Start programs of quality and  
 75 excellence.  
 76           6. Family involvement, verified through document review.  
 77           Section 2. Florida's Sunshine State Stars Quality Rating  
 78 System Voluntary Pilot Program.--  
 79           (1) FLORIDA'S SUNSHINE STATE STARS QUALITY RATING SYSTEM  
 80 VOLUNTARY PILOT PROGRAM.--Florida's Sunshine State Stars Quality  
 81 Rating System voluntary pilot program is created for the  
 82 implementation of the rating system tier program in the  
 83 following counties: Broward, Duval, Hillsborough, Leon, Miami-  
 84 Dade, Orange, Palm Beach, and Pinellas. The identified counties

85 include urban counties and rural counties that have established  
 86 or are in the process of establishing quality rating systems.

87 (2) FINANCIAL INCENTIVES FOR ADVANCEMENT IN THE RATING  
 88 SYSTEM.--

89 (a) Centers and programs in tiers 1, 2, and 3 shall be  
 90 eligible for grants and awards to improve quality.

91 (b) Centers and programs in tiers 4 and 5 shall be  
 92 eligible for merit awards to maintain high quality.

93 (3) TECHNICAL SUPPORT.--Technical support shall be  
 94 provided to programs to ensure successful entry into the rating  
 95 system and movement through the system. The Office of Early  
 96 Learning within the Agency for Workforce Innovation shall  
 97 coordinate with the participating early learning coalitions to  
 98 facilitate the successful participation of child care facilities  
 99 in the pilot program and with those programs currently  
 100 implementing a quality rating system.

101 (4) OTHER COUNTIES.--Nothing in this section shall  
 102 preclude early learning coalitions from implementing a quality  
 103 rating system in other counties.

104 (5) EXPIRATION OF THE PILOT PROGRAM.--The pilot program  
 105 shall expire on July 1, 2009.

106 Section 3. In order to ensure the availability of  
 107 qualified teachers to meet the needs associated with higher  
 108 standards, the Office of Early Learning within the Agency for  
 109 Workforce Innovation shall develop a workforce development plan.  
 110 The plan shall include recommendations for the funding and  
 111 expansion of current child care professional development  
 112 credentialing programs, such as the Teacher Education and



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2007

113 | Compensation Helps program (TEACH), as well as other programs  
114 | designed to provide professional development, credentialing, and  
115 | advanced education.

116 | Section 4. The sum of \$25 million is appropriated from the  
117 | General Revenue Fund to the Agency for Workforce Innovation for  
118 | the 2007-2008 fiscal year to implement the provisions of this  
119 | act.

120 | Section 5. This act shall take effect upon becoming a law.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1 with AA1)

Bill No. **HB 1107**

COUNCIL/COMMITTEE ACTION

|                       |          |       |
|-----------------------|----------|-------|
| ADOPTED               | ___      | (Y/N) |
| ADOPTED AS AMENDED    | ___      | (Y/N) |
| ADOPTED W/O OBJECTION | <u>Y</u> | (Y/N) |
| FAILED TO ADOPT       | ___      | (Y/N) |
| WITHDRAWN             | ___      | (Y/N) |
| OTHER                 | _____    |       |

Council/Committee hearing bill: K-12

Representative Flores/Ausley offered the following:

**Amendment (with title amendments)**

Remove lines 24-120 and insert:

SYSTEM.--Subject to specific legislative appropriation, the Office of Early Learning within the Agency for Workforce Innovation shall establish Florida's Sunshine State Stars Quality Rating System to provide a voluntary, statewide standard rating system for licensed early learning programs, child care facilities as defined in s. 402.302, and facilities participating in the Voluntary Prekindergarten Education Program created under s. 1002.53.

(a) The rating system shall consist of five tiers. For the purposes of this section, a "tier" refers to each level of progression and represents a higher level of quality within the quality rating system. To communicate the level of quality to parents, consumers, and the participating early learning program, a star symbol shall be used. Programs that meet the highest level of quality in the rating system shall be awarded five stars.

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1 with AA1)

22 (b) Programs must meet all the criteria of a tier before  
23 advancing to the next tier. The office shall be responsible for  
24 implementing the requirements for each tier in each category  
25 based upon recommendations of the Early Learning Advisory  
26 Council's Quality Rating System Task Force and recommendations  
27 from organized meetings to gather local input from parent and  
28 provider focus groups and interviews.

29 (2) REQUIREMENTS FOR CHILD CARE FACILITIES AND FACILITIES  
30 PARTICIPATING IN THE VOLUNTARY PREKINDERGARTEN EDUCATION  
31 PROGRAM.--

32 (a) Overall quality rating assessment shall be based on  
33 the following major components that have been documented by  
34 research or best practices to positively impact child and family  
35 outcomes:

- 36 1. Learning environment.
- 37 2. Curricula, screening, and assessment.
- 38 3. Staff qualifications.
- 39 4. Professional development.
- 40 5. Business practices.
- 41 6. Family involvement.

42 (b) Advancement through the tiers in each major component  
43 shall be based on the following:

- 44 1. Learning environment, verified through document  
45 submission or use of an appropriate environment rating scale.
- 46 2. Curricula, screening, and assessment, verified through  
47 document review and observation.
- 48 3. Staff qualifications, verified by linkage with  
49 licensing and document review.

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1 with AA1)

50 4. Professional development for the director, lead  
51 teacher, and assistant teacher, verified by linkage with  
52 licensing and document review.

53 5. Business practices, verified by document review and  
54 observation. Consideration shall be given to child care  
55 providers possessing a Gold Seal Quality Care designation and  
56 Head Start and Early Head Start programs of quality and  
57 excellence.

58 6. Family involvement, verified through document review.

59 Section 2. Florida's Sunshine State Stars Quality Rating  
60 System Voluntary Pilot Program.--

61 (1) FLORIDA'S SUNSHINE STATE STARS QUALITY RATING SYSTEM  
62 VOLUNTARY PILOT PROGRAM.--Subject to specific legislative  
63 appropriation, Florida's Sunshine State Stars Quality Rating  
64 System voluntary pilot program is created for the implementation  
65 of the rating system tier program in the following counties:  
66 Broward, Duval, Hillsborough, Leon, Miami-Dade, Orange, Palm  
67 Beach, and Pinellas. The identified counties include urban  
68 counties and rural counties that have established or are in the  
69 process of establishing quality rating systems.

70 (2) FINANCIAL INCENTIVES FOR ADVANCEMENT IN THE RATING  
71 SYSTEM.--

72 (a) Centers and programs in tiers 1, 2, and 3 shall be  
73 eligible for grants and awards to improve quality, subject to  
74 appropriation.

75 (b) Centers and programs in tiers 4 and 5 shall be  
76 eligible for merit awards to maintain high quality, subject to  
77 appropriation.

78 (3) TECHNICAL SUPPORT.--Subject to specific legislative  
79 appropriation, technical support shall be provided to programs

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1 with AA1)

80 to ensure successful entry into the rating system and movement  
81 through the system. The Office of Early Learning within the  
82 Agency for Workforce Innovation shall coordinate with the  
83 participating early learning coalitions to facilitate the  
84 successful participation of child care facilities in the pilot  
85 program and with those programs currently implementing a quality  
86 rating system.

87 (4) OTHER COUNTIES.--Nothing in this section shall  
88 preclude early learning coalitions from implementing a quality  
89 rating system in other counties.

90 (5) EXPIRATION OF THE PILOT PROGRAM.--The pilot program  
91 shall expire on July 1, 2009.

92 Section 3. In order to ensure the availability of  
93 qualified teachers to meet the needs associated with higher  
94 standards, the Office of Early Learning within the Agency for  
95 Workforce Innovation, in collaboration with the Department of  
96 Education and the Department of Children and Family Services,  
97 shall develop an early education workforce development plan.  
98 The plan shall include recommendations for the funding and  
99 expansion of current child care professional development  
100 credentialing programs, such as the Teacher Education and  
101 Compensation Helps program (TEACH), as well as other programs  
102 designed to provide professional development, credentialing, and  
103 advanced education.

104 Section 4. This act shall take effect upon becoming a law.

106 ===== T I T L E A M E N D M E N T =====

107 Remove line 14 and insert:  
108 workforce development plan;

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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1201

Building Designations

SPONSOR(S): Gibson

TIED BILLS:

IDEN./SIM. BILLS: SB 2566

| REFERENCE                                | ACTION          | ANALYST                   | STAFF DIRECTOR         |
|--|-----------------|---------------------------|------------------------|
| 1) <u>Committee on K-12</u>              | <u>6 Y, 0 N</u> | <u>Barnhill</u>           | <u>Ahearn</u>          |
| 2) <u>Schools &amp; Learning Council</u> | <u></u>         | <u>Barnhill</u> <i>yB</i> | <u>Cobb</u> <i>lcc</i> |
| 3) <u></u>                               | <u></u>         | <u></u>                   | <u></u>                |
| 4) <u></u>                               | <u></u>         | <u></u>                   | <u></u>                |
| 5) <u></u>                               | <u></u>         | <u></u>                   | <u></u>                |

SUMMARY ANALYSIS

This bill designates the Department of Education office at 921 N. Davis Street in Jacksonville as the "Mary L. Singleton Education Office." The Department of Education is directed to erect suitable markers to designate the building as such.

Current law does not permit a state building, road, bridge, park, recreation complex, or similar facility to be named after a living person (unless specifically provided by law). Ms. Singleton passed away in 1980.

Ms. Singleton served the City of Jacksonville and the State of Florida as an elected official. She was a member of the City Council from 1967-1972. In 1972, Ms. Singleton was elected to the House of Representatives. She was appointed Director of Florida's Division of Elections in 1976. She was appointed Director of the Department of Banking and Finance's Division of Administration in 1979.

Throughout her career as a public servant, Ms. Singleton has brought greater attention to and championed the needs of children through better childcare services and increased funding for early childhood education services.

The bill has an indeterminate fiscal impact on the Department of Education; however, the cost of erecting suitable markers will not be significant.

Two amendments were adopted by the Committee on K-12 on March 13, 2007, both designating additional buildings. Please see AMENDMENTS SECTION, section IV.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

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

#### B. EFFECT OF PROPOSED CHANGES:

##### Present Situation

Section 267.062, F.S., requires that no state building be named for any living person, unless specifically provided by law.

##### Mary L. Singleton

A native Floridian, Ms. Mary L. Singleton was born and raised in Jacksonville. She graduated from Boylan-Haven Industrial Training School in 1943. After her high school graduation, Ms. Singleton went to Hampton Institute in Virginia, majoring in horticulture. She left Hampton Institute and later graduated from Florida A & M University where she received her B.S. in 1949. She returned to Jacksonville and taught at Matthew W. Gilbert Junior-Senior High School. She married Isadore Singleton in 1955.

Ms. Singleton was appointed to the Local Government Study Commission of Duval County by Governor Farris Bryant in 1965. She was elected to serve on the city council of Jacksonville in 1967 and was one of the first two women elected to the Jacksonville City Council. Singleton then was elected to the House of Representatives in 1972. She remained in office until 1976 when she was appointed Director of Florida's Division of Elections, making her the highest ranking African American in the executive branch of state government. She resigned and was then appointed Director of the Department of Banking and Finance's Division of Administration in 1979, where she worked until her death in 1980.

Throughout her career as a public servant, Ms. Singleton has brought greater attention to and championed the needs of children through better childcare services and increased funding for early childhood education services.

##### Effects of Proposed Changes

This bill provides that the Department of Education office at 921 N. Davis Street in Jacksonville is designated as the "Mary L. Singleton Education Office." The bill requires the Department of Education to erect suitable markers designating the building as such.

#### C. SECTION DIRECTORY:

- Section 1: Designating the Department of Education office in Jacksonville as the "Mary L. Singleton Education Office"  
Section 2: Providing an effective date of July 1, 2007.

### II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:



The bill does not appear to have a fiscal impact on state government revenues.

2. Expenditures:

The bill has an indeterminate fiscal impact on the Department of Education; however, the cost of erecting suitable markers will not be significant.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

The bill does not appear to have a fiscal impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require a city or county to expend funds or to take any action requiring the expenditure of funds.

The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

This bill does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 13, 2007, the Committee on K-12 adopted two amendments:

- The first amendment, by Representative Richardson, provides an additional building designation to the bill. The amendment designates the Florida State Hospital Administration Building in Chattahoochee as the "William DeWitt Rogers Administration Building".
- The second amendment, by Representative Coley, provides an additional building designation to the bill. The amendment designates the Florida Center for Nursing in Orlando as the "Florida Barbara B. Lumpkin Center for Nursing".

1                                   A bill to be entitled  
 2           An act relating to building designations; designating the  
 3           Department of Education office at 921 N. Davis Street in  
 4           Jacksonville as the "Mary L. Singleton Education Office";  
 5           directing the Department of Education to erect suitable  
 6           markers; providing an effective date.

7  
 8   Be It Enacted by the Legislature of the State of Florida:

9  
 10           Section 1. Mary L. Singleton Education Office designated;  
 11 Department of Education to erect suitable markers.--

12           (1) The Department of Education office at 921 N. Davis  
 13 Street in Jacksonville is designated as the "Mary L. Singleton  
 14 Education Office."

15           (2) The Department of Education is directed to erect  
 16 suitable markers designating the Mary L. Singleton Education  
 17 Office as described in subsection (1).

18           Section 2. This act shall take effect July 1, 2007.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1)

Bill No. 1201

COUNCIL/COMMITTEE ACTION

|                       |          |       |
|-----------------------|----------|-------|
| ADOPTED               | ___      | (Y/N) |
| ADOPTED AS AMENDED    | ___      | (Y/N) |
| ADOPTED W/O OBJECTION | <u>Y</u> | (Y/N) |
| FAILED TO ADOPT       | ___      | (Y/N) |
| WITHDRAWN             | ___      | (Y/N) |
| OTHER                 | _____    |       |

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1 Council/Committee hearing bill: Committee on K-12  
 2 Representative(s) Richardson offered the following:

**Amendment (with title amendment)**

Between line(s) 17 and 18 insert:

6 Section 2. William DeWitt Rogers Administration Building  
7 designated; Department of Management Services to erect suitable  
8 markers.--

9 (1) The Florida State Hospital Administration Building at  
10 100 West Main Street in the city of Chattahoochee in Gadsden  
11 County is designated as the "William DeWitt Rogers  
12 Administration Building."

13 (2) The Department of Management Services is directed to  
14 erect suitable markers designating the William DeWitt Rogers  
15 Administration Building as described in subsection (1).

17 ===== T I T L E A M E N D M E N T =====

18 Remove line(s) 6 and insert:  
19 markers; designating the Administration Building at the Florida  
20 State Hospital as the William DeWitt Rogers Administration

3-12-07 10:52 am

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1)

21 Building; directing the Department of Management Services to  
22 erect suitable markers; providing an effective date.

3-12-07 10:52 am

Page 2 of 2

Amendment1-Richardson HB 1201.doc

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (2)

Bill No. **HB 1201**

COUNCIL/COMMITTEE ACTION

|                       |          |       |
|-----------------------|----------|-------|
| ADOPTED               | ___      | (Y/N) |
| ADOPTED AS AMENDED    | ___      | (Y/N) |
| ADOPTED W/O OBJECTION | <u>Y</u> | (Y/N) |
| FAILED TO ADOPT       | ___      | (Y/N) |
| WITHDRAWN             | ___      | (Y/N) |
| OTHER                 | _____    |       |

1 Council/Committee hearing bill: Committee on K-12

2 Representative Coley offered the following:

3  
4 **Amendment (with title amendment)**

5 Remove line 18 and insert:

6 Section 2. Florida Barbara B. Lumpkin Center for Nursing  
7 designated; Department of Health to erect suitable markers.--

8 (1) The Florida Center for Nursing, created by section  
9 464.0195, Florida Statutes, and located in Orlando, is  
10 designated as the "Florida Barbara B. Lumpkin Center for  
11 Nursing."

12 (2) The Department of Health is directed to erect suitable  
13 markers designating the Florida Barbara B. Lumpkin Center for  
14 Nursing as described in subsection (1).

15 Section 3. This act shall take effect July 1, 2007.

16  
17 ===== T I T L E A M E N D M E N T =====

18 Remove line 6 and insert:

19 markers; designating the Florida Center for Nursing as the  
20 "Florida Barbara B. Lumpkin Center for Nursing"; directing

3/26/2007 6:38 PM

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (2)

21           the Department of Health to erect suitable markers;  
22           providing an effective date.





HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB SLC 07-07 Option to Divide School Districts
SPONSOR(S): Schools & Learning Council
TIED BILLS: IDEN./SIM. BILLS:

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Orig. Comm.: Schools & Learning Council, Barnhill JB, Cobb [signature]. Rows 2-6 are empty.

SUMMARY ANALYSIS

This proposed council bill (PCB) proposes a constitutional amendment to allow counties to divide their school districts into smaller school districts, provided each smaller school district has at least 25,000 students.

This PCB provides for the creation of a board comprised of an equal number of members from each school district in the county. The board must determine the rate of school district taxes.

The Division of Elections within the Department of State estimates that the non-recurring cost of compliance with the publication requirements would be approximately \$60,000 in the 2007-2008 fiscal year.

This is a joint resolution, requiring passage by 3/5 vote of each chamber. If passed by each chamber, the proposed constitutional amendment would be placed before the electorate at the 2008 general election.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

*Provide Limited Government:* This PCB allows school districts to divide into multiple school districts, when approved by the county's voters. If the county voters approve a school district subdivision, this proposed constitutional amendment requires the creation of a new board to determine the rate of school district taxes.

*Safeguard Individual Liberty:* This PCB allows county voters to approve smaller school districts, thereby providing greater local control.

*Empower Families:* This PCB allows voters in counties with large student populations to establish multiple, smaller school districts, potentially increasing families' access to school district decision makers.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Present Situation--**

Article IX, Section 4 of the Florida Constitution provides that each county constitutes a school district. However, two or more contiguous counties may be combined, upon approval of the electors of each county, to form one school district, although no counties have exercised this option.

Each district is required to have a school board composed of five or more members elected by the county's voters in a nonpartisan election. The board members serve staggered four year terms. The constitution further requires that the school board operate, control and supervise all free public schools within the school district, and determine the rate of school district taxes.

Section 1011.62, F.S., governs the Florida Education Finance Program (FEFP) which is designed to provide equitable funding for students across the state. The program combines state dollars and local revenue in a formula to allocate funds to school districts according to student population and cost of educational programs.

##### **Effect of Proposed Changes--**

This PCB proposes an amendment to the Florida Constitution to allow counties with large student populations to divide into smaller school districts, if approved by the county's voters. Each subdivided school district must have no fewer than 25,000 students.

This PCB requires the creation of a board consisting of an equal number of board members from each school district in the county. This board will be responsible for determining school district taxes. These school district taxes will be imposed countywide and distributed to the school districts in an equitable and nondiscriminatory manner, as provided by law.

If the proposed amendment is approved by the voters, implementing legislation will be needed to establish specific requirements and processes.

According to the most recent estimate<sup>1</sup> of K-12 unweighted full-time equivalent students for the 2007-2008 school year, there are fourteen school districts large enough to be affected by the resolution. In addition to these fourteen school districts, Collier County is projected to surpass the 50,000 FTE student threshold within the next three years.

**Florida School Districts Potentially Affected by HJR 213**

| <b>School District</b> | <b>Student Population based on 2007-2008 Estimated K-12 Unweighted FTE Students</b> | <b>Number of Potential New Districts (FTE Count divided by 25,000)</b> |
|------------------------|---|--|
| Brevard County         | 73,338  | 2  |
| Broward County         | 255,491   | 10   |
| Duval County           | 124,899   | 4  |
| Hillsborough County    | 191,618   | 7  |
| Lee County             | 82,100  | 3  |
| Miami-Dade County      | 341,644   | 13   |
| Orange County          | 175,985   | 7  |
| Osceola County         | 53,070  | 2  |
| Palm Beach County      | 166,452   | 6  |
| Pasco County           | 65,058  | 2  |
| Pinellas County        | 107,569   | 4  |
| Polk County            | 95,500  | 3  |
| Seminole County        | 65,916  | 2  |
| Volusia County         | 65,221  | 2  |

The districts listed above would not have to divide into smaller school districts, as this PCB provides districts the *option* to divide.

**Revision or Amendment to the State Constitution**

Amendments to Florida’s Constitution can be proposed by five distinct methods: 1) joint legislative resolution, 2) the Constitutional Revision Commission, 3) citizen’s initiative, 4) a constitutional convention, or 5) the Taxation and Budget Reform Commission.<sup>2</sup>

Article XI, s.1, of the Florida Constitution provides for proposed changes to the Constitution originating with the Legislature:

**SECTION 1: Proposal by legislature.** – Amendment of a section or revision of one or more articles, or the whole, of this constitution may be proposed by joint resolution agreed to by three-fifths of the membership of each house of the legislature. The full text of the joint resolution and the vote of each member voting shall be entered on the journal of each house.

Once in the tenth week, and once in the sixth week immediately preceding the week in which the election is held, the proposed amendment or revision, with notice of the date of election at which it will be submitted to the electors, must be published in one newspaper of general circulation in each county in which a newspaper is published. If the joint resolution is passed in this session, the proposed amendment would be placed before the electorate at the next general election, unless it is submitted at an earlier special election pursuant to a law enacted by an affirmative vote of three-fourths of the membership of each house of the Legislature and is limited to a single amendment or revision.

The Florida Constitution provides that if the proposed amendment or revision is approved by the vote of electors, it is effective as an amendment to or revision of the Constitution of the state on the first

<sup>1</sup> K-12 Public School Student Enrollment Estimating Conference, February 12, 2007.

<sup>2</sup> See Art. XI, ss. 1-4, and 6, Fla. Const.

Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment or revision.

This proposed constitutional amendment would be placed before the electors of Florida in the general election of 2008, unless a special election is authorized by law, requiring a passage by 3/4 vote of each chamber. If approved by the electors of Florida in the general election, the constitutional amendment would take effect January 6, 2009.

**C. SECTION DIRECTORY:**

Not applicable.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

**1. Revenues:**

This bill does not appear to have a fiscal impact on state government revenues.

**2. Expenditures:**

The Division of Elections within the Department of State estimates that the non-recurring cost of compliance with the publication requirements would be approximately \$60,000 in 2007-2008 fiscal year.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

**1. Revenues:**

This bill does not appear to have a fiscal impact on local government revenues.

**2. Expenditures:**

This bill does not appear to have a fiscal impact on local government expenditures.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

This bill does not appear to have a direct fiscal impact on the private sector.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

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

This PCB does not appear to require a city or county to expend funds or to take any action requiring the expenditure of funds.

This PCB does not appear to reduce the authority that municipalities or counties have to raise revenues in the aggregate.

This PCB does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Comments

Florida has 7 of the top 25 and 13 of the top 100 largest school districts in the nation.<sup>3</sup> Studies show that large school districts have the lowest school achievement and highest dropout rates.<sup>4</sup> Research would support that Florida could increase its graduation rate by 5% by reducing the size of school districts.<sup>5</sup>

Dade County, the fourth largest school district in the nation, and Orange County, the 15<sup>th</sup> largest school district in the nation, had twice the state average for failing schools. Duval County, the 19<sup>th</sup> largest school district in the nation, had three times the state average for failing schools.

Large schools are found predominantly in large school districts, and research shows that the students most adversely affected by large schools are members of racial minority groups and those from low socioeconomic backgrounds.<sup>6</sup> Therefore, reducing school district size could help bridge the achievement gap between white and minority students.

Potential Issues regarding School District Division

If this PCB is approved by both chambers by 3/5 vote and if the electors of this state approve the constitutional amendment, then the legislature will have to draft implementing legislation. Implementing legislation will need to address, among other things, what processes are to be used to put the initiative before the county electors.

If the county electors vote to divide, districts will need to address socioeconomic and racial diversity, as well as how to divide school buildings, administrative service buildings, land, buses, vehicles, and other property. Districts will also have to determine the status of charter schools currently authorized by a unified school district.

If the constitution is amended and county electors choose to divide their school district, then issues arise, such as:

- Dividing existing bond debt service obligations, certificates of participation obligations, and other debt the district may have.
- Distributing the revenue from future bond referendums, voter approved operating millage revenue, current and future capital outlay sales taxes and intra-governmental capital outlay sales taxes, and impact fees.
- Determining allocation of federal funds that flow through the Department of Education, e.g., Individuals with Disabilities Act, Title I.

<sup>3</sup> List of 100 Largest US Sch. Dists. (based on 2001-2002 Sch. Dist. Information System Data)

<sup>4</sup> R.S. Jewell, School and School District Size Relationships: Costs, Results, Minorities, and Private School Enrollments

<sup>5</sup> J.P. Greene. The Effect of Residential School Choice on Public High School Graduation Rates

<sup>6</sup> .S. Jewell, School and School District Size Relationships: Costs, Results, Minorities, and Private School Enrollments

D. STATEMENT OF THE SPONSOR

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

→

PCB SLC 07-07

PCB draft for approval

2007

1 House Joint Resolution

2 A joint resolution proposing an amendment to Section 4 of  
 3 Article IX of the State Constitution to option to divide  
 4 school districts.

5  
 6 Be It Resolved by the Legislature of the State of Florida:

7  
 8 That the following amendment to Section 4 of Article IX of  
 9 the State Constitution is agreed to and shall be submitted to the  
 10 electors of this state for approval or rejection at the next  
 11 general election or at an earlier special election specifically  
 12 authorized by law for that purpose:

13 ARTICLE IX

14 Education

15 SECTION 4. School districts; school boards.--

16 a) Each county shall constitute a school district;  
 17 provided, two or more contiguous counties, upon vote of the  
 18 electors of each county pursuant to law, may be combined into one  
 19 school district. In each school district there shall be a school  
 20 board composed of five or more members chosen by vote of the  
 21 electors in a nonpartisan election for appropriately staggered  
 22 terms of four years, as provided by law.

23 b) The school board shall operate, control, and supervise  
 24 all free public schools within the school district and determine  
 25 the rate of school district taxes within the limits prescribed  
 26 herein. Two or more school districts may operate and finance  
 27 joint educational programs.

28 c) Provision may be made by law for the division of a  
 29 school district into two or more school districts, each having no

→

PCB SLC 07-07

PCB draft for approval

2007

30 fewer than 25,000 students, when approved by a vote of the  
 31 county's electors. School district taxes for the school districts  
 32 created pursuant to this subsection shall be imposed countywide  
 33 and distributed to the school districts in an equitable and  
 34 nondiscriminatory manner as provided by law. The rate of school  
 35 district taxes shall be determined by a board consisting of an  
 36 equal number of school board members from each school district in  
 37 the county as provided by law.

38 BE IT FURTHER RESOLVED that the following statement be  
 39 placed on the ballot:

40 CONSTITUTIONAL AMENDMENT

41 ARTICLE IX SECTION 4

42 AUTHORIZING THE DIVISION OF A SCHOOL DISTRICT INTO TWO OR  
 43 MORE SCHOOL DISTRICTS.--Proposing an amendment to the State  
 44 Constitution to provide that school districts may be divided into  
 45 two or more school districts, each having no fewer than 25,000  
 46 students, as provided by law and upon a vote of the county's  
 47 electors; to provide that school district taxes shall be imposed  
 48 countywide and distributed to the school districts in an  
 49 equitable and nondiscriminatory manner as provided by law; and to  
 50 provide that the rate of school district taxes shall be  
 51 determined by a board consisting of an equal number of school  
 52 board members from each school district in the county as provided  
 53 by law.

54



COUNCIL/COMMITTEE ACTION

|                       |       |       |
|-----------------------|-------|-------|
| ADOPTED               | ___   | (Y/N) |
| ADOPTED AS AMENDED    | ___   | (Y/N) |
| ADOPTED W/O OBJECTION | ___   | (Y/N) |
| FAILED TO ADOPT       | ___   | (Y/N) |
| WITHDRAWN             | ___   | (Y/N) |
| OTHER                 | _____ |       |

1 Council/Committee hearing bill: Schools & Learning Council  
 2 Representative Flores offered the following:

**Amendment**

Remove line(s) 28-53 and insert:

3  
 4  
 5  
 6 (c) Upon vote of the electors of the county pursuant to general  
 7 law, a school district may be divided into two or more school  
 8 districts, each having no fewer than 25,000 students. A school  
 9 district is not required to exercise its option to divide the  
 10 school district pursuant to this subsection. However, general  
 11 law authorizing division of a school district shall provide for  
 12 more than one method by which the question of dividing the  
 13 school district into two or more school districts is placed on  
 14 the ballot, including an initiative by the electors of the  
 15 county. School district taxes for the school districts created  
 16 pursuant to this subsection shall be imposed countywide and  
 17 distributed to the school districts in an equitable and  
 18 nondiscriminatory manner as provided by general law. The rate of  
 19 school district taxes shall be determined by a board consisting  
 20 of an equal number of school board members from each school  
 21 district in the county as provided by general law.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1)

22 BE IT FURTHER RESOLVED that the following statement be  
23 placed on the ballot:

24 CONSTITUTIONAL AMENDMENT

25 ARTICLE IX, SECTION 4

26 AUTHORIZING THE DIVISION OF A SCHOOL DISTRICT INTO TWO OR  
27 MORE SCHOOL DISTRICTS.--Proposing an amendment to the State  
28 Constitution to provide that school districts may be divided  
29 into two or more school districts, each having no fewer than  
30 25,000 students, upon a vote of the electors of the county  
31 pursuant to general law; to provide that a school district is  
32 not required to exercise its option to divide the school  
33 district; to require that general law authorizing division of a  
34 school district shall provide for more than one method by which  
35 the question of dividing the school district into two or more  
36 school districts may be placed on the ballot, including an  
37 initiative by the electors of the county; to provide that school  
38 district taxes shall be imposed countywide and distributed to  
39 the school districts in an equitable and nondiscriminatory  
40 manner as provided by general law; and to provide that the rate  
41 of school district taxes shall be determined by a board  
42 consisting of an equal number of school board members from each  
43 school district in the county as provided by general law.

44



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** PCS for HB 461 High School Athletics  
**SPONSOR(S):** Committee on Education Innovation & Career Preparation  
**TIED BILLS:** **IDEN./SIM. BILLS:**

---

| REFERENCE                               | ACTION | ANALYST         | STAFF DIRECTOR  |
|---|--------|-----------------|-----------------|
| Orig. Comm.: Schools & Learning Council |        | White <i>TW</i> | Cobb <i>lcc</i> |
| 1) _____                                | _____  | _____           | _____           |
| 2) _____                                | _____  | _____           | _____           |
| 3) _____                                | _____  | _____           | _____           |
| 4) _____                                | _____  | _____           | _____           |
| 5) _____                                | _____  | _____           | _____           |

---

**SUMMARY ANALYSIS**

Currently, there is no statewide requirement that high school student athletes be tested for anabolic steroids.

The Proposed Council Substitute for House Bill 461 (bill) establishes a one-year, random, anabolic steroids testing program for students in grades 9 through 12, who participate in football, baseball, and weightlifting. The program is to be administered by the Florida High School Athletic Association (FHSAA) during the 2007-2008 school year. Public and private schools must participate in the program as a prerequisite to FHSAA membership. The bill provides program requirements, penalties, and challenge and appeal procedures.

The bill requires FHSAA to submit an annual report of program results to the Legislature.

The bill provides that the random, steroid testing program is to be funded by the Legislature, but it does not contain an appropriation. The cost of the program is currently indeterminate. Please see FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provides Limited Government:** The bill requires FHSAA member schools and student athletes in specified sports to participate in a mandatory random steroid testing program as a prerequisite to athletic participation.

#### B. EFFECT OF PROPOSED CHANGES:

##### Present Situation

**Florida High School Athletic Association:** The Florida High School Athletic Association (FHSAA) is the governing nonprofit organization for Florida public school athletics in grades 6 through 12.<sup>1</sup> The school principal, or his or her designee, is the official representative of each member school.<sup>2</sup> Private schools may also become members if they engage in competitions with public high schools.<sup>3</sup>

The FHSAA bylaws establish eligibility criteria for all students who participate in high school athletic competition in its member schools.<sup>4</sup> Included is a requirement that all students satisfactorily pass a medical evaluation each year before competing in interscholastic athletics;<sup>5</sup> however, an exception may be granted where a parent objects in writing due to religious beliefs.<sup>6</sup>

The FHSAA is required to establish procedures for students to appeal unfavorable rulings regarding his or her eligibility to compete. Appeals by student athletes or member schools are initially made to the regional committee on appeals. The committee on appeals decision may be appealed to the board of directors, which is authorized to issue a final decision regarding the ruling of the committee on appeals.<sup>7</sup>

**Controlled Substances:** Chapter 893, F.S., contains the Florida Comprehensive Drug Abuse Prevention and Control Act.<sup>8</sup> This Act provides a list of controlled substances, and classifies them according to their potential for abuse from Schedules I through V.<sup>9</sup> Anabolic steroids are classified as Schedule III controlled substances. Schedule III substances are considered to have a lower potential for abuse than Schedule I and II. Abuse of a Schedule III substance is thought to lead to moderate or low physical dependence, or high psychological dependence, although anabolic steroids are thought to possibly result in physical damage.<sup>10</sup> Anabolic steroids are chemically and pharmacologically related to testosterone.<sup>11</sup>

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<sup>1</sup> See s. 1006.20(1), F.S.

<sup>2</sup> See s. 1006.20(3)(b), F.S.

<sup>3</sup> See s. 1006.20(1), F.S.

<sup>4</sup> See s. 1006.20(2)(a), F.S.

<sup>5</sup> See s. 1006.20(2)(c), F.S.

<sup>6</sup> Section 1006.20(2)(d), F.S.,

<sup>7</sup> See s. 1006.20(7), F.S.

<sup>8</sup> See s. 893.01, F.S.

<sup>9</sup> See s. 893.02, F.S.

<sup>10</sup> See s. 893.03(3), F.S.

<sup>11</sup> See s. 893.03(3)(d), F.S.

**OPPAGA Study and Drug Testing in Florida:** In October 2004, the Office of Program Policy Analysis and Government Accountability (OPPAGA) published a study on steroid use among high school students.<sup>12</sup> The report relied on the Florida Youth Substance Abuse Survey, and indicates the following:

- Although nationally and in Florida, steroid use remains relatively low compared to other drugs of concern, use has increased over time.
- Approximately two percent of students nationally report using steroids, and use is highest among high school seniors.
- Steroid use in Florida among 6<sup>th</sup> through 12<sup>th</sup> graders is comparable to national levels.
- Approximately 1.4 percent, or 19,350, of Florida students report using steroids previously, and 0.4 percent, or 5,600, report using steroids in the past 30 days.
- Males are represented much higher than females as steroid users.
- Steroid use increased in the 9<sup>th</sup> and 12<sup>th</sup> grades in Florida.
- Steroid testing is one of the more expensive drug tests, costing between \$50 to \$250 per test.
- As of the date of the report, Florida had 11 school districts that drug test, including testing of student athletes, but none tested for steroids.<sup>13</sup>
- Of those Florida districts which drug test, due to cost, the districts only test a percentage of athletes during the year and randomly thereafter.
- As of the date of the report, with 215,000 high school athletes in Florida, testing just 5 percent of the population annually could range from \$537,500 to \$2,687,500 in lab fees alone. Costs incidental to the testing are not included in these estimates.

While there is no express statutory authority regarding school drug testing, s. 1001.42, F.S., addresses general powers and duties of district school boards. Section 1001.42(6), F.S., stipulates that district school boards may “provide for. . .the attendance and control of students at school, and for proper attention to health, safety, and other matters relating to the welfare of students.”

### **Effect of Proposed Changes**

The bill creates subsection (10) of s. 1006.20, F.S., to require the FHSAA to facilitate a one-year program during the 2007-2008 academic year in which students in grades 9 through 12 in its member schools, who participate in regular and postseason football, baseball, and weightlifting sports that are governed by the FHSAA, must be subject to random testing for the use of anabolic steroids. All schools, both public and private, must consent to the provisions of this subsection as a prerequisite for membership in FHSAA for the duration of the program.

The board of directors of FHSAA must establish procedures for the anabolic steroid drug testing program which, at a minimum, require:

- The FHSAA to enter into a contract with a testing agency whose laboratory is accredited by the World Anti-Doping Agency;
- Each member school to report the names of all students who will compete to the FHSAA and the FHSAA to provide the list of all names submitted by the member schools to the testing agency;
- The testing agency to randomly select a maximum of one percent of the students on the list for testing;
- The testing agency to give at least seven days notice to the school administration and the FHSAA of the date that it will collect a specimen from a randomly selected student, whose name will not be disclosed; and

---

<sup>12</sup> OPPAGA Information Brief, *Though the Option Is Available, School Districts Do Not Test Students for Steroids*, Report No. 04-72(Oct. 2004).

<sup>13</sup> As an update, the Department of Education indicates that as of school year 2004-2005, 17 Florida school boards had authorized drug testing of student athletes.

- Records relating to the drug test and to the challenges and appeals authorized by the bill to be maintained separately from a student's educational record.

In order to participate in football, baseball, or weightlifting, each student and his or her parents must complete and sign a consent form prescribed by FHSAA. Failure to sign the consent form results in the student's ineligibility to participate in the sport for which the consent form is required. The consent form must include specified information: a brief description of the drug testing program, the penalties for a positive finding, the procedure for challenging a positive finding, and the procedure for appealing a prescribed penalty.

If a student is selected for testing and refuses to provide a specimen, the bill requires that the student be immediately suspended from interscholastic athletic practice and competition until such time as a specimen is provided.

If a student tests positive in a drug test under the bill, the school administration must: immediately suspend the student from participation in all interscholastic athletic practice and competition; and notify and schedule a meeting with the student and his or her parent during which the principal or his or her designee will explain the finding, challenge procedure, penalties, and the procedures for appealing the penalties.

The penalties for a positive finding are a 90 school day suspension from all interscholastic athletic practice and competition. The student must take a mandatory exit drug test no sooner than the 60<sup>th</sup> school day of the suspension. If the exit test is negative, the FHSAA must immediately restore the eligibility of the student. If the exit test is positive, the student must remain suspended from all interscholastic athletic practice and competition until such time as a subsequent retest of the student results in a negative finding. Thereafter, the student shall be subject to repeated tests during his or her eligibility for high school athletics. Additionally, a student who tests positive must complete a mandatory drug education program. This program must be conducted by the student's school, the student's school district, or a third-party organization contracted by the school or school district.

The following due process appeal procedures are established for students who test positively in a drug test:

- The member school may challenge a positive finding by requesting an analysis of a sample of the original specimen, and must challenge the finding upon the student's request. The cost of analysis is borne by the member school or student's parent, unless the finding is negative, in which case, the cost is refunded. The student remains on suspension pending the outcome of the analysis, and if negative, eligibility is immediately restored.
- A member school may also appeal the period of ineligibility imposed on a student due to a positive finding, and must appeal if requested by the student. The commissioner may require the student to complete the penalty, may reduce the penalty by one-half, or provide complete relief from the prescribed penalty; however, regardless of the commissioner's decision, the student shall remain ineligible until he or she has tested negative on an exit drug test.
- A member school may appeal the commissioner's decision to the FHSAA board of directors, and must appeal upon the student's request. The board of directors may require the student to complete the penalty, may reduce the penalty by one-half, or provide complete relief from the prescribed penalty; however, regardless of the board's decision, the student shall remain ineligible until he or she has tested negative on an exit drug test. The decision of the board is final.
- Technical experts are authorized to serve as consultants to the FHSAA's commissioner and its board of directors in connection with appeals.

The FHSAA is required to provide a report on program results by October 1, 2008, to the President of the Senate and the Speaker of the House of Representatives. The report must include statistics on the number of students tested; the number of violations; the number of challenges and their results; the

number of appeals and their dispositions; and the costs incurred by FHSAA to administer the program, including attorney's fees and other expenses of litigation.

The bill provides immunity from civil liability for FHSAA, including members of its board of directors, employees, and member schools and their employees. Immunity extends to any civil liability arising from any act or omission in connection with the program. The Department of Legal Affairs, or its outside counsel, must defend FHSAA, its board of directors, employees and its member schools, and their employees in civil litigation resulting from the program.

The bill provides the new subsection (10) created to establish the steroid testing program is repealed on October 2, 2008.

The program is to be conducted to the extent funded by the Legislature and the FHSAA is authorized to only implement the program in one or two of the named sports if necessary to conduct the program within appropriated funds. Expenses of the program must include, but are not limited to: fees and expenses charged by the testing agency for administrative services, and specimen collection and analysis; administrative expenses incurred by the FHSAA; and attorney's fees and other costs of litigation.

#### C. SECTION DIRECTORY:

**Section 1.:** Amends s. 1006.20, F.S.; establishes a random steroid testing program to be administered by the FHSAA; provides program requirements; provides penalties; provides appeal procedures; provides civil immunity; provides that program is to be conducted to the extent funded by the Legislature.

**Section 2.:** Provides an effective date of July 1, 2007.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

The bill does not appear to have a fiscal impact on state revenues.

##### 2. Expenditures:

The bill provides that the random steroid testing program is to be funded by the Legislature, but does not contain an appropriation. The bill further states that expenses of the program must include, but are not limited to: fees and expenses charged by the testing agency for administrative services, and specimen collection and analysis; administrative expenses incurred by the FHSAA; and attorney's fees and other costs of litigation.

The FHSAA estimates that the cost of administrative expenses and litigation would be \$100,000.<sup>14</sup> Regarding the costs of steroid testing, an OPPAGA study on steroid use among high school students indicated that steroid tests cost between \$50 and \$250.<sup>15</sup> According to the FHSAA website, 58,913 students participated in football, baseball, and weight lifting in 2005-2006.<sup>16</sup> Thus, steroid testing costs for the maximum of one percent of student participants permitted by the bill could range from \$29,450 (589 students X \$50 per test) to \$147,250 (589 students X \$250 per test).

<sup>14</sup> E-mail correspondence from the Commissioner of the FHSAA dated March 21, 2007.

<sup>15</sup> OPPAGA Information Brief, *Though the Option Is Available, School Districts Do Not Test Students for Steroids*, Report No. 04-72(Oct. 2004).

<sup>16</sup> Data may be found at: [http://www.fhsaa.org/programs/participation/2005\\_06.asp](http://www.fhsaa.org/programs/participation/2005_06.asp)



The number of student participants (58,913) may be overstated, however, because the data does not reflect that students may participate in more than one sport.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

Under the bill, a student who tests positive for steroids must complete a mandatory drug education program. This program must be conducted by the student's school, the student's school district, or a third-party organization contracted by the school or school district. Accordingly, a school or school district that does not have a drug education program currently available may incur costs for that program.

The bill also provides that a member school may challenge a positive drug test finding by requesting a re-analysis of the original specimen, and must challenge the finding upon the student's request. The cost of the re-analysis is borne by the member school or student's parent, unless the finding is negative, in which case, the cost is refunded. Accordingly, school districts may incur the cost of re-analyses if positive. The OPPAGA study on steroid use among high school students indicated that steroid tests cost between \$50 and \$250.<sup>17</sup>

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

During a challenge to a positive drug test finding, parents may be required to pay for the cost of a re-analysis that is positive. See Fiscal Impact on Local Governments, Expenditures, *supra*.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a city or county to expend funds or to take any action requiring the expenditure of funds.

The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

The bill does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

**Searches:** Although the U.S. Supreme Court case of New Jersey v. T.L.O. involved a search of a student's purse, rather than a drug test, it is frequently cited in student drug testing challenges.<sup>18</sup> This seminal case established the ability of private plaintiffs to challenge searches conducted by public school officials, based on the Fourth Amendment, which had traditionally been reserved for police

<sup>17</sup> OPPAGA Information Brief, *Though the Option Is Available, School Districts Do Not Test Students for Steroids*, Report No. 04-72(Oct. 2004).

<sup>18</sup> 469 U.S. 325 (1985).

searches.<sup>19</sup> The T.L.O. Court stipulated that a student has a legitimate expectation of privacy. Additionally, the Court confirmed that school officials conducting searches as agents of the state do not need to obtain warrants, or evidence probable cause, but rather, need only show reasonableness.<sup>20</sup> The T.L.O. Court established a two-prong test to determine reasonableness, which is as follows:

- i. Whether the action was justified at its inception; and
- ii. Whether the search was reasonably related in scope to the circumstances which justified the interference in the first place.<sup>21</sup>

A student and his parents specifically challenged a school district policy of randomly drug testing student athletes as a condition of participation in *Vernonia School District 47J v. Acton*.<sup>22</sup> In assessing “reasonableness,” the U.S. Supreme Court indicated a proper balancing of the intrusion on the student’s Fourth Amendment interests against the promotion of legitimate governmental interests.<sup>23</sup> The court additionally confirmed that the public school setting constitutes a ‘special need,’ thereby removing the requirement of probable cause or a warrant.<sup>24</sup> While acknowledging that students in general have a legitimate expectation of privacy, the court determined that student athletes have even less of a legitimate privacy expectation, in that “an element of communal undress is inherent in athletic participation, and athletes are subject to preseason physical exams and rules regulating their conduct.”<sup>25</sup> In upholding the school districts’ practice of suspicionless searches of student athletes, the court noted, “... that the risk of immediate physical harm to the athlete drug user or the athlete’s competitors is especially high.”<sup>26</sup>

In 2002, the U.S. Supreme Court applied the *Vernonia* ruling to a school board policy of requiring drug testing of middle and high school students who participated in competitive extracurricular activities in *Board of Education of Independent School District No. 92 of Pottawatomie County v. Earls*.<sup>27</sup> In its analysis, the court drew comparisons between this class of students and athletes, in that some of these clubs and activities involve off-campus travel and communal undress, and all of these activities contain rules and requirements that do not extend to the student body as a whole.<sup>28</sup> The court classified the students who participate in extracurricular activities as voluntary participants, which further limits their expectation of privacy.<sup>29</sup>

State courts have subsequently extended the *Vernonia* and *Board of Education* holdings to authorize drug testing of students who drive to school and park on school premises.<sup>30</sup> In *Joye v. Hunterdon Central Regional High School Board of Education*, the New Jersey Supreme Court indicated that parking at school is voluntary and a privilege, and that student drivers must comply with special rules and regulations that are not required of the student body at large:

... the testing program avoids subjecting the entire school to testing. And it preserves an option for a conscientious objector. He can refuse testing while

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<sup>19</sup> Ronald T. Hyman, *Constitutional Issues When Testing Students for Drug Use, A Special Exception, and Telltale Metaphors*, 35 JLEDUC 1, 4 (Jan. 2006).

<sup>20</sup> *New Jersey v. T.L.O.*, *supra* note 18, at 326.

<sup>21</sup> *Id.*

<sup>22</sup> 515 U.S. 646 (1995).

<sup>23</sup> *Id.* at 646.

<sup>24</sup> *Id.* at 653.

<sup>25</sup> *Id.* at 646-647.

<sup>26</sup> *Id.* at 662.

<sup>27</sup> 536 U.S. 822 (2002).

<sup>28</sup> *Id.* at 823.

<sup>29</sup> *Id.* at 832.

<sup>30</sup> Joseph R. McKinney, *The Effectiveness and Legality of Random Student Drug Testing Programs Revisited*, 205 WELR 19, 28 (2006).

paying a price (nonparticipation that is serious, but less severe than expulsion from the school).<sup>31</sup>

However, it is unclear whether suspicionless drug testing of specific classes of students withstands constitutional muster under privacy provisions in state constitutions. For example, the Pennsylvania Supreme Court noted that its state constitution required a higher level of scrutiny than that mandated under the Federal Constitution.<sup>32</sup> As such, the court required a school district to make an actual showing of the specific need for its policy of drug testing students who hold parking permits or participate in voluntary extracurricular activities, along with an explanation of its basis for believing that the policy would address that need.<sup>33</sup>

The right of privacy contained in the Florida Constitution provides:

Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein.<sup>34</sup>

The Fifth District Court of Appeal in Florida recently upheld the practice at Cornerstone Complex, an alternative middle school, of suspicionless pat-down searches of students.<sup>35</sup> Central to the court's holding were the facts that: the school was an alternative school, or a school for high-risk children; that attendance at the school was in lieu of confinement; and that a notable threat of violence existed at the school.<sup>36</sup> According to the court, "Students within a school environment have a lesser expectation of privacy than members of the general population, and they may waive a portion of their privacy rights in exchange for, or in lieu of something else. *J.A.* See also *Vernonia* (approved random drug urinalysis testing policy for student athletes)."<sup>37</sup> In this case, the court found that the students in the alternative school waived a portion of their privacy rights in exchange for a lack of confinement.<sup>38</sup> Further, the court stated that, "alternative schools have an even greater need to maintain discipline and safety for the protection of students and staff, and create a healthy learning environment, than regular public schools . . ."<sup>39</sup>

The court also stated that:

In addition to weapons, Cornerstone had a legitimate interest in keeping drugs out of the school in order to promote a safe environment in which the students could redeem themselves and learn. A school may test for drugs because the school is responsible for maintaining the discipline, health and safety of students. *Earls*, at 836, 122 S.Ct. 2559. Further, a school has a legitimate concern in preventing certain students from using drugs. *Vernonia*.<sup>40</sup>

Whether the aforementioned holding would be applied in a challenge to the bill's requirement of random, suspicionless, drug testing of athletes as a condition of participation in interscholastic athletics is yet unknown.

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<sup>31</sup> 826 A.2d 624, 637 (2003).

<sup>32</sup> *Theodore v. Delaware Valley School District*, 836 A.2d 76, 88 (2003).

<sup>33</sup> *Id.* at 95-96.

<sup>34</sup> Section 23, Article 1, of the State Constitution.

<sup>35</sup> *C.N.H. v. State*, 927 So.2d 1 (Fla. 5<sup>th</sup> DCA 2006), *rev. den.* (July 14, 2006).

<sup>36</sup> *Id.* at 1-3.

<sup>37</sup> *Id.* at 4.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 3.

<sup>40</sup> *Id.* at 5.

**Equal Protection:** Article I, s. 2 of the Florida Constitution, sets forth the guaranty of equal protection, which provides that:

All natural persons, female and male alike, are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property; except that the ownership, inheritance, disposition and possession of real property by aliens ineligible for citizenship may be regulated or prohibited by law. No person shall be deprived of any right because of race, religion, national origin, or physical disability.

Equal protection, however, does not require that a statute apply equally and uniformly to all persons within the state. It is sufficient if the statute applies uniformly to all persons who are similarly situated.<sup>41</sup> Furthermore, reasonable classifications, meaning a grouping of things because they agree with one another in certain particulars and differ from other things in those particulars, is permissible under the equal protection clause, so long as the classification is not arbitrary and is based on some difference in the classes having a substantial relation to the purpose of the legislation.<sup>42</sup>

The bill provides that the steroid testing program only applies to students participating in football, baseball, and weightlifting.

**B. RULE-MAKING AUTHORITY:**

This bill does not appear to create, modify, or eliminate rulemaking authority.

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

None.

**D. STATEMENT OF THE SPONSOR**

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

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<sup>41</sup> *State ex rel. Spence v. Bryan*, 87 Fla. 56 (1924).

<sup>42</sup> *Greater Miami Financial Corp. v. Dickinson*, 214 So.2d 874 (Fla. 1968).

1                   A bill to be entitled  
 2           An act relating to high school athletics; amending s.  
 3           1006.20, F.S.; requiring the Florida High School Athletic  
 4           Association to facilitate a 1-year drug testing program to  
 5           randomly test certain students for anabolic steroid use;  
 6           requiring schools to consent to the provisions of the  
 7           program as a prerequisite for membership in the  
 8           organization; requiring the organization to establish  
 9           procedures for the conduct of the program, including  
 10          contracting with a testing agency to administer the  
 11          program; providing that records relating to drug tests and  
 12          challenge and appeal proceedings shall be maintained  
 13          separately from a student's educational record; requiring  
 14          students and their parents to consent to the provisions of  
 15          the program as a prerequisite for eligibility to  
 16          participate in specified sports; requiring the  
 17          administration of a school to meet with a student who  
 18          tests positive and his or her parent to review the  
 19          finding, penalties, and procedures for challenge and  
 20          appeal; providing penalties for positive findings;  
 21          providing due process procedures for challenge and appeal;  
 22          requiring a report to the Legislature on the results of  
 23          the program; providing an exemption from civil liability  
 24          resulting from implementation of the program; requiring  
 25          the Department of Legal Affairs to provide defense in  
 26          claims of civil liability; requiring program expenses to  
 27          be paid through legislative appropriation; providing for  
 28          repeal of the program; providing an effective date.  
 29

30 Be It Enacted by the Legislature of the State of Florida:

31

32 Section 1. Subsection (10) is added to section 1006.20,  
33 Florida Statutes, to read:

34 1006.20 Athletics in public K-12 schools.--

35 (10) RANDOM DRUG TESTING PROGRAM.--

36 (a) Contingent upon funding, and to the extent funded, the  
37 organization shall facilitate a 1-year program during the 2007-  
38 2008 academic year in which students in grades 9 through 12 in  
39 its member schools who participate in regular and postseason  
40 competition in football, baseball, or weightlifting governed by  
41 the organization shall be subject to random testing for the use  
42 of anabolic steroids as defined in s. 893.03(3)(d). All schools,  
43 both public and private, shall consent to the provisions of this  
44 subsection as a prerequisite for membership in the organization  
45 for the duration of the program.

46 (b) The organization's board of directors shall establish  
47 procedures for the conduct of the program that, at a minimum,  
48 shall provide for the following:

49 1. The organization shall select and enter into a contract  
50 with a testing agency that will administer the testing program.  
51 The laboratory utilized by the testing agency to analyze  
52 specimens shall be accredited by the World Anti-Doping Agency.

53 2. Each member school shall report to the organization the  
54 names of all students who will represent the school in football,  
55 baseball, and weightlifting. A student shall not be eligible to  
56 participate in interscholastic athletics in any of these sports  
57 in a member school until the student's name has been reported to  
58 the organization by the school.

59       3. The organization shall provide to the testing agency all  
 60 names of students that are submitted by its member schools. A  
 61 maximum of 1 percent of the total number of students who  
 62 participate in football, baseball, and weightlifting shall be  
 63 randomly selected by the testing agency to undergo testing.

64       4. The testing agency shall notify not fewer than 7 days in  
 65 advance both the administration of a school and the organization  
 66 of the date on which its representatives will be present at the  
 67 school to collect a specimen from a randomly selected student.  
 68 However, the name of the student from which a specimen is to be  
 69 collected shall not be disclosed.

70       5. Records relating to drug tests under this subsection and  
 71 to the challenge and appeal proceedings under paragraph (h) shall  
 72 be maintained separately from a student's educational record.

73       (c) Each student who wishes to participate in football,  
 74 baseball, or weightlifting and his or her parent must consent to  
 75 the provisions of this subsection as a prerequisite for athletic  
 76 eligibility. This consent shall be in writing on a form  
 77 prescribed by the organization and provided to the student by his  
 78 or her school. Failure to complete and sign the consent form  
 79 shall result in the student's ineligibility to participate in the  
 80 sport for which the consent form is required. The consent form  
 81 shall include the following information:

- 82       1. A brief description of the drug testing program.
- 83       2. The penalties for a positive finding.
- 84       3. The procedure for challenging a positive finding.
- 85       4. The procedure for appealing a prescribed penalty.

86       (d) A student who is selected for testing and fails to  
 87 provide a specimen shall be immediately suspended from

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88 interscholastic athletic practice and competition until such time  
 89 as a specimen is provided.

90 (e) If a student tests positive in a test administered  
 91 under this subsection, the administration of the school the  
 92 student attends shall immediately:

93 1. Suspend the student from participation in all  
 94 interscholastic athletic practice and competition.

95 2. Notify and schedule a meeting with the student and his  
 96 or her parent during which the principal or his or her designee  
 97 shall review with them the positive finding, the procedure for  
 98 challenging the positive finding, the prescribed penalties, and  
 99 the procedure for appealing the prescribed penalties.

100 (f) For a positive finding, the student shall be suspended  
 101 from all interscholastic athletic practice and competition for a  
 102 period of 90 school days and shall be subject to a mandatory exit  
 103 test for restoration of eligibility no sooner than the 60th  
 104 school day of the suspension. If the exit test is negative, the  
 105 organization shall immediately restore the eligibility of the  
 106 student. If the exit test is positive, the student shall remain  
 107 suspended from all interscholastic athletic practice and  
 108 competition until such time as a subsequent retest of the student  
 109 results in a negative finding. The student shall be subject to  
 110 repeated tests for the duration of his or her high school  
 111 athletic eligibility.

112 (g) In addition to the penalties prescribed in paragraph  
 113 (f), a student who tests positive in a test administered under  
 114 this subsection shall attend and complete an appropriate  
 115 mandatory drug education program conducted by the student's  
 116 school, the student's school district, or a third-party



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117 organization contracted by the school or school district to  
 118 conduct such an education program.

119 (h) The following due process shall be afforded each  
 120 student who tests positive in a test administered under this  
 121 subsection:

122 1. The member school may challenge a positive finding and  
 123 must challenge a positive finding at the request of the student.

124 A sample of the original specimen provided by the student and  
 125 retained by the testing agency shall be analyzed. The member  
 126 school or the student's parent shall pay the cost of the  
 127 analysis. If the analysis results in a positive finding, the  
 128 student shall remain ineligible until the prescribed penalty is  
 129 fulfilled. If the analysis results in a negative finding, the  
 130 organization shall immediately restore the eligibility of the  
 131 student and shall refund to the member school or student's parent  
 132 the cost of the analysis. The student shall remain suspended from  
 133 interscholastic athletic practice and competition during the  
 134 challenge.

135 2.a. The member school may appeal to the organization's  
 136 commissioner the period of ineligibility imposed on a student as  
 137 a result of a positive finding and must appeal at the request of  
 138 the student. The commissioner may require the student to complete  
 139 the prescribed penalty, reduce the prescribed penalty by one-  
 140 half, or provide complete relief from the prescribed penalty.  
 141 Regardless of the decision of the commissioner, the student shall  
 142 remain ineligible until the student tests negative on an exit  
 143 drug test and the student's eligibility is restored by the  
 144 organization.

145 b. Should the member school or student be dissatisfied with

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146 the decision of the commissioner, the school may pursue the  
 147 appeal before the organization's board of directors and must do  
 148 so at the request of the student. The board of directors may  
 149 require the student to complete the prescribed penalty, reduce  
 150 the prescribed penalty by one-half, or provide complete relief  
 151 from the prescribed penalty. Regardless of the decision of the  
 152 board of directors, the student shall remain ineligible until the  
 153 student tests negative on an exit drug test and the student's  
 154 eligibility is restored by the organization. The decision of the  
 155 board of directors on each appeal shall be final.

156 c. Technical experts may serve as consultants to both the  
 157 organization's commissioner and its board of directors in  
 158 connection with such appeals.

159 (i) No later than October 1, 2008, the organization shall  
 160 submit to the President of the Senate and the Speaker of the  
 161 House of Representatives a report on the results of the program.  
 162 The report shall include statistics on the number of students  
 163 tested; the number of violations; the number of challenges and  
 164 their results; the number of appeals and their dispositions; and  
 165 the costs incurred by the organization in the administration of  
 166 the program, including attorney's fees and other expenses of  
 167 litigation.

168 (j) The organization, members of its board of directors,  
 169 and its employees and member schools and their employees are  
 170 exempt from civil liability arising from any act or omission in  
 171 connection with the program conducted under this subsection. The  
 172 Department of Legal Affairs shall defend the organization,  
 173 members of its board of directors, and its employees and member  
 174 schools and their employees in any action against such parties

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175 arising from any such act or omission. In providing such defense,  
 176 the Department of Legal Affairs may employ or utilize the legal  
 177 services of outside counsel.

178 (k) The program shall be conducted to the extent funded by  
 179 the Legislature. In order to conduct the program within  
 180 appropriated funds, the organization is authorized to implement  
 181 the program in only one or two of the named sports. All expenses  
 182 of the program shall be paid with funds appropriated by the  
 183 Legislature. Such expenses shall include, but not be limited to,  
 184 all fees and expenses charged by the testing agency for  
 185 administrative services, specimen collection services, and  
 186 specimen analysis; all administrative expenses incurred by the  
 187 organization in the facilitation of the program; and all  
 188 attorney's fees and other expenses of litigation resulting from  
 189 legal challenges related to the program.

190 (l) This subsection shall stand repealed on October 2,  
 191 2008, unless reviewed and saved from repeal through reenactment  
 192 by the Legislature.

193 Section 2. This act shall take effect July 1, 2007.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Bill No. **PCS 461**

COUNCIL/COMMITTEE ACTION

|                       |       |       |
|-----------------------|-------|-------|
| ADOPTED               | ___   | (Y/N) |
| ADOPTED AS AMENDED    | ___   | (Y/N) |
| ADOPTED W/O OBJECTION | ___   | (Y/N) |
| FAILED TO ADOPT       | ___   | (Y/N) |
| WITHDRAWN             | ___   | (Y/N) |
| OTHER                 | _____ |       |

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1 Council/Committee hearing bill: Schools and Learning Council  
 2 Representative Llorente offered the following:

**Amendment (with title amendment)**

On line 72 after the "." insert:

The result of a drug test under this subsection shall not be  
admissible as evidence in a criminal prosecution.

===== T I T L E A M E N D M E N T =====

On line 13 after the ";" insert:

providing that the result of a drug test is not admissible in a  
criminal prosecution;

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## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide limited government** – The bill decreases access to records and meetings concerning the Florida High School Athletic Association (FHSA) anabolic steroid testing program for certain high school athletes.

**Safeguard individual liberty** – The bill prevents the release of sensitive, personal information regarding the anabolic steroid testing of student athletes.

#### B. EFFECT OF PROPOSED CHANGES:

##### Present Situation

**Public Records:** Florida has a long history of providing public access to the records and meetings of governmental and other public entities. The Florida Legislature enacted the first law affording access to public records in 1909. In 1992, Floridians voted to adopt an amendment to the Florida Constitution that raised the statutory right of public access to public records to a constitutional level.

The Public Records Law, ch. 119, F.S., specifies the conditions under which public access must be provided to governmental records. Section 286.011, F.S., the Public Meetings Law, specifies the requirements for meetings of public bodies to be open to the public. While the State Constitution provides that records and meetings are to be open to the public, it also provides that the Legislature may create exemptions to these requirements by general law if a public need exists and certain procedural requirements are met. Article I, s. 24, of the Florida Constitution, governs the creation and expansion of exemptions to provide, in effect, that any legislation that creates a new exemption or that substantially amends an existing exemption must also contain a statement of the public necessity that justifies the exemption. Article I, s. 24, of the Florida Constitution, provides that any bill that contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions.

The Open Government Sunset Review Act (s. 119.15, F.S.), provides for the repeal and prior review of any public records or meetings exemptions that are created or substantially amended in 1996 and subsequently. The chapter defines the term "substantial amendment" for purposes of triggering a repeal and prior review of an exemption to include an amendment that expands the scope of the exemption to include more records or information or to include meetings as well as records. The law clarifies that an exemption is not substantially amended if an amendment limits or narrows the scope of an existing exemption. The law was amended by ch. 2005-251, Laws of Florida, to modify the criteria under the Open Government Sunset Review Act so that consideration will be given to reducing the number of exemptions by creating a uniform exemption during the review of an exemption subject to repeal.

Under the Open Government Sunset Review Act, an exemption may be created or maintained only if it serves an identifiable public purpose. An identifiable public purpose is served if the exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, the administration of which would be significantly impaired without the exemption;
- Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to

protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

**House Bill 461 (2007):** House Bill 461 establishes a one-year, random, anabolic steroids testing program for students in grades 9 through 12, who participate in football, baseball, and weightlifting. The program is to be administered by the Florida High School Athletic Association (FHSAA) during the 2007-2008 school year. Public and private schools must participate in the program as a prerequisite to FHSAA membership. The bill provides program requirements, penalties, and challenge and appeal procedures.

### **Effect of Proposed Changes**

This bill creates a public records exemption relating to the Florida High School Athletic Association's steroid testing program that is created by House Bill 461 (2007). This program provides for the random testing of high school students who participate in football, baseball, and weightlifting and includes penalties and procedures for challenges and appeals.

This bill makes records relating to the steroid drug tests and to the challenge and appeal proceedings confidential and exempt from public disclosure. It also provides an exemption from public meeting requirements for the portions of meetings at which the exempt records are discussed or presented.

A public necessity statement is included. Regarding records related to drug tests and challenge and appeal proceedings, the statement indicates that such records:

- Are of a sensitive, personal nature;
- Could be used to discriminate against a student; and
- Could cause harm to a student's reputation.

Regarding exempted meetings, the statement provides that the exemption will minimize the potential of unnecessary scrutiny by the public or media concerning sensitive, personal information about a student. Further, it states that release of the exempted records in a meeting would defeat the purpose of making the findings confidential and exempt.

The bill repeals the exemptions on October 2, 2012, unless they are reviewed and saved from repeal through reenactment by the Legislature.

This bill is linked to HB 461.

#### **C. SECTION DIRECTORY:**

**Section 1.** Amends s. 1006.20, F.S.; creates a public record and a public meeting exemption.

**Section 2.** Provides a statement of public necessity.

**Section 3.** Provides that this act shall take effect upon the passage of House Bill 461.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

The bill does not appear to have a fiscal impact on state revenues.



2. Expenditures:

This bill does not appear to have a fiscal impact on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

This bill does not appear to have a fiscal impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a fiscal impact on the private sector.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a city or county to expend funds or to take any action requiring the expenditure of funds.

The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

The bill does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill does not appear to create, modify, or eliminate rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

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1                                   A bill to be entitled  
 2           An act relating to public records and public meetings  
 3           exemptions; amending s. 1006.20, F.S.; exempting from  
 4           public records requirements records relating to drug tests  
 5           and to challenge and appeal proceedings under the Florida  
 6           High School Athletic Association's random drug testing  
 7           program; exempting from public meetings requirements the  
 8           portions of a meeting at which records relating to drug  
 9           tests or to challenge or appeal proceedings will be  
 10          discussed; providing for future review and repeal;  
 11          providing a statement of public necessity; providing a  
 12          contingent effective date.

13  
 14 Be It Enacted by the Legislature of the State of Florida:

15  
 16           Section 1. Paragraph (b) of subsection (10) of section  
 17           1006.20, Florida Statutes, as created by Committee Substitute for  
 18           HB 461, 2007 Regular Session, is amended to read:

19           1006.20 Athletics in public K-12 schools.--  
 20           (10) RANDOM DRUG TESTING PROGRAM.--

21           (b) The organization's board of directors shall establish  
 22           procedures for the conduct of the program that, at a minimum,  
 23           shall provide for the following:

24           1. The organization shall select and enter into a contract  
 25           with a testing agency that will administer the testing program.  
 26           The laboratory utilized by the testing agency to analyze  
 27           specimens shall be accredited by the World Anti-Doping Agency.

28           2. Each member school shall report to the organization the  
 29           names of all students who will represent the school in football,

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30 | baseball, and weightlifting. A student shall not be eligible to  
 31 | participate in interscholastic athletics in any of these sports  
 32 | in a member school until the student's name has been reported to  
 33 | the organization by the school.

34 |         3. The organization shall provide to the testing agency all  
 35 | names of students that are submitted by its member schools. A  
 36 | maximum of 1 percent of the total number of students who  
 37 | participate in football, baseball, and weightlifting shall be  
 38 | randomly selected by the testing agency to undergo testing.

39 |         4. The testing agency shall notify not fewer than 7 days in  
 40 | advance both the administration of a school and the organization  
 41 | of the date on which its representatives will be present at the  
 42 | school to collect a specimen from a randomly selected student.  
 43 | However, the name of the student from which a specimen is to be  
 44 | collected shall not be disclosed.

45 |         5. Records relating to drug tests under this subsection and  
 46 | to the challenge and appeal proceedings under paragraph (h) shall  
 47 | be maintained separately from a student's educational records.

48 |         6.a. Records relating to drug tests under this subsection  
 49 | and to the challenge or appeal proceedings under paragraph (h)  
 50 | are confidential and exempt from s. 119.07(1) and s. 24(a), Art.  
 51 | I of the State Constitution. This subparagraph is subject to the  
 52 | Open Government Sunset Review Act in accordance with s. 119.15  
 53 | and shall stand repealed on October 2, 2012, unless reviewed and  
 54 | saved from repeal through reenactment by the Legislature.

55 |         b. Information made confidential and exempt under sub-  
 56 | paragraph a. may only be disclosed to the organization, the  
 57 | student, the student's parent, the administration of the  
 58 | student's school, and the administration of any school to which

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59 the student may transfer during a suspension from participation  
 60 in interscholastic athletics resulting from a positive finding.  
 61 The entities or persons receiving such information shall maintain  
 62 the confidential and exempt status of the information.

63 7. The portions of a meeting at which records are presented  
 64 or discussed that are confidential and exempt under subparagraph  
 65 6. are exempt from s. 286.011 and s. 24(b), Art. I of the State  
 66 Constitution. This subparagraph is subject to the Open Government  
 67 Sunset Review Act in accordance with s. 119.15 and shall stand  
 68 repealed on October 2, 2012, unless reviewed and saved from  
 69 repeal through reenactment by the Legislature.

70 Section 2. The Legislature finds that it is a public  
 71 necessity for the records relating to drug tests administered,  
 72 and to the challenge or appeal proceedings occurring, under s.  
 73 1006.20(10), Florida Statutes, to be made confidential and exempt  
 74 from public records requirements. The Legislature finds that harm  
 75 caused by releasing such information outweighs any public benefit  
 76 that might be derived from releasing the information. Such  
 77 information is of a sensitive and personal nature, could be used  
 78 to discriminate against a student, and could cause harm to a  
 79 student's reputation. The Legislature further finds that it is a  
 80 public necessity for the portions of a meeting at which the  
 81 records of drug tests or of challenge or appeal proceedings under  
 82 s. 1006.20(10), Florida Statutes, are presented or discussed to  
 83 be made exempt from public meetings requirements. The Legislature  
 84 finds that the exemption of these proceedings from public  
 85 meetings requirements minimizes the possibility of unnecessary  
 86 scrutiny by the public or media of sensitive, personal  
 87 information concerning a student. Furthermore, without such

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88 | exemption, release of confidential and exempt information via a  
89 | public meeting defeats the purpose of the public records  
90 | exemption.

91 |       Section 3. This act shall take effect on the same date that  
92 | Committee Substitute for HB 461 or similar legislation takes  
93 | effect, if such legislation is adopted in the same legislative  
94 | session or an extension thereof and becomes law.



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** PCS for HB 1161 High School to Business Career Enhancement  
**SPONSOR(S):** Schools & Learning Council  
**TIED BILLS:** **IDEN./SIM. BILLS:**

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| REFERENCE                               | ACTION | ANALYST           | STAFF DIRECTOR |
|---|--------|-------------------|----------------|
| Orig. Comm.: Schools & Learning Council |        | Hassell <i>JH</i> | Cobb <i>CC</i> |
| 1) _____                                | _____  | _____             | _____          |
| 2) _____                                | _____  | _____             | _____          |
| 3) _____                                | _____  | _____             | _____          |
| 4) _____                                | _____  | _____             | _____          |
| 5) _____                                | _____  | _____             | _____          |

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**SUMMARY ANALYSIS**

The proposed council substitute (PCS) provides for the creation of the High School to Business Career Enhancement Program and provides generally for whereas clauses. The program is established to offer certain high school students in each school district the opportunity to participate in an internship program with local employers that have partnered with the district to offer such opportunity. District school boards are required to adopt policies and procedures for the implementation of this program. The internships shall be coordinated with the career goals of each student participant.

The PCS provides that no more than 100 internships may be offered by each school year by a district school board. An internship shall be at least 8 weeks long but no more than 20 consecutive weeks during any school year, and a student is prohibited from working more than 20 hours per week. The participating employer is required to monitor the academic value of the internship using criteria developed by the school board and must conduct an evaluation of the student at the conclusion of the internship.

The PCS provides that the number of internships that an employer may provide is limited to the number of employees that the employer employs in the school district in which the internship is offered. It also requires any employees or contracted personnel of an employer participating in this program who have direct contact with student interns be subject to the level 2 background screening requirements as described in s. 1012.32. The employer is required to borne the cost of the state and federal criminal history check required by level 2 background screening of such persons.

The PCS clarifies that the employment of students participating in this program is not subject to unemployment tax under ch. 443.

The bill provides for an effective date.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

*Provide limited government* – The PCS authorizes the State Board of Education to adopt rules necessary to administer the program.

*Safeguard individual liberty* – The PCS increases the opportunities of high school students to participate in an internship program that is aligned with each student's career goals.

#### B. EFFECT OF PROPOSED CHANGES:

Currently, school districts offer various internships, on-the-job-training (OJT), and cooperative education opportunities to students, mainly through the Workforce (Career and Technical) Education programs.

The PCS provides for the creation of the High School to Business Career Enhancement Program and provides generally for whereas clauses. The program is established to offer certain high school students in each school district the opportunity to participate in an internship program with local employers that have partnered with the district to offer such opportunity. District school boards are required to adopt policies and procedures for the implementation of this program. The internships shall be coordinated with the career goals of each student participant.

The PCS provides that no more than 100 internships may be offered by each school year by a district school board. An internship shall be at least 8 weeks long but no more than 20 consecutive weeks during any school year, and a student is prohibited from working more than 20 hours per week. The participating employer is required to monitor the academic value of the internship and must conduct an evaluation of the student at the conclusion of the internship. District school boards must develop the criteria for use by the employer to evaluate the academic value of the student's internship.

The PCS provides that the number of internships that an employer may provide is limited to the number of employees that the employer employs in the school district in which the internship is offered.

- Employers with 10 or fewer employees may provide one internship per year.
- Employers with 11 to 20 employees may provide 2 internships per year.
- Employers with 21-50 employees may provide 3 internships per year.
- Employers with 50 or more employees may provide 4 internships per year.

The PCS requires any employees or contracted personnel of an employer participating in this program who have direct contact with student interns be subject to the level 2 background screening requirements as described in s. 1012.32. The employer is required to borne the cost of the state and federal criminal history check required by level 2 background screening of such persons.

The PCS clarifies that employment under this section of a student intern who meets the criteria of s. 443.1216(13)(i)2., F.S., is not employment for purposes of unemployment compensation under chapter 443.

The PCS authorizes the State Board of Education to adopt rules necessary to administer the program.



C. SECTION DIRECTORY:

**Section 1.** Creates the High School to Business Career Enhancement Program.

**Section 2.** Provides for an effective date.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The PCS does not appear to have a fiscal impact on state government revenues.

2. Expenditures:

The PCS does not appear to have a fiscal impact on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The PCS does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

The PCS does not appear to have a fiscal impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The PCS does not appear to require a city or county to expend funds or to take any action requiring the expenditure of funds.

The PCS does not appear to reduce the authority that municipalities or counties have to raise revenues in the aggregate.

The PCS does not appear to reduce the percentage of state tax shared with counties or municipalities

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The PCS authorizes the State Board of Education to adopt by rules necessary to administer the program.

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

None.

**D. STATEMENT OF THE SPONSOR**

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

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1                                   A bill to be entitled  
 2           An act relating to high school work experience; creating  
 3           s. 1003.496, F.S.; requiring each district school board to  
 4           adopt policies and procedures for a High School to  
 5           Business Career Enhancement Program through which student  
 6           internships shall be offered in each school district;  
 7           providing internship requirements; requiring the  
 8           background screening of employees or contracted personnel  
 9           participating in this program; providing for number of  
 10          internships certain employers may offer; clarifying that  
 11          employment of a student intern is not employment for  
 12          purposes of unemployment compensation; providing the  
 13          Department of Education with rulemaking authority;  
 14          providing an effective date.

15  
 16           WHEREAS, student learning outside of the classroom, as well  
 17          as student learning in the classroom, is critical to success  
 18          later in life, and

19           WHEREAS, high school student participation in an internship  
 20          may provide an experience that will cultivate a student's  
 21          interest or talent and may be used to supplement a student's high  
 22          school major, and

23           WHEREAS, participation in an internship can be a good  
 24          educational tool and provide employment opportunities after high  
 25          school or college graduation, and

26           WHEREAS, participation in an internship will increase the  
 27          connections of a high school student to business and the  
 28          community, and

29           WHEREAS, participation in an internship may be the

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30 motivation to pursue higher education in a particular field, and  
 31 WHEREAS, partnerships between schools and employers that  
 32 offer internships to high school students will help employers  
 33 find and train workers and help young people prepare for success  
 34 in college, careers, and life, and

35 WHEREAS, employers benefit by training student interns in  
 36 their business methods and form a connection between the employer  
 37 and the student that may keep talented students in the state,  
 38 NOW, THEREFORE,

39

40 Be It Enacted by the Legislature of the State of Florida:

41

42 Section 1. Section 1003.496, Florida Statutes, is created to  
 43 read:

44 1003.496 High School to Business Career Enhancement Program. --

45 (1) This section may be cited as the "High School to  
 46 Business Career Enhancement Act."

47 (2) (a) Each district school board, as defined in section  
 48 1003.01, shall adopt policies and procedures for a High School to  
 49 Business Career Enhancement Program through which high school  
 50 student internships shall be offered in each school district  
 51 through partnerships developed with employers within the  
 52 communities served by the district school board. Each internship  
 53 shall be coordinated with the career goals of each student  
 54 participant and shall include a student evaluation at the end of  
 55 each internship, by the employer offering the internship, to  
 56 monitor the academic value of the internship using criteria  
 57 established by each district school board.

58 (b) A student participant may be in the ninth, tenth,

→

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59 eleventh, or twelfth grade and must have a minimum weighted grade  
 60 point average of 2.0.

61 (c) A student participant may not be required to work more  
 62 than 20 hours per week during the internship.

63 (d) An internship shall be consistent with the career goals  
 64 of each student participant.

65 (e) An internship shall be at least eight weeks long, and  
 66 cannot last more than 20 consecutive weeks during any school  
 67 year.

68 (f) Each student may only participate in one internship per  
 69 school year.

70 (g) No more than 100 internships may be offered each school  
 71 year by a district school board.

72 (h) The number of internships that an employer may provide  
 73 under this program is limited to the number of employees that the  
 74 employer employs in the school district in which the internship  
 75 is offered.

76 1. An employer with 10 or fewer employees may provide one  
 77 internship per school year.

78 2. An employer with 11 to 20 employees may provide up to  
 79 two internships per school year.

80 3. An employer with 21 to 50 employees may provide up to  
 81 three internships per school year.

82 4. An employer with more than 50 employees may provide up  
 83 to four internships per school year.

84  
 85 Employers may partner with more than one district school board;  
 86 however, the number of internships that may be provided within  
 87 each district school board are subject to the limitations of this

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88 | paragraph.

89 |       (i) Any employees or contracted personnel of an employer  
 90 | under this section who have direct contact with student interns  
 91 | shall be subject to the level 2 background screening requirements  
 92 | as described in s. 1012.32. The cost of the state and federal  
 93 | criminal history check required by level 2 background screening  
 94 | must be borne by the employer.

95 |       (3) Employment under this section of a student intern who  
 96 | meets the criteria of s. 443.1216(13)(i)2. is not employment for  
 97 | purposes of unemployment compensation under chapter 443.

98 |       (4) RULES.- The State Board of Education may adopt rules  
 99 | necessary to administer this section.

100 |       Section 2. This act shall take effect July 1, 2007.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 01(for drafter's use only)

Bill No. **PCS 1161**

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

1 Council/Committee hearing bill: Schools & Learning Council  
2 Representative(s) Ambler offered the following:

3  
4 **Amendment**  
5 Remove line(s) 96 and insert:  
6 meets the criteria of s. 443.1216(13)(q)2. is not employment for

000000