

Education Policy Council

Wednesday, April 7, 2010

9:00

Morris Hall (17 HOB)

**Larry Cretul
Speaker**

**Will W. Weatherford
Chair**



The Florida House of Representatives

Education Policy Council

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Agenda
Wednesday, April 7, 2010
Morris Hall (17 HOB)
9:00 – 10:30 am

- I. Roll Call
- II. Consideration of the following bill(s):
 - CS/HB 55 District School Board Policies and Procedures by PreK-12 Policy Committee, Reed
 - CS/HB 341 H. Lee Moffitt Cancer Center and Research Institute by State Universities & Private Colleges Policy Committee, Coley
 - CS/HB 603 Cooperation Between Schools and Juvenile Authorities by PreK-12 Policy Committee, Soto
 - CS/HB 747 Treatment of Diabetes by PreK-12 Policy Committee, Thompson, N.
 - CS/HB 1233 Educational Plant Surveys by PreK-12 Appropriations Committee, Jenne
 - CS/CS/HB 1337 Nursing by Health Care Appropriations Committee, State Universities & Private Colleges Policy Committee, Grimsley
 - CS/HB 1363 Postsecondary Student Fees by State Universities & Private Colleges Policy Committee, Glorioso
 - CS/HB 1505 John M. McKay Scholarships for Students with Disabilities Program by PreK-12 Policy Committee, Flores
- III. Adjourn

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 55

District School Board Policies and Procedures

SPONSOR(S): Reed and others

TIED BILLS:

IDEN./SIM. BILLS: SB 206

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) PreK-12 Policy Committee	12 Y, 0 N, As CS	Beagle	Ahearn
2) Policy Council	17 Y, 0 N	Varn	Ciccone
3) Education Policy Council		White	Lowell
4)			
5)			

SUMMARY ANALYSIS

Florida law does not currently require or encourage school districts to conduct "Academic Scholarship Signing Day" assemblies or activities. School assemblies are generally regulated by district school board policy. Guidelines for student assemblies must be included in district-adopted student codes of conduct.

The Committee Substitute for House Bill 55 encourages district school boards to adopt policies for designating the third Tuesday in April each year as "Academic Scholarship Signing Day." The purpose of Academic Scholarship Signing Day is to recognize high school seniors who have been awarded postsecondary academic scholarships. School boards may authorize assemblies or other events for this purpose. Students may sign actual or ceremonial documents signifying acceptance of the scholarship. A school board may encourage holding these events for the entire student body to reinforce the importance of academic success.

The bill does not have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Florida law does not currently require or encourage school districts to conduct "Academic Scholarship Signing Day" assemblies or activities. Student assemblies are generally regulated by district school board policy. Guidelines for student assemblies must be included in district-adopted student codes of conduct.¹

Effect of Proposed Changes

The bill encourages district school boards to recognize high school seniors who have been awarded postsecondary academic scholarships and to adopt policies designating the third Tuesday in April each year as "Academic Scholarship Signing Day." School boards may authorize assemblies or other events for this purpose. Students may sign actual or ceremonial documents signifying acceptance of the scholarship. A school board may encourage holding these events for the entire student body to reinforce the importance of academic success.

Academic Scholarship Signing Day is modeled after "letter of intent" signing activities conducted by many United States high schools to celebrate a student athlete's acceptance of a college athletic scholarship.² The purpose of Academic Scholarship Signing Day is to recognize academic achievement with similar fanfare.

B. SECTION DIRECTORY:

Section 1. Amends s. 1001.43, F.S.; encouraging district school boards to recognize Academic Scholarship Signing Day.

Section 2. Provides an effective date of July 1, 2010.

¹ Section 1006.07(2)(c), F.S.

² The National Collegiate Athletic Association, National Letter of Intent, *Signing Dates*, <http://www.ncaa.org/wps/wcm/connect/nli/NLI/Home/> (last visited Mar. 4, 2010).

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:

None.

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 10, 2010, the PreK-12 Policy Committee adopted one amendment and reported the bill favorably as a Committee Substitute (CS). The difference between the CS and the bill is that the CS authorizes district school boards to encourage holding Academic Scholarship Signing Day assemblies for *the entire student body*; whereas, the bill authorized boards to encourage holding such assemblies for *freshmen and sophomores*.

This analysis is drafted to the CS.

1 A bill to be entitled
 2 An act relating to district school board policies and
 3 procedures; amending s. 1001.43, F.S.; providing
 4 legislative intent to recognize student academic
 5 achievement; encouraging each district school board to
 6 adopt policies and procedures that provide for an annual
 7 "Academic Scholarship Signing Day"; providing an effective
 8 date.

9

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

11

12 Section 1. Subsection (14) is added to section 1001.43,
 13 Florida Statutes, to read:

14 1001.43 Supplemental powers and duties of district school
 15 board.—The district school board may exercise the following
 16 supplemental powers and duties as authorized by this code or
 17 State Board of Education rule.

18 (14) RECOGNITION OF ACADEMIC ACHIEVEMENT.—

19 (a) The Legislature recognizes the importance of promoting
 20 student academic achievement, motivating students to attain
 21 academic achievement, and providing positive acknowledgment for
 22 that achievement. It is the intent of the Legislature that
 23 school districts bestow the same level of recognition to the
 24 state's academic scholars as to its athletic scholars.

25 (b) The district school board is encouraged to adopt
 26 policies and procedures to provide for a student "Academic
 27 Scholarship Signing Day" by declaring the third Tuesday in April
 28 each year as "Academic Scholarship Signing Day." The "Academic

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29 Scholarship Signing Day" shall recognize the outstanding
30 academic achievement of high school seniors who sign a letter of
31 intent to accept an academic scholarship offered to the student
32 by a postsecondary educational institution. District school
33 board policies and procedures may include, but not be limited
34 to, conducting assemblies or other appropriate public events in
35 which students offered academic scholarships assemble and sign
36 actual or ceremonial documents accepting those scholarships. The
37 district school board may encourage holding such events in an
38 assembly or gathering of the entire student body as a means of
39 making academic success and recognition visible to all students.

40 Section 2. This act shall take effect July 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The H. Lee Moffitt Cancer Center and Research Institute

The H. Lee Moffitt Cancer Center and Research Institute is a leading cancer research, education, and treatment center in Tampa that is affiliated with the University of South Florida (USF) as well as other universities nationwide.¹

History of the H. Lee Moffitt Cancer Center and Research Institute

The 1982 Legislature provided for the transfer of \$45 million from the Cigarette Tax Collection Fund to complete a Cancer and Chronic Disease Research and Treatment Center (Cancer Center) at the USF College of Medicine.² The Board of Regents (BOR) and USF created a not-for-profit corporation to operate the Cancer Center medical facility.³ State corporate records show the H. Lee Moffitt Cancer Center and Research Institute, Inc., was incorporated as a not-for-profit corporation in 1984.⁴ The not-for-profit corporation was considered a direct support organization of USF and operated under a contract with the BOR. The Cancer Center was completed and officially opened in October 1986. The medical staff of the center was comprised of the faculty of the USF College of Medicine. The corporation had additional staff of approximately 500, who were not state employees but were paid from the corporation's state appropriated budget.⁵

Ch. 87-121, L.O.F., codified in law the relationship between the BOR and the not-for-profit organization created to operate the Cancer Center by establishing the H. Lee Moffitt Cancer Institute and Research Institute at USF and requiring the BOR to enter into an agreement for the utilization of the facilities on the USF campus known as the H. Lee Moffitt Cancer Center and Research Institute with a not-for-profit organization that was certified by the BOR as a direct support organization. The not-for-profit corporation, acting as an instrumentality of the state, was required to govern and operate the H. Lee Moffitt Cancer Center and Research Institute in accordance with the terms of the agreement between the BOR and the not-for-profit corporation. The agreement was required to provide for the following:

- Approval of the articles of incorporation of the not-for-profit corporation by the BOR.
- Certification of the not-for-profit corporation by the BOR as a university direct support organization.

¹ Moffitt Cancer Center analysis of HB 341 (January 27, 2010).

² Ch. 82-240, L.O.F.

³ Staff analysis of HB 790 (April 21, 1987).

⁴ State Corporation Records <http://www.sunbiz.org> (last visited February 10, 2010).

⁵ Staff analysis of CS/SB 757 (May 22, 1987).

- Utilization of hospital facilities and personnel for mutually approved teaching and research programs conducted by USF.

The 1990 Legislature enacted specific provisions regarding the membership of the board of directors of the not-for-profit corporation; expanded the teaching and research programs for which the facilities could be used to include other accredited medical schools or research institutes; provided for the center to be administered by a director who served at the pleasure of the board of directors of the H. Lee Moffitt Cancer Center and Research Institute, Inc.; and prescribed the powers and duties of the center director.⁶

In 1993, the Legislature granted the not-for-profit corporation the ability to create not-for-profit subsidiaries to provide it the flexibility necessary to compete in the health care industry.⁷ The legislative intent section of Ch. 93-167, L.O.F., includes the following statement:

“Whereas, the Legislature considers the not-for-profit corporation that governs and operates the H. Lee Moffitt Cancer Center and Research Institute to be performing a statewide function and to be a corporation primarily acting as an instrumentality of the state, and, therefore, considers any subsidiaries created by virtue of this act to be corporations acting primarily as instrumentalities of the state...”

The 2002 School Code Rewrite replaced references to the Board of Regents with references to the State Board of Education (SBE).⁸

In 2004, the Legislature authorized the not-for-profit corporation, with prior approval of the SBE, to create for-profit corporate subsidiaries as well as not-for-profit corporate subsidiaries.⁹

The responsibilities of the SBE with regard to the H. Lee Moffitt Cancer Center and Research Institute, including the agreement between the SBE and the not-for-profit corporation, were transferred to the Board of Governors in 2007.¹⁰

Current status of the H. Lee Moffitt Cancer Center and Research Institute (Moffitt Cancer Center)

Today, the Moffitt Cancer Center is an NCI Comprehensive Cancer Center that employs over 3,800 people and its facilities cover over 1.6 million square feet. The Moffitt Cancer Center currently admits approximately 7,500 patients per year and treats approximately 272,500 outpatients per year. The Moffitt Cancer Center also receives approximately \$59.7 million in grant funding per year. The Moffitt Cancer Center is licensed to operate 206 inpatient beds, plus a 36-bed blood and marrow transplant unit. The Moffitt Cancer Center also has 12 operating rooms; a diagnostic radiology department with MRI, PET/CT, digital mammography, and other imaging capabilities; and a radiation therapy with seven linear accelerators.¹¹

The not-for-profit corporation has created three not-for-profit subsidiaries which were approved by the Board of Regents and two for-profit subsidiaries which were approved by the Board of Governors.¹²

State corporation records identify three not-for-profit corporations that were formed in 1994: the H. Lee Moffitt Cancer Center and Research Hospital, Inc.; the H. Lee Moffitt Cancer Center and Research Institute Lifetime Cancer Screening Center, Inc.; and the H. Lee Moffitt Cancer Center and Research Institute Foundation, Inc.¹³ In 2006, the center announced that it was forming M2GEN, a for-profit

⁶ Ch. 90-56, L.O.F.

⁷ Ch. 93-167, L. O. F.

⁸ Ch. 2002-387, L.O.F.

⁹ Ch. 2004-2, L.O.F.

¹⁰ Ch. 2007-217, L.O.F.

¹¹ Moffitt Cancer Center’s analysis of HB 341 (January 27, 2010).

¹² The Florida Senate, *Open Government Sunset Review of Section 1004.43(8)10. and 12., F.S., H. Lee Moffitt Cancer Center and Research Institute Trade Secrets and Information Exempt or Confidential Under the Laws of Another State, National or the Federal Government*, 3, Interim Report 2010-221, September 2009.

¹³ State Corporation Records <http://www.sunbiz.org> (last visited February 10, 2010). The search was limited to a search of the name "H. Lee Moffitt." The apparent related corporations are: H. Lee Moffitt Cancer Center and Research

subsidiary with drug manufacturer Merck & Co., to develop personalized cancer treatments for patients using molecular technology.¹⁴ The Moffitt Technologies Corporation is a for-profit corporation formed in 2005 to develop biotechnology.¹⁵

Current Role of the Board of Governors

The Board of Governors must provide for the following in the agreement with the not-for-profit corporation:¹⁶

- Approval of the articles of incorporation of the not-for-profit corporation and any not-for-profit subsidiary;
- Use of lands, facilities, and personnel by the not-for-profit corporation and its subsidiaries for mutually approved teaching and research programs conducted by the University of South Florida or other accredited medical schools or research institutes;
- Preparation of an annual financial audit of the accounts and records of the not-for-profit corporation and all subsidiaries and submittal of the annual audit report and a management letter to the Auditor General and the Board of Governors for review. The Board of Governors, the Auditor General, and the Office of Program Policy Analysis and Government Accountability are authorized to require and receive any detail or supplemental data relative to the operation of the not-for-profit corporation or subsidiary; and
- Provision by the not-for-profit corporation and its subsidiaries of equal employment opportunities to all persons regardless of race, color, religion, sex, age, or national origin.

The Board of Governors is authorized to secure comprehensive general liability protection, including professional liability protection, for the not-for-profit corporation and its subsidiaries pursuant to s. 1004.24, F.S.¹⁷

In the event that the agreement between the not-for-profit corporation and the Board of Governors terminates, the Board of Governors resumes governance and operation of the facilities.¹⁸

Administration of the Moffitt Cancer Center

A not-for-profit corporation governs and operates the Moffitt Cancer Center in accordance with the terms of the agreement between the BOG and the not-for-profit corporation.¹⁹ The not-for-profit corporation is managed by a board of directors consisting of the President of the University of South Florida, the chair of the Board of Governors or his/her designee, 5 representatives of the state universities, and between 10-14 additional directors who are not medical doctors or state employees.²⁰

The Moffitt Cancer Center is administered by a chief executive officer who serves at the pleasure of the board of directors of the not-for-profit corporation.²¹ The duties of the chief executive officer include control over the budget and the dollars appropriated or donated to the institute from private, local, state, and federal sources, as well as technical and professional income that is generated or derived from the medical practice activities of the institute. Professional income generated by USF faculty from practice activities at the institute must be shared between the institute and USF as determined by the chief executive officer and the appropriate university dean or vice president.²²

Hospital, Inc.; H. Lee Moffitt Cancer Center and Research Institute Lifetime Cancer Screening Center, Inc.; and H. Lee Moffitt Cancer Center and Research Institute Foundation, Inc.

¹⁴ <http://www.moffitt.org/Site.aspx?spid=C54AF116F69244D49BACE202F69BC2A6> (last visited February 10, 2010).

¹⁵ State Corporation Records <http://www.sunbiz.org> (last visited February 10, 2010) and Moffitt Cancer Center 2005 Annual Report 5, <http://www.moffitt.org/Site.aspx?spid=CD60BED02BAC4E9299664B0F4AE463F1> (last visited February 10, 2010).

¹⁶ Section 1004.43(2), F.S.

¹⁷ Section 1004.43(3), F.S.

¹⁸ Section 1004.43(4), F.S.

¹⁹ Section 1004.43(1), F.S.

²⁰ Section 1004.43(1), F.S.

²¹ Section 1004.43(5), F.S.

²² Section 1004.43(5)(b), F.S.

The chief executive officer also appoints members to carry out the research, patient care, and educational activities of the institute and determines compensation, benefits, and terms of service. Members of the institute are eligible to hold concurrent appointments at affiliated academic institutions. University faculty are eligible to hold concurrent appointments at the institute.

Sovereign Immunity

The term "sovereign immunity" originally referred to the English common law concept that the government may not be sued because "the King can do no wrong." Sovereign immunity bars lawsuits against the government or its political subdivisions for the torts of officers or agents of such governments unless such immunity is expressly waived.

Article X, s. 13 of the Florida Constitution recognizes the concept of sovereign immunity and gives the Legislature the right to waive such immunity in part or in full by general law. Section 768.28, F.S., contains the limited waiver of sovereign immunity applicable to the state. Subsection (5) limits the recovery of any one person to \$100,000 for one incidence and limits all recovery related to one incidence to a total of \$200,000. Where the state's sovereign immunity applies, subsection (9) provides that the officers, employees and agents of the state that were involved in the commission of the tort are not personally liable to an injured party.

The term "state agencies or subdivisions" includes the executive departments, the Legislature, the judicial branch, and the independent establishments of the state, including state university boards of trustees; counties and municipalities; and corporations primarily acting as instrumentalities or agencies of the state, counties, or municipalities.²³

It is common for the state to create corporations and authorize subsidiary corporations. Whether such corporations are instrumentalities of the state is dependent upon the degree of control over the corporation or subsidiary. Where the subsidiary corporation is significantly controlled by government, it is an instrumentality of the state²⁴, but where the subsidiary acts with significant autonomy, it is not.²⁵

One circuit court in Hillsborough County has ruled that the "H. Lee Moffitt Cancer Center and Research Institute of Tampa, Inc.", is an instrumentality of the State of Florida and therefore the corporation is "entitled to the protections of sovereign immunity and the limited waiver set forth in Section 768.28, Florida Statutes."²⁶ The ruling did not consider whether any subsidiary corporation of the Moffitt Cancer Institute would similarly be considered an instrumentality of the state.

An entity that is an "instrumentality of the state" falls within the state's sovereign immunity. Section 1004.43(1), F.S., provides the H. Lee Moffitt Cancer Center and Research Institute is an instrumentality of the state, and thus it is clear that it is covered by sovereign immunity. The legislative intent of the bill allowing non-profit subsidiaries stated that any non-profit entity is an instrumentality of the state.²⁷

²³ Section 768.28(2), F.S.

²⁴ *Pagan v. Sarasota County Hospital Board*, 884 So.2d 257 (Fla. 2nd DCA 2004); *Prison Rehabilitative Industries & Diversified Enterprises v. Betterson*, 648 So.2d 778 (Fla. 1st DCA 1994).

²⁵ In *Shands Teaching Hospital & Clinics, Inc. v. Lee*, 478 So.2d 77, 79 (Fla. 1st DCA 1985), the court concluded that the nonprofit corporation to which the State Board of Education leased the Shands Teaching Hospital was not entitled to the benefit of sovereign immunity because the corporate entity was determined to be "an autonomous and self-sufficient entity, one not primarily acting as an instrumentality on behalf of the state."

²⁶ *McBride v. H. Lee Moffitt Cancer Center & Research Institute of Tampa, Inc.*, Case No. 95-CA-007231 (13th Judicial Circuit, February 2, 1996), at paragraph 1.b., recorded in OR Book 8039, Page 927, of the Public Records of Hillsborough County, Florida; *affirmed without opinion*, 683 So. 2d 122 (Fla. 2nd DCA 1996).

²⁷ Chapter 93-167, L.O.F., provided in part: "Whereas, the Legislature considers the not-for-profit corporation that governs and operates the H. Lee Moffitt Cancer Center and Research Institute to be performing a statewide function and

Such intent language is not law, but will be considered by any court that would be called upon to determine whether the non-profits are covered by sovereign immunity. On the issue of control, all of the subsidiaries appear to provide medical care and services for cancer research and treatment, operate out of the same campus next the University of South Florida, share corporate officers, and are controlled by the H. Lee Moffitt Cancer Center and Research Institute, Inc. It appears that the current subsidiaries are protected by sovereign immunity, although this is not specifically provided for in statute.

Effect of Proposed Changes

CS/HB 341 recognizes the expansion of the Moffitt Cancer Center's teaching and research programs to other state universities, including USF. The bill also notes the Moffitt Cancer Center's statewide mission by removing the initial reference to USF and providing that the Moffitt Cancer Center is a "statewide resource for basic and clinical research and multidisciplinary approaches to patient care."

The bill replaces the remaining reference to the State Board of Education with "Board of Governors" to conform to other references in s. 1004.43, F.S.

The bill specifically provides that the H. Lee Moffitt Cancer Center and Research Institute, Inc., and any not-for-profit subsidiary of the H. Lee Moffitt Cancer Center and Research Institute, Inc., are corporations primarily acting as instrumentalities of the state, and thus entitled to the sovereign immunity protection of s. 768.28, F.S.

The bill requires that the agreement between the Board of Governors and the not-for-profit corporation provide for the utilization of lands, facilities and personnel by the not-for-profit corporation and its subsidiaries for mutually approved teaching and research programs conducted by state universities, not just USF. The Moffitt Cancer Center indicates that this will allow for greater flexibility in creating programs statewide that will benefit institutions and attract high quality professionals and students to Florida in furtherance of the Moffitt Cancer Center's mission.²⁸

The bill provides that the chief executive officer will have control over income generated or derived from practice activities of the "not-for-profit corporation" rather than the "institute." Technical and professional income generated from practice activities may be shared between the not-for-profit corporation and its subsidiaries as determined by the chief executive officer. However, professional income generated by any state university employee from practice activities at the not-for-profit corporation and its subsidiaries must be shared between the employee's university and the not-for-profit corporation and its subsidiaries only as determined by the chief executive officer and the appropriate university dean or vice president. Representatives of the Moffitt Cancer Center indicate that these changes clarify the permissibility of sharing professional income generated between the not-for-profit corporation and its subsidiaries. Historically, the vast majority of the physicians on the medical staff at the Moffitt Center were employees of USF. On January 1, 2008, as part of the realignment of the affiliation between the Institute and USF, a majority of these physicians previously employed by USF transferred employment to the Moffitt Cancer Center. The changes proposed in the bill recognize the change in the employment status of these physicians.²⁹

The bill permits all state university faculty, rather than just USF faculty, to hold concurrent appointments at the Moffitt Cancer Center in recognition of the Moffitt Center's state-wide role and function. Representatives of the Moffitt Cancer Center indicate that this change will permit more meaningful affiliations between the Moffitt Center and other state universities as well as with USF³⁰

to be a corporation primarily acting as an instrumentality of the state, and, therefore, considers any subsidiaries created by virtue of this act to be corporations acting primarily as instrumentalities of the state..."

²⁸ Moffitt Cancer Center analysis of HB 341 (January 27, 2010).

²⁹ *Id.*

³⁰ *Id.*

B. SECTION DIRECTORY:

Section 1. Amends s. 1004.43, F.S., revising provisions relating to the establishment of the institute and specifying primary responsibilities of the institute; conforming provisions relating to the agreement by the Board of Governors and the not-for-profit corporation for the use of facilities on the campus of the University of South Florida, specifying that the not-for-profit corporation and its not-for-profit subsidiaries shall conclusively act as instrumentalities of the state for purposes of sovereign immunity; authorizing the use of land, facilities, and personnel for teaching and research program conducted by state universities; revising provisions relating to the control and sharing of certain income.

Section 2. Provides an effective date of July 1, 2010.

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:

None.

D. FISCAL COMMENTS:

The fiscal impact of the bill is indeterminate. According to the Board of Governors, there appears to be minimal potential fiscal impact to the State University System resulting from this legislation.

There is the potential for increased revenues for the state university system from faculty member practice activity if other universities in addition to USF choose to partner with Moffitt in the future and receive a portion of any additional practice activity income that is generated. The potential revenue amount cannot be determined at this time.³¹

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

³¹ Board of Governors analysis of CS/HB 341 (February 18, 2010).

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor 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/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On February 17, 2010, the State Universities & Private Colleges Policy Committee adopted an amendment to HB 341 and reported the bill favorably as a Committee Substitute (CS). The amendment clarifies how technical and professional income from practice activities will be shared. The amendment:

- Allows technical and professional income generated from practice activities to be shared between the not-for-profit corporation and its subsidiaries as determined by the chief executive officer; and
- Requires professional income generated by state university employees from practice activities at the not-for-profit corporation and its subsidiaries to be shared between the university and the not-for-profit corporation and its subsidiaries only as determined by the chief executive officer and the appropriate university dean or vice president.

1 A bill to be entitled
 2 An act relating to the H. Lee Moffitt Cancer Center and
 3 Research Institute; amending s. 1004.43, F.S.; revising
 4 provisions relating to the establishment of the institute
 5 and specifying primary responsibilities of the institute;
 6 conforming provisions relating to the agreement by the
 7 Board of Governors and the not-for-profit corporation for
 8 the use of facilities on the campus of the University of
 9 South Florida; specifying that the not-for-profit
 10 corporation and its not-for-profit subsidiaries shall
 11 conclusively act as instrumentalities of the state for
 12 purposes of sovereign immunity; authorizing the use of
 13 land, facilities, and personnel for teaching and research
 14 programs conducted by state universities; revising
 15 provisions relating to the control and sharing of certain
 16 income; providing an effective date.

17
 18 Be It Enacted by the Legislature of the State of Florida:

19
 20 Section 1. Section 1004.43, Florida Statutes, is amended
 21 to read:

22 1004.43 H. Lee Moffitt Cancer Center and Research
 23 Institute.—There is established the H. Lee Moffitt Cancer Center
 24 and Research Institute, a statewide resource for basic and
 25 clinical research and multidisciplinary approaches to patient
 26 care at the University of South Florida.

27 (1) The Board of Governors ~~State Board of Education~~ shall
 28 enter into an agreement for the utilization of the facilities on

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29 | the campus of the University of South Florida to be known as the
 30 | H. Lee Moffitt Cancer Center and Research Institute, including
 31 | all furnishings, equipment, and other chattels used in the
 32 | operation of such ~~said~~ facilities, with a Florida not-for-profit
 33 | corporation organized solely for the purpose of governing and
 34 | operating the H. Lee Moffitt Cancer Center and Research
 35 | Institute. ~~This not-for-profit corporation, acting as an~~
 36 | ~~instrumentality of the State of Florida, shall govern and~~
 37 | ~~operate the H. Lee Moffitt Cancer Center and Research Institute~~
 38 | ~~in accordance with the terms of the agreement between the Board~~
 39 | ~~of Governors and the not-for-profit corporation.~~ The not-for-
 40 | profit corporation may, with the prior approval of the Board of
 41 | Governors, create either for-profit or not-for-profit corporate
 42 | subsidiaries, or both, to fulfill its mission. The not-for-
 43 | profit corporation and any approved not-for-profit subsidiary
 44 | shall be conclusively deemed corporations primarily acting as
 45 | instrumentalities of the state, pursuant to s. 768.28(2), for
 46 | purposes of sovereign immunity. For-profit subsidiaries of the
 47 | not-for-profit corporation may not compete with for-profit
 48 | health care providers in the delivery of radiation therapy
 49 | services to patients. The not-for-profit corporation and its
 50 | subsidiaries are authorized to receive, hold, invest, and
 51 | administer property and any moneys received from private, local,
 52 | state, and federal sources, as well as technical and
 53 | professional income generated or derived from practice
 54 | activities of the institute, for the benefit of the institute
 55 | and the fulfillment of its mission. The affairs of the
 56 | corporation shall be managed by a board of directors who shall

57 | serve without compensation. The President of the University of
 58 | South Florida and the chair of the Board of Governors, or his or
 59 | her designee, shall be directors of the not-for-profit
 60 | corporation, together with 5 representatives of the state
 61 | universities and no more than 14 nor fewer than 10 directors who
 62 | are not medical doctors or state employees. Each director shall
 63 | have only one vote, shall serve a term of 3 years, and may be
 64 | reelected to the board. Other than the President of the
 65 | University of South Florida and the chair of the Board of
 66 | Governors, directors shall be elected by a majority vote of the
 67 | board. The chair of the board of directors shall be selected by
 68 | majority vote of the directors.

69 | (2) The Board of Governors shall provide in the agreement
 70 | with the not-for-profit corporation for the following:

71 | (a) Approval of the articles of incorporation of the not-
 72 | for-profit corporation by the Board of Governors.

73 | (b) Approval of the articles of incorporation of any not-
 74 | for-profit corporate subsidiary created by the not-for-profit
 75 | corporation.

76 | (c) Utilization of lands, facilities, and personnel by the
 77 | not-for-profit corporation and its subsidiaries for research,
 78 | education, treatment, prevention, and the early detection of
 79 | cancer and for mutually approved teaching and research programs
 80 | conducted by the state universities ~~University of South Florida~~
 81 | or other accredited medical schools or research institutes.

82 | (d) Preparation of an annual financial audit of the not-
 83 | for-profit corporation's accounts and records and the accounts
 84 | and records of any subsidiaries to be conducted by an

85 independent certified public accountant. The annual audit report
 86 shall include a management letter, as defined in s. 11.45, and
 87 shall be submitted to the Auditor General and the Board of
 88 Governors. The Board of Governors, the Auditor General, and the
 89 Office of Program Policy Analysis and Government Accountability
 90 shall have the authority to require and receive from the not-
 91 for-profit corporation and any subsidiaries or from their
 92 independent auditor any detail or supplemental data relative to
 93 the operation of the not-for-profit corporation or subsidiary.

94 (e) Provision by the not-for-profit corporation and its
 95 subsidiaries of equal employment opportunities to all persons
 96 regardless of race, color, religion, sex, age, or national
 97 origin.

98 (3) The Board of Governors is authorized to secure
 99 comprehensive general liability protection, including
 100 professional liability protection, for the not-for-profit
 101 corporation and its subsidiaries pursuant to s. 1004.24. The
 102 not-for-profit corporation and its subsidiaries shall be exempt
 103 from any participation in any property insurance trust fund
 104 established by law, including any property insurance trust fund
 105 established pursuant to chapter 284, so long as the not-for-
 106 profit corporation and its subsidiaries maintain property
 107 insurance protection with comparable or greater coverage limits.

108 (4) In the event that the agreement between the not-for-
 109 profit corporation and the Board of Governors is terminated for
 110 any reason, the Board of Governors shall resume governance and
 111 operation of such facilities.

112 (5) The institute shall be administered by a chief
 113 executive officer who shall serve at the pleasure of the board
 114 of directors of the not-for-profit corporation and who shall
 115 have the following powers and duties subject to the approval of
 116 the board of directors:

117 (a) The chief executive officer shall establish programs
 118 which fulfill the mission of the institute in research,
 119 education, treatment, prevention, and the early detection of
 120 cancer; however, the chief executive officer shall not establish
 121 academic programs for which academic credit is awarded and which
 122 terminate in the conference of a degree without prior approval
 123 of the Board of Governors.

124 (b) The chief executive officer shall have control over
 125 the budget and the dollars appropriated or donated to the
 126 institute from private, local, state, and federal sources, as
 127 well as technical and professional income generated or derived
 128 from practice activities of the not-for-profit corporation and
 129 its subsidiaries ~~institute~~. Technical and professional income
 130 generated from practice activities may be shared between the
 131 not-for-profit corporation and its subsidiaries as determined by
 132 the chief executive officer. However, professional income
 133 generated by state university employees ~~faculty~~ from practice
 134 activities at the not-for-profit corporation and its
 135 subsidiaries ~~institute~~ shall be shared between the ~~institute and~~
 136 ~~the university and the not-for-profit corporation and its~~
 137 subsidiaries only as determined by the chief executive officer
 138 and the appropriate university dean or vice president.

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139 (c) The chief executive officer shall appoint members to
140 carry out the research, patient care, and educational activities
141 of the institute and determine compensation, benefits, and terms
142 of service. Members of the institute shall be eligible to hold
143 concurrent appointments at affiliated academic institutions.
144 State university faculty shall be eligible to hold concurrent
145 appointments at the institute.

146 (d) The chief executive officer shall have control over
147 the use and assignment of space and equipment within the
148 facilities.

149 (e) The chief executive officer shall have the power to
150 create the administrative structure necessary to carry out the
151 mission of the institute.

152 (f) The chief executive officer shall have a reporting
153 relationship to the Board of Governors or its designee.

154 (g) The chief executive officer shall provide a copy of
155 the institute's annual report to the Governor and Cabinet, the
156 President of the Senate, the Speaker of the House of
157 Representatives, and the chair of the Board of Governors.

158 (6) The board of directors of the not-for-profit
159 corporation shall create a council of scientific advisers to the
160 chief executive officer comprised of leading researchers,
161 physicians, and scientists. This council shall review programs
162 and recommend research priorities and initiatives so as to
163 maximize the state's investment in the institute. The council
164 shall be appointed by the board of directors of the not-for-
165 profit corporation. Each member of the council shall be

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166 appointed to serve a 2-year term and may be reappointed to the
 167 council.

168 (7) In carrying out the provisions of this section, the
 169 not-for-profit corporation and its subsidiaries are not
 170 "agencies" within the meaning of s. 20.03(11).

171 (8)(a) Records of the not-for-profit corporation and of
 172 its subsidiaries are public records unless made confidential or
 173 exempt by law.

174 (b) Proprietary confidential business information is
 175 confidential and exempt from the provisions of s. 119.07(1) and
 176 s. 24(a), Art. I of the State Constitution. However, the Auditor
 177 General, the Office of Program Policy Analysis and Government
 178 Accountability, and the Board of Governors, pursuant to their
 179 oversight and auditing functions, must be given access to all
 180 proprietary confidential business information upon request and
 181 without subpoena and must maintain the confidentiality of
 182 information so received. As used in this paragraph, the term
 183 "proprietary confidential business information" means
 184 information, regardless of its form or characteristics, which is
 185 owned or controlled by the not-for-profit corporation or its
 186 subsidiaries; is intended to be and is treated by the not-for-
 187 profit corporation or its subsidiaries as private and the
 188 disclosure of which would harm the business operations of the
 189 not-for-profit corporation or its subsidiaries; has not been
 190 intentionally disclosed by the corporation or its subsidiaries
 191 unless pursuant to law, an order of a court or administrative
 192 body, a legislative proceeding pursuant to s. 5, Art. III of the
 193 State Constitution, or a private agreement that provides that

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194 | the information may be released to the public; and which is
 195 | information concerning:

196 | 1. Internal auditing controls and reports of internal
 197 | auditors;

198 | 2. Matters reasonably encompassed in privileged attorney-
 199 | client communications;

200 | 3. Contracts for managed-care arrangements, including
 201 | preferred provider organization contracts, health maintenance
 202 | organization contracts, and exclusive provider organization
 203 | contracts, and any documents directly relating to the
 204 | negotiation, performance, and implementation of any such
 205 | contracts for managed-care arrangements;

206 | 4. Bids or other contractual data, banking records, and
 207 | credit agreements the disclosure of which would impair the
 208 | efforts of the not-for-profit corporation or its subsidiaries to
 209 | contract for goods or services on favorable terms;

210 | 5. Information relating to private contractual data, the
 211 | disclosure of which would impair the competitive interest of the
 212 | provider of the information;

213 | 6. Corporate officer and employee personnel information;

214 | 7. Information relating to the proceedings and records of
 215 | credentialing panels and committees and of the governing board
 216 | of the not-for-profit corporation or its subsidiaries relating
 217 | to credentialing;

218 | 8. Minutes of meetings of the governing board of the not-
 219 | for-profit corporation and its subsidiaries, except minutes of
 220 | meetings open to the public pursuant to subsection (9);

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221 9. Information that reveals plans for marketing services
 222 that the corporation or its subsidiaries reasonably expect to be
 223 provided by competitors;

224 10. Trade secrets as defined in s. 688.002, including:

225 a. Information relating to methods of manufacture or
 226 production, potential trade secrets, potentially patentable
 227 materials, or proprietary information received, generated,
 228 ascertained, or discovered during the course of research
 229 conducted by the not-for-profit corporation or its subsidiaries;
 230 and

231 b. Reimbursement methodologies or rates;

232 11. The identity of donors or prospective donors of
 233 property who wish to remain anonymous or any information
 234 identifying such donors or prospective donors. The anonymity of
 235 these donors or prospective donors must be maintained in the
 236 auditor's report; or

237 12. Any information received by the not-for-profit
 238 corporation or its subsidiaries from an agency in this or
 239 another state or nation or the Federal Government which is
 240 otherwise exempt or confidential pursuant to the laws of this or
 241 another state or nation or pursuant to federal law.

242
 243 As used in this paragraph, the term "managed care" means systems
 244 or techniques generally used by third-party payors or their
 245 agents to affect access to and control payment for health care
 246 services. Managed-care techniques most often include one or more
 247 of the following: prior, concurrent, and retrospective review of
 248 the medical necessity and appropriateness of services or site of

249 services; contracts with selected health care providers;
 250 financial incentives or disincentives related to the use of
 251 specific providers, services, or service sites; controlled
 252 access to and coordination of services by a case manager; and
 253 payor efforts to identify treatment alternatives and modify
 254 benefit restrictions for high-cost patient care.

255 (c) Subparagraphs 10. and 12. of paragraph (b) are subject
 256 to the Open Government Sunset Review Act in accordance with s.
 257 119.15 and shall stand repealed on October 2, 2010, unless
 258 reviewed and saved from repeal through reenactment by the
 259 Legislature.

260 (9) Meetings of the governing board of the not-for-profit
 261 corporation and meetings of the subsidiaries of the not-for-
 262 profit corporation at which the expenditure of dollars
 263 appropriated to the not-for-profit corporation by the state are
 264 discussed or reported must remain open to the public in
 265 accordance with s. 286.011 and s. 24(b), Art. I of the State
 266 Constitution, unless made confidential or exempt by law. Other
 267 meetings of the governing board of the not-for-profit
 268 corporation and of the subsidiaries of the not-for-profit
 269 corporation are exempt from s. 286.011 and s. 24(b), Art. I of
 270 the State Constitution.

271 (10) In addition to the continuing appropriation to the
 272 institute provided in s. 210.20(2), any appropriation to the
 273 institute provided in a general appropriations act shall be paid
 274 directly to the board of directors of the not-for-profit
 275 corporation by warrant drawn by the Chief Financial Officer from
 276 the State Treasury.

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Section 2. This act shall take effect July 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 603

Cooperation Between Schools and Juvenile Authorities

SPONSOR(S): Soto

TIED BILLS:

IDEN./SIM. BILLS: SB 1058

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	PreK-12 Policy Committee	12 Y, 0 N, As CS	Beagle	Ahearn
2)	Education Policy Council		White <i>rw</i>	Lowell <i>(P)</i>
3)				
4)				
5)				

SUMMARY ANALYSIS

Florida law requires the state attorney, upon formally charging a child with a felony or a delinquent act that would be a felony if committed by an adult, to notify the superintendent of the school district in which the child attends school that such charges have been filed. The superintendent must notify the appropriate school personnel, including the child's school principal, within 48 hours. In turn, the principal must immediately notify the child's classroom teachers.

The bill adds the school district director of transportation as a person who must be notified by the district school superintendent when a child is formally charged with a felony or delinquent act that would be a felony if committed by an adult. The bill adds the child's assigned bus driver and other school personnel who directly supervise the child as persons that must be notified by a school principal.

The bill requires that the school principal be notified of the disposition of the charges against the child. The principal must then notify the other school personnel whose duties include direct supervision of the child.

The Family Educational Rights Privacy Act of 1974 (FERPA) prohibits educational agencies and institutions that receive federal education funds from disclosing a student's education records without the consent of the student or the student's parent. FERPA provides several exceptions that allow the disclosure of education records without prior consent. Among other exceptions, FERPA authorizes public educational agencies and institutions to disclose the education records of students, without prior consent, if such disclosure is expressly authorized by a state statute that concerns the juvenile justice system.

In 2009, legislation was enacted which aligned Florida law governing education records to recent amendments to federal regulations implementing FERPA. This legislation removed provisions authorizing state and local educational agencies, public schools, and public postsecondary institutions to disclose education records to parties to an interagency agreement. The parties to the interagency agreement are the Department of Juvenile Justice (DJJ), school authorities, law enforcement, and other signatory agencies. The Department of Education has raised concerns that the removal of these provisions creates a conflict between state law and FERPA.

The bill authorizes an educational agency, public K-12 school, center, or institution; the Florida School for the Deaf and the Blind; and the Florida Virtual School to disclose education records, without prior consent, to parties to an interagency agreement. The parties to the interagency agreement are the DJJ, the school, law enforcement authorities, and other signatory agencies. Such disclosure is permitted to facilitate cooperation among entities to improve school safety; reduce juvenile crime, truancy, and in-school and out-of-school suspensions; and support alternatives to suspension and expulsion that enable students to complete their education. These bill provisions are substantively similar to the provisions removed in 2009.

The bill does not appear have a fiscal impact on state or local governments.

See Drafting Issues and Other Comments section of this bill analysis.

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

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DATE: 3/31/2010

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Notification of School Personnel

Florida law requires the state attorney, upon formally charging a child with a felony or a delinquent act that would be a felony if committed by an adult, to notify the superintendent of the school district in which the child attends school that the charges have been filed. The superintendent must notify the appropriate school personnel, including the child's school principal, within 48 hours. In turn, the principal must immediately notify the child's classroom teachers.¹

The school principal is authorized to initiate suspension proceedings against the child if the incident from which the charges originate is determined, after notice and a hearing, to have an adverse impact on the educational program, discipline, or welfare of the school. If the court determines that the child committed the offense, the district school board may expel the student.² Current law does not specify how the school board will be notified regarding the outcome of court proceedings concerning children who have been charged with felonies or delinquent acts.

Effect of Proposed Changes

The bill adds the school district director of transportation as a person who must be notified by the district school superintendent when a child is formally charged with a felony or delinquent act that would be a felony if committed by an adult. The bill adds the child's assigned bus driver and other school personnel who directly supervise the child as persons who must be notified by a school principal.

The bill requires that the school principal be notified of the disposition of the charges against the child. The principal must then notify the other school personnel whose duties include direct supervision of the child. However, it remains unclear as to whether the superintendent would notify the principal, and if so, how the superintendent would be so notified. No provision in current law or the bill expressly instructs the state attorney to inform the superintendent of the case disposition.

¹ Section 985.04(4)(b), F.S. A "felony" is "any criminal offense that is punishable under the laws of this state, or that would be punishable if committed in this state, by death or imprisonment in a state penitentiary [for a period exceeding one year]." Section 775.08(1), F.S. A "delinquent act" is "a violation of any law of this state, the United States, or any other state which is a misdemeanor or a felony or a violation of a county or municipal ordinance which would be punishable by incarceration if the violation were committed by an adult." Section 985.03(56), F.S.

² Section 1006.09(2), F.S.

Education Records of Juveniles

The Family Educational Rights Privacy Act of 1974 (FERPA) prohibits educational agencies and institutions³ that receive federal education funds from disclosing a student's education records without the consent of the student or the student's parent. Educational agencies and institutions must comply with the FERPA or risk losing federal funds.⁴

The FERPA sets forth several exceptions that allow the disclosure of education records without prior consent. Among other exceptions, the FERPA authorizes public educational agencies and institutions to disclose the education records of students, without prior consent, if such disclosure is expressly authorized by a state statute that concerns the juvenile justice system.⁵ The statute must specify which state and local authorities are authorized to receive the records.⁶ The disclosure must concern the juvenile justice system's ability to effectively serve the child before adjudication.⁷

In 2009, the Legislature enacted House Bill 7117, which aligned Florida law governing education records to recent amendments to federal regulations implementing the FERPA.⁸ Among other things, the bill removed statutory provisions authorizing state and local educational agencies, public schools, and public postsecondary institutions to disclose education records, without prior consent, to parties to an interagency agreement, including the Department of Juvenile Justice (DJJ), school and law enforcement authorities, and other signatory agencies.⁹ The Department of Education (DOE) has raised concerns that the removal of these provisions creates a conflict between state law and FERPA.¹⁰

Effect of Proposed Changes

The bill reinstates statutory authorization for educational agencies;¹¹ public K-12 schools, centers, or institutions; the Florida School for the Deaf and the Blind; and the Florida Virtual School to disclose education records, without prior consent, to parties to an interagency agreement. The parties to the interagency agreement are the DJJ, the school, law enforcement authorities, and other signatory agencies. Such disclosure is permitted to facilitate cooperation among entities to improve school safety; reduce juvenile crime, truancy, and in-school and out-of-school suspensions; and support alternatives to suspension and expulsion that enable students to complete their education.

Information contained in education records may only be disclosed for the purpose of determining appropriate programs and services for the student and to coordinate the delivery of such programs and services among agencies. The bill provides that such information is inadmissible in court proceedings before a dispositional hearing unless written consent is provided by a parent or other responsible adult. These bill provisions are substantively similar to the provisions removed by HB 7117 (2009).

B. SECTION DIRECTORY:

Section 1: Amending s. 985.04, F.S.; requiring that specified school personnel be notified when a child is formally charged by a state attorney with a felony or delinquent act that would be a felony if committed by an adult; requiring that specified school personnel be notified of the disposition of the charges.

³ The FERPA defines "educational agency or institution" to mean any public or private agency or institution that receives federal education funding. 20 U.S.C. § 1232g(a)(3).

⁴ 20 U.S.C. § 1232g(a).

⁵ 20 U.S.C. § 1232g(b)(1)(E), F.S.

⁶ 34 C.F.R. § 99.31(5)(i).

⁷ 34 C.F.R. § 99.38.

⁸ House Bill 7117(2009); § 2, ch. 2009-239, L.O.F.; See § 1002.22, F.S. (2008).

⁹ See § 1002.22(3)(d)13., F.S. (2008). Within each county, law enforcement, the district school superintendent, and the DJJ must enter into an interagency agreement for the purpose of sharing information regarding juvenile offenders. Section 985.04(1), F.S.

¹⁰ Email from Legislative Affairs staff, Florida Department of Education (Feb. 18, 2010, 4:45 PM EST).

¹¹ Florida's education records statute defines "agency" to mean a board, agency, or other entity that provides administrative control or direction of, or performs services for, public elementary or secondary schools, centers, or other institutions. Section 1002.22(1)(a), F.S.

Section 2: Amending s. 1002.221, F.S. authorizing the disclosure of K-12 education records for juvenile justice purposes; specifying conditions for such disclosure.

Section 3: Providing an effective date of July 1, 2010.

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 does not appear to have a fiscal impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 36-39: The bill requires that the school principal be notified of the disposition of the charges against the child. The principal must then notify the other school personnel whose duties include direct supervision of the child. However, it remains unclear as to whether the superintendent would notify the principal, and if so, how the superintendent would be so notified. No provision in current law or the bill expressly instructs the state attorney to inform the superintendent of the case disposition.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 17, 2010, the PreK-12 Policy Committee adopted two amendments to HB 603 and reported favorably as a committee substitute. The differences between the CS and the HB are as follows:

- The CS requires the school principal to notify both the child's assigned school bus driver and any school personnel who directly supervise the child when a child has been charged with a felony or a delinquent act. The bill required the director of transportation to notify the school bus driver and the principal to notify the child's immediate "paraprofessionals."
- The CS adds provisions requiring that the school principal be notified of the disposition of the charges against the child and requires the principal to notify the other school personnel whose duties include direct supervision of the child.
- The CS reinstates provisions removed by HB 7117 (2009) to enable education records to be disclosed for juvenile justice purposes in compliance with FERPA. To this end, the CS adds provisions:
 - Authorizing an educational agency, public K-12 school, center, or institution; the Florida School for the Deaf and the Blind; and the Florida Virtual School to disclose education records, without prior consent, to parties to an interagency agreement. The parties to the interagency agreement are the DJJ, the school, law enforcement authorities, and other signatory agencies.
 - Providing that disclosure is permitted to facilitate cooperation among entities to improve school safety; reduce juvenile crime, truancy, and in-school and out-of-school suspensions; and support alternatives to suspension that enable students to complete their education.
 - Providing that disclosure of education records may only be made for the purpose of determining appropriate programs and services for the student and to coordinate the delivery of such programs and services among agencies.
 - Providing that information contained in education records is inadmissible in court proceedings before a dispositional hearing unless written consent is provided by a parent or other responsible adult.

1 A bill to be entitled
 2 An act relating to cooperation between schools and
 3 juvenile authorities; amending s. 985.04, F.S.; requiring
 4 that specified school personnel be notified when a child
 5 of any age is formally charged by a state attorney with a
 6 felony or a delinquent act that would be a felony if
 7 committed by an adult and be notified of the disposition
 8 of the charges; amending s. 1002.221, F.S.; providing for
 9 release of a student's education records to parties to an
 10 interagency agreement for specified purposes without
 11 consent of the student or parent; providing that such
 12 information is inadmissible in court proceedings before a
 13 dispositional hearing without consent; providing an
 14 effective date.

15
 16 Be It Enacted by the Legislature of the State of Florida:

17
 18 Section 1. Paragraph (b) of subsection (4) of section
 19 985.04, Florida Statutes, is amended to read:

20 985.04 Oaths; records; confidential information.—

21 (4)

22 (b) Notwithstanding paragraph (a) or any other provision
 23 of this section, when a child of any age is formally charged by
 24 a state attorney with a felony or a delinquent act that would be
 25 a felony if committed by an adult, the state attorney shall
 26 notify the superintendent of the child's school that the child
 27 has been charged with such felony or delinquent act. The
 28 information obtained by the superintendent of schools under this

29 section must be released within 48 hours after receipt to
 30 appropriate school personnel, including the principal of the
 31 school of the child and the director of transportation. The
 32 principal must immediately notify the child's immediate
 33 classroom teachers, the child's assigned bus driver, and any
 34 other school personnel whose duties include direct supervision
 35 of the child. Upon notification, the principal is authorized to
 36 begin disciplinary actions under s. 1006.09(1)-(4). The
 37 principal must also be notified and must notify the other school
 38 personnel whose duties include direct supervision of the child
 39 of the disposition of the charges against the child.

40 Section 2. Subsection (2) of section 1002.221, Florida
 41 Statutes, is amended to read:

42 1002.221 K-12 education records.—

43 (2) (a) An agency, as defined in s. 1002.22(1)(a), or a
 44 public school, center, institution, or other entity that is part
 45 of Florida's education system under s. 1000.04(1), (3), or (4),
 46 may not release a student's education records without the
 47 written consent of the student or parent to any individual,
 48 agency, or organization, except in accordance with and as
 49 permitted by the FERPA. Education records released by an agency,
 50 as defined in s. 1002.22(1)(a), or by a public school, center,
 51 institution, or other entity that is part of Florida's education
 52 system under s. 1000.04(1), (3), or (4), to the Auditor General
 53 or the Office of Program Policy Analysis and Government
 54 Accountability, which are necessary for such agencies to perform
 55 their official duties and responsibilities, shall be used and
 56 maintained by the Auditor General and the Office of Program

57 Policy Analysis and Government Accountability in accordance with
58 the FERPA.

59 (b) In accordance with FERPA, and the federal regulations
60 issued pursuant to FERPA, an agency, as defined in s. 1002.22,
61 or a public school, center, institution, or other entity that is
62 part of Florida's education system under s. 1000.04(1), (3), or
63 (4) may release a student's education records without written
64 consent of the student or parent to parties to an interagency
65 agreement among the Department of Juvenile Justice, the school,
66 law enforcement authorities, and other signatory agencies. The
67 purpose of such an agreement and information sharing is to
68 reduce juvenile crime, especially motor vehicle theft, by
69 promoting cooperation and collaboration and the sharing of
70 appropriate information in a joint effort to improve school
71 safety, to reduce truancy and in-school and out-of-school
72 suspensions, and to support alternatives to in-school and out-
73 of-school suspensions and expulsions that provide structured and
74 well-supervised educational programs supplemented by a
75 coordinated overlay of other appropriate services designed to
76 correct behaviors that lead to truancy, suspensions, and
77 expulsions and that support students in successfully completing
78 their education. Information provided in furtherance of the
79 interagency agreements is intended solely for use in determining
80 the appropriate programs and services for each juvenile or the
81 juvenile's family, or for coordinating the delivery of the
82 programs and services, and as such is inadmissible in any court
83 proceeding before a dispositional hearing unless written consent
84 is provided by a parent or other responsible adult on behalf of

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85 | the juvenile.

86 | Section 3. This act shall take effect July 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 747 Treatment of Diabetes
SPONSOR(S): PreK-12 Policy Committee
TIED BILLS: **IDEN./SIM. BILLS:** CS for SB 896

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	PreK-12 Policy Committee	11 Y, 0 N, As CS	Davis	Ahearn
1)	Education Policy Council		White <i>mw</i>	Lowell <i>PL</i>
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

Committee Substitute for House Bill (CS/HB) 747 prohibits school districts from restricting the assignment of a student who has diabetes to a particular school on the basis that the student has diabetes, that the school does not have a full-time nurse, or that the school does not have trained diabetes personnel. CS/HB 747 permits diabetic students, whose parent and physician provide their written authorization to the school principal, to carry diabetic supplies and equipment on their person and attend to the management and care of their diabetes while in school, participating in school-sponsored activities, or in transit to or from school or school-sponsored activities to the extent authorized by the parent and physician and within the parameters set forth by State Board of Education rule.

The parent of a student authorized to carry diabetic supplies or equipment must indemnify the school district, county health department, public-private partner, and their employees and volunteers from any and all liability with respect to the student's use of such supplies and equipment.

The State Board of Education (SBE), in cooperation with the Department of Health (DOH), must adopt rules for the management and care of diabetes by students in schools that must include provisions to protect the safety of all students from the misuse or abuse of diabetic supplies or equipment. The SBE, in cooperation with the DOH, must also adopt rules to encourage every school in which a student with diabetes is enrolled to have personnel trained in routine and emergency diabetes care.

CS/HB 747 adds a representative from the Florida Academy of Family Physicians to the Diabetes Advisory Council.

CS/HB 747 does not appear to have a fiscal impact on state and local government revenues or expenditures.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Law

Administering Medication in School

Current law provides that district school board personnel, who are authorized by the school principal, may assist students in the administration of prescription medication when they have been trained by a registered nurse, licensed practical nurse, physician, or physician's assistant.¹ Each district school board must adopt policies and procedures governing the administration of prescription medication by district school board personnel. These policies and procedures must include the requirement that, for each prescription medication, parents must provide the school principal with a written statement granting the school principal or his or her designee permission to assist in administering the child's medication. Parents must also explain why it is necessary for the medication to be provided during the school day, including any occasion when the student is away from school property on official school business.²

Any prescribed medication to be administered by district school board personnel must be received, counted, and stored in its original container. When it is not in use, the medication must be stored in its original container in a secure fashion under lock and key in a location designated by the school principal.³

There is no liability for civil damages as a result of the administration of medication when the person administering the medication acts as an ordinarily reasonably prudent person would have acted under the same or similar circumstances.⁴

Asthmatic and Severely Allergic Students

Current law permits asthmatic students to carry a metered dose inhaler on their person while in school. The student's parent and physician must provide their approval to the school principal.⁵

¹ s. 1006.062(1)(a), F.S.

² s. 1006.062(1)(b), F.S.

³ s. 1006.062(1)(b)2., F.S.

⁴ s. 1006.062(2), F.S.

⁵ s. 1002.20(3)(h), F.S.

Students who have experienced or are at risk for life-threatening allergic reactions may carry and self-administer an epinephrine auto-injector while in school, participating in school-sponsored activities, or in transit to or from school or school-sponsored activities if parental and physician authorization has been provided to the school. The law requires the State Board of Education (SBE), in cooperation with the Department of Health (DOH), to adopt rules for such use of epinephrine auto-injectors. These rules must include provisions to protect the safety of all students from the misuse or abuse of auto-injectors. The parent must indemnify the school district, county health department, public-private partner, and their employees and volunteers from any and all liability with respect to the student's use of an epinephrine auto-injector.⁶

Diabetes

Type 1 diabetes is usually diagnosed in children and young adults.⁷ Approximately one in every 400 to 600 children and adolescents have Type 1 diabetes. One in six overweight adolescents ages 12-19 have pre-diabetes.⁸ In Type 1 diabetes, the body does not produce insulin. Insulin is a hormone that is needed to convert sugar, starches and other food into energy needed for daily life. Only five to 10 percent of people with diabetes have this form of the disease.⁹

Type 2 diabetes is the most common form of diabetes. Millions of Americans have been diagnosed with Type 2 diabetes. With Type 2 diabetes, either the body does not produce enough insulin or the cells ignore the insulin, which is necessary for the body to be able to use glucose for energy.¹⁰

Children and teens with diabetes must meet their diabetes needs around the clock, including at school, on field trips, or at school sponsored activities.¹¹ While each student with diabetes has different needs, the basics of diabetes care are similar. Careful tracking of food intake, monitoring of physical activity, insulin or medication dosing, and several daily blood glucose checks enhances the ability to maintain blood glucose levels within target range.¹²

Effect of Proposed Changes

CS/HB 747 prohibits school districts from restricting the assignment of a student who has diabetes to a particular school on the basis that the student has diabetes, that the school does not have a full-time nurse, or that the school does not have trained diabetes personnel. It permits diabetic students, whose parent and physician provide their written authorization to the school principal, to carry diabetic supplies and equipment on their person and attend to the management and care of their diabetes while in school, participating in school-sponsored activities, or in transit to or from school or school-sponsored activities to the extent authorized by the parent and physician and within the parameters set forth by SBE rule. This written authorization must identify the diabetic supplies and equipment that the student is authorized to carry and must describe the activities the child is capable of performing without assistance, such as performing blood-glucose level checks and urine ketone testing; administering insulin through the insulin-delivery system used by the student; and treating hypoglycemia and hyperglycemia.

The SBE, in cooperation with the DOH, is required to adopt rules for the management and care of diabetes by students in schools which must include provisions to protect the safety of all students from the misuse or abuse of diabetic supplies or equipment. The SBE, in cooperation with the DOH, must also adopt rules to encourage every school in which a student with diabetes is enrolled to have personnel trained in routine and emergency diabetes care.

⁶ s. 1002.20(3)(i), F.S.

⁷ <http://www.diabetes.org/diabetes-basics/type-1/>, American Diabetes Association.

⁸ <http://www.diabetes.org/diabetes-basics/diabetes-statistics/>, American Diabetes Association.

⁹ <http://www.diabetes.org/diabetes-basics/type-1/>, American Diabetes Association.

¹⁰ <http://www.diabetes.org/diabetes-basics/type-2/>, American Diabetes Association.

¹¹ <http://www.diabetes.org/living-with-diabetes/parents-and-kids/diabetes-care-at-school/safe-at-school/>, American Diabetes Association.

¹² <http://www.diabetes.org/living-with-diabetes/parents-and-kids/diabetes-care-at-school/>, American Diabetes Association.

The parent of a student authorized to carry diabetic supplies or equipment must indemnify the school district, county health department, public-private partner, and their employees and volunteers from any and all liability with respect to the student's use of such supplies and equipment.

Current Law

Diabetes Advisory Council

The Diabetes Advisory Council (DAC) is a Governor-appointed group that serves as the advisory unit to the Department of Health, other governmental agencies, professional and other organizations, and the general public. The DAC provides statewide leadership to continuously improve the lives of Floridians with diabetes and reduce the burden of diabetes; serves as a forum for the discussion and study of issues related to the public health approach for the delivery of health care services to persons with diabetes; and annually meets with the State Surgeon General or designee to make specific recommendations regarding the prevention and control of diabetes.¹³

The council is composed of 25 members as follows:

- Five interested citizens, three of whom are affected by diabetes; and
- Twenty members, who must include one representative from each of the following areas: nursing with diabetes-educator certification; dietary with diabetes educator certification; podiatry; ophthalmology or optometry; psychology; pharmacy; adult endocrinology; pediatric endocrinology; the American Diabetes Association (ADA); the Juvenile Diabetes Foundation (JDF); a community health center; a county health department; an American Diabetes Association recognized community education program; each medical school in the state; an osteopathic medical school; the insurance industry; a Children's Medical Services diabetes regional program; and an employer.¹⁴

Effect of Proposed Changes

CS/HB 747 adds a representative from the Florida Academy of Family Physicians to the Diabetes Advisory Council.

B. SECTION DIRECTORY:

Section 1. Amends s. 385.203, F.S., revising the Diabetes Advisory Council membership.

Section 2. Amends s. 1002.20, F.S., adding new language preventing school districts from restricting the school assignment of a student who has diabetes; allowing diabetic students to carry and use diabetic supplies and equipment at school with authorization from parent and physician and as restricted by rule; requiring the SBE, in cooperation with the DOH, to adopt rules for such use; and providing indemnification from any and all liability of school districts, county health departments, and others by the parents of such students.

Section 2. Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

CS/HB 747 does not appear to have a fiscal impact on state government revenues.

¹³ s. 385.203, F.S.

¹⁴ *Id.*

2. Expenditures:

CS/HB 747 does not appear to have a fiscal impact on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

CS/HB 747 does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

CS/HB 747 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:

CS/HB 747 does not appear to require a city or county to expend funds or take any action requiring the expenditure of funds. CS/HB 747 does not appear to reduce the authority that municipalities or counties have to raise revenues in the aggregate. CS/HB 747 does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The SBE, in cooperation with the DOH, is required to adopt rules for the management and care of diabetes by students in schools that must include provisions to protect the safety of all students from the misuse or abuse of diabetic supplies or equipment. The SBE, in cooperation with the DOH, must also adopt rules to encourage every school in which a student with diabetes is enrolled to have personnel trained in routine and emergency diabetes care.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The indemnity provision does not prohibit a person from filing a lawsuit. This provision merely provides that the school district, county health department, public-private partner, and their employees and volunteers may recover from the parent of the student authorized to carry diabetic supplies or equipment.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 25, 2010, the PreK-12 Policy Committee adopted three amendments to the Proposed Committee Substitute (PCS) for HB 747 and reported the bill favorably as a CS. The differences between the PCS and CS are as follows:

- The CS adds "participating in school-sponsored activities, or in transit to or from school or school-sponsored activities" as situations in which a student with diabetes, whose parent and physician provide written authorization, may carry diabetic supplies and equipment on their person and attend to the management and care of their diabetes.

- The CS adds a requirement for the SBE, in cooperation with the DOH, to adopt rules encouraging every school in which a student with diabetes is enrolled to have personnel trained in routine and emergency diabetes care.
- The CS adds a representative from the Florida Academy of Family Physicians to the Diabetes Advisory Council.

1 A bill to be entitled
 2 An act relating to the treatment of diabetes; amending s.
 3 385.203, F.S.; revising the Diabetes Advisory Council
 4 membership; amending s. 1002.20, F.S.; prohibiting school
 5 districts from restricting the assignment of diabetic
 6 students to certain schools for certain reasons;
 7 authorizing a student to manage diabetes while at school,
 8 at school-sponsored activities, or in transit to or from
 9 school or school-sponsored activities with written
 10 authorization from the parent and physician; requiring the
 11 State Board of Education to adopt rules; providing for
 12 indemnification of specified employees, volunteers, and
 13 entities; providing an effective date.

14
 15 Be It Enacted by the Legislature of the State of Florida:

16
 17 Section 1. Subsection (3) of section 385.203, Florida
 18 Statutes, is amended to read:

19 385.203 Diabetes Advisory Council; creation; function;
 20 membership.—

21 (3) The council shall be composed of 26 ~~25~~ citizens of the
 22 state who have knowledge of, or work in, the area of diabetes
 23 mellitus as follows:

24 (a) Five interested citizens, three of whom are affected
 25 by diabetes.

26 (b) Twenty-one ~~Twenty~~ members, who must include one
 27 representative from each of the following areas: nursing with
 28 diabetes-educator certification; dietary with diabetes educator

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29 certification; podiatry; ophthalmology or optometry; psychology;
 30 pharmacy; adult endocrinology; pediatric endocrinology; the
 31 American Diabetes Association (ADA); the Juvenile Diabetes
 32 Foundation (JDF); the Florida Academy of Family Physicians; a
 33 community health center; a county health department; an American
 34 Diabetes Association recognized community education program;
 35 each medical school in the state; an osteopathic medical school;
 36 the insurance industry; a Children's Medical Services diabetes
 37 regional program; and an employer.

38 (c) One or more representatives from the Department of
 39 Health, who shall serve on the council as ex officio members.

40 Section 2. Paragraph (j) is added to subsection (3) of
 41 section 1002.20, Florida Statutes, to read:

42 1002.20 K-12 student and parent rights.—Parents of public
 43 school students must receive accurate and timely information
 44 regarding their child's academic progress and must be informed
 45 of ways they can help their child to succeed in school. K-12
 46 students and their parents are afforded numerous statutory
 47 rights including, but not limited to, the following:

48 (3) HEALTH ISSUES.—

49 (j) Diabetes management.—A school district may not
 50 restrict the assignment of a student who has diabetes to a
 51 particular school on the basis that the student has diabetes,
 52 that the school does not have a full-time school nurse, or that
 53 the school does not have trained diabetes personnel. Diabetic
 54 students whose parent and physician provide their written
 55 authorization to the school principal may carry diabetic
 56 supplies and equipment on their person and attend to the

57 management and care of their diabetes while in school,
58 participating in school-sponsored activities, or in transit to
59 or from school or school-sponsored activities to the extent
60 authorized by the parent and physician and within the parameters
61 set forth by State Board of Education rule. The written
62 authorization shall identify the diabetic supplies and equipment
63 that the student is authorized to carry and shall describe the
64 activities the child is capable of performing without
65 assistance, such as performing blood-glucose level checks and
66 urine ketone testing, administering insulin through the insulin-
67 delivery system used by the student, and treating hypoglycemia
68 and hyperglycemia. The State Board of Education, in cooperation
69 with the Department of Health, shall adopt rules to encourage
70 every school in which a student with diabetes is enrolled to
71 have personnel trained in routine and emergency diabetes care.
72 The State Board of Education, in cooperation with the Department
73 of Health, shall also adopt rules for the management and care of
74 diabetes by students in schools that include provisions to
75 protect the safety of all students from the misuse or abuse of
76 diabetic supplies or equipment. A school district, county health
77 department, and public-private partner and their employees and
78 volunteers shall be indemnified by the parent of a student
79 authorized to carry diabetic supplies or equipment for any and
80 all liability with respect to the student's use of such supplies
81 and equipment pursuant to this paragraph.

82 Section 3. This act shall take effect July 1, 2010.

COUNCIL/COMMITTEE AMENDMENT

Bill No. CS/HB 747 (2010)

Amendment No. 1

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: Education Policy Council
2 Representative(s) Thompson offered the following:

3
4 **Amendment**



5 Remove lines 77-78 and insert:

6 department, and public-private partner, and the employees and
7 volunteers of those entities, shall be indemnified by the parent
8 of a student

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1233
SPONSOR(S): Jenne and others
TIED BILLS:

Educational Plant Surveys
IDEN./SIM. BILLS: SB 2356

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	PreK-12 Appropriations Committee	9 Y, 0 N, As CS	Seifert	Heflin
2)	PreK-12 Policy Committee	(ref. removed)		
3)	Full Appropriations Council on Education & Economic Development	(ref. removed)		
4)	Education Policy Council		White 	Lowell 
5)				

SUMMARY ANALYSIS

The bill amends s. 1031.31, F.S., to:

- Authorize a school district to apply to the Department of Education for an extension of the submission deadline for an educational plant survey.
- Prohibit school districts from contracting for new construction projects during an extension period, except for projects funded with local bonds or voter-approved 1/2 cent sales taxes.
- Require the State Board of Education to adopt rules.

The bill does not appear to have a state or local fiscal impact. See FISCAL COMMENTS section of this analysis.

The bill takes effect July 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Law

The educational plant survey is a systematic study that aids in the formulation of plans for housing an educational program and its student population, faculty, administrators, staff, and auxiliary and ancillary services. The survey, which may be performed by agency staff or an agency employed by the board, must be conducted at least once five (5) years. A copy of the survey must be submitted to the Office of Educational Facilities within the Department of Education (DOE) for review and validation.¹

Sections 1013.03 and 1013.64, F.S. and s. 3.1 of the State Requirements for Educational Facilities require that an educational plant survey include:²

- Correct inventory data;
- Appropriate inventory changes;
- New square footage requirements within normal allocation limits;
- Cost projections;
- Facility lists;
- Uniform utilization factors;
- Survey recommendations for existing and new plants;
- A summary of cost for survey recommendations;
- Documented need for programs offered per site;
- Documented approval of vocational and adult programs by the Division of Workforce Development;
- Assigned student stations to required areas;
- Documentation showing utilization of plants based on regular and extended day/year round operation;
- Capacity of existing satisfactory facilities;
- Past and projected membership trends;
- Financial trends in assessed valuation;
- Required local millage contribution;
- Current tax levies on non-exempt property;
- Debt service obligations;

¹ Florida Department of Education Office of Educational Facilities website <http://www.fldoe.org/edfacil/k12survey.asp>

² *Id.*

- Anticipated state revenue allocations; and
- Plans for financing the proposed facility program

There is no statute or rule addressing whether a school district may apply for an extension of the educational plant survey submission deadline. In practice, district superintendents have been permitted by the DOE to provide a formal written request to the Commissioner of Education for an extension of the deadline. In most cases, the extension request has been approved where the reasons for the request were persuasive, objective, and logical.³

Effect of Proposed Changes

The bill amends s. 1013.31(1), F.S., to authorize a district school superintendent, with the concurrence of all school board members, to submit a request to the DOE for an extension of the submission deadline for an educational plant survey. An extension may not exceed six months and no more than four consecutive extensions may be granted by the DOE per survey.

The bill requires the DOE to develop a formal application for the extension requests, which must include sections for the following information: the purpose for requesting the extension; data that clearly and objectively support the need for the extension; the signatures of all current district school board members; and the signature of the director of the department responsible for oversight of the district's educational facility planning, design, and construction.

School districts are prohibited from contracting for new construction projects during an extension period, except for projects funded with local bonds or voter-approved ½ cent sales taxes.

The bill requires the State Board of Education (SBE) to adopt implementing rules.

B. SECTION DIRECTORY:

Section 1: Amends s. 1013.31, F.S., relating to educational plant surveys.

Section 2: Provides an effective date of July 1, 2010.

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 does not appear to have a fiscal impact on state government expenditures. See FISCAL COMMENTS.

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.

³ Department of Education Analysis of HB 1233, March 5, 2010.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The DOE may incur costs for the SBE to adopt implementing rules. It is anticipated that these costs can be absorbed by existing resources.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require a city or county to expend funds or 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. The bill does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires the SBE to adopt implementing rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 26, 2010, the PreK-12 Appropriations Committee adopted one technical amendment and reported the bill favorably as a Committee Substitute (CS). The amendment clarified that no more than four consecutive extensions may be granted per survey.

1 A bill to be entitled
 2 An act relating to educational plant surveys; amending s.
 3 1013.31, F.S.; authorizing an extension to a school
 4 district educational plant survey submission deadline;
 5 providing restrictions; providing requirements for the
 6 submission of a request for an extension to the Department
 7 of Education and requiring department approval; providing
 8 restrictions on school district construction during the
 9 extension period; requiring the State Board of Education
 10 to adopt rules; providing an effective date.

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

13
 14 Section 1. Paragraph (e) is added to subsection (1) of
 15 section 1013.31, Florida Statutes, to read:

16 1013.31 Educational plant survey; localized need
 17 assessment; PECO project funding.—

18 (1) At least every 5 years, each board shall arrange for
 19 an educational plant survey, to aid in formulating plans for
 20 housing the educational program and student population, faculty,
 21 administrators, staff, and auxiliary and ancillary services of
 22 the district or campus, including consideration of the local
 23 comprehensive plan. The Department of Education shall document
 24 the need for additional career and adult education programs and
 25 the continuation of existing programs before facility
 26 construction or renovation related to career or adult education
 27 may be included in the educational plant survey of a school
 28 district or community college that delivers career or adult

29 education programs. Information used by the Department of
 30 Education to establish facility needs must include, but need not
 31 be limited to, labor market data, needs analysis, and
 32 information submitted by the school district or community
 33 college.

34 (e) Request for extension.—

35 1. Upon request by a district school superintendent to the
 36 Department of Education and upon approval by the department, an
 37 extension to a survey submission deadline may be granted for up
 38 to 180 days. No more than four consecutive extensions shall be
 39 granted per survey. A request for an extension to a survey
 40 submission deadline shall be submitted to the department no
 41 later than 90 days prior to the current submission deadline. A
 42 request shall contain the following:

43 a. A letter from the district school superintendent to the
 44 department, submitted on behalf of the district school board and
 45 on district school board letterhead, formally requesting an
 46 extension which cites the specific need for the extension.

47 b. A formal application, developed by the department, that
 48 includes sections for the following information: the purpose for
 49 requesting the extension; data that clearly and objectively
 50 supports the need for the extension; the signatures of all
 51 current district school board members; and the signature of the
 52 director of the department responsible for oversight of the
 53 educational facility planning, design, and construction for the
 54 school district, if one exists.

55 2. School districts shall not contract for new
 56 construction projects, except for local bonded projects and

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57 those financed with the voter-approved one-half-cent cent sales
 58 surtax for public school capital outlay authorized by s.
 59 212.055(6), during the extension period.

60 3. The State Board of Education shall adopt rules pursuant
 61 to ss. 120.536(1) and 120.54 to implement this paragraph.

62 Section 2. This act shall take effect July 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1337 Nursing
SPONSOR(S): Health Care Appropriations Committee; State Universities & Private Colleges Policy Committee and Grimsley
TIED BILLS: IDEN./SIM. BILLS: SB 2530

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) State Universities & Private Colleges Policy Committee	12 Y, 0 N, As CS	White	Tilton
2) Health Care Regulation Policy Committee	11 Y, 0 N	Holt	Calamas
3) Health Care Appropriations Committee	11 Y, 0 N, As CS	Massengale	Massengale
4) Education Policy Council		White <i>W</i>	Lowell <i>W</i>
5)			

SUMMARY ANALYSIS

To address the state’s lack of nursing education program capacity, the 2009 Legislature took action to expedite and streamline the nursing education program approval and regulatory processes in Florida with the passage of House Bill 1209 (2009). This legislation repealed the Florida Board of Nursing’s (BON’s) authority to prescribe the nursing education program approval and regulation processes by rule and, instead, set forth these processes in statute.

Committee Substitute for House Bill 1337 builds upon the 2009 legislation by further streamlining these processes. Under the bill, a nursing education program that is accredited by one of the two specialized nursing accrediting agencies that are nationally recognized by the United States Secretary of Education is no longer subject to BON regulation for as long as the program maintains its accreditation. The BON approval process for non-accredited programs, as adopted in last year’s bill, is largely retained, but implementation issues identified by the Office of Program Policy and Government Accountability, Florida Center for Nursing, and stakeholders are addressed. The bill’s changes include:

- Specifying that the BON must approve or deny a nursing education program application within 90 days after receipt of a *complete* application.
- Specifying that faculty education requirements for a nursing program may be documented by an official transcript or a written statement from an educational institution verifying that it conferred a degree.
- Specifying that the graduate passage rate on the National Council Licensure Examination (NCLEX), which must be achieved by approved programs, is 10 percentage points, rather than 10 percent below, the national average passage rate.
- Specifying that the requirements for NCLEX graduate passage rates, as adopted in last year’s legislation for approved programs, should only be applied prospectively beginning with the 2010 calendar year.
- Specifying that approved programs placed on probation for inadequate NCLEX graduate passage rates shall be removed from probation after attaining the required passage rate for one calendar year.
- Eliminating probation as a penalty for an approved program’s failure to submit an annual report and, instead, requiring the program’s director to appear before the BON to explain the delay.
- Authorizing nursing program directors to receive information on the NCLEX exam date and pass/fail score for program graduates included in the program’s graduate passage rate.

Although the Department of Health requires a one-time expenditure for setting up a website, this should be offset by a reduction in expenditures as a result of having fewer programs to approve and regulate. Please see “Fiscal Analysis & Economic Impact Statement.”

The bill takes effect July 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives:

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

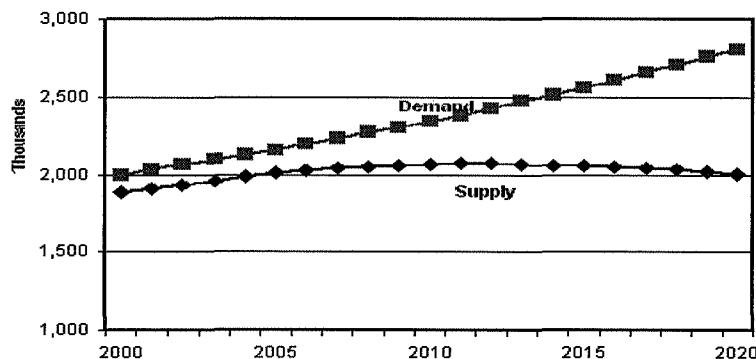
A. EFFECT OF PROPOSED CHANGES:

Present Situation

National Nursing Shortage

In 2007, the National Center for Health Workforce Analysis at Health Resource and Service Administration projected a growing shortage of Registered Nurses (RNs) over the next 15 years, with a 12 percent shortage by 2010 and a 20 percent shortage by 2015.¹

National Supply and Demand Projections for FTE RNs, 2000 to 2020



Since 2007, the economic recession has forced many nurses to return to the workforce and, as a result, the current demand for RNs has decreased somewhat. A national nursing shortage, however, remains on the horizon. According to a study published in the June 2009 edition of *Health Matters*, a peer-reviewed health policy journal, the shortage is projected to grow to 260,000 RNs by 2025. The primary cause is the aging nursing workforce.² By 2014, nearly 40 percent of the nation's RN population will be between the ages of 55 to 64 years and expected to retire from active nursing practice.³

¹U.S. Department of Health and Human Services, Bureau of Health Professions, National Center for Health Workforce Analysis, *Nursing Workforce Data Analysis: Methods for Identifying Facilities and Communities with Shortages of Nurses*, Technical Report. (February 2007). Available online at: http://bhpr.hrsa.gov/healthworkforce/nursingshortage/tech_report/default.htm (last viewed March 6, 2010).

²Buerhaus, P., Auerbach, D., & Staiger, D., (2009), *The Recent Surge In Nurse Employment: Causes And Implications*, *Health Matters*, 28, no. 4 (2009): w657-w668. Available online at: <http://content.healthaffairs.org/cgi/content/abstract/hlthaff.28.4.w657> (last viewed March 6, 2010).

³See *supra* note 1.

Florida Nursing Shortage

As of June 30, 2009, there were 62,254 active in-state licensed practical nurses (LPNs), 178,214 active in-state licensed RNs, and 11,829 active in-state licensed advanced registered nurse practitioners.⁴

According to reports prepared by the Florida Center for Nursing (FCN), there is a current shortage of RNs and LPNs in Florida, and this shortage is expected to grow significantly in the long-term. As of June 30, 2009, demand for RNs in Florida exceeded supply by 6,807 RNs and demand for LPNs exceeded supply by 1,417 LPNs.⁵ The FCN has projected that by 2020 the shortage of RNs will increase to 52,209 and the shortage of LPNs will increase to 7,018.^{6,7}

There is, however, no shortage of potential nurses in Florida. While Florida nursing programs produced 7,671 new RN graduates and 4,047 new LPN graduates in academic year 2008-2009, these programs also turned away 10,876 qualified RN program applicants and 2,755 qualified LPN program applicants in that same year because the programs were at capacity.⁸

To address the lack of nursing education program capacity, the 2009 Legislature took action to expedite and streamline the nursing education program approval and regulatory processes in Florida with the passage of House Bill 1209.⁹ As discussed in the section below, this legislation repealed the Florida Board of Nursing's (BON's) broad authority to prescribe the nursing education program approval and regulation processes by rule and, instead, set forth these processes in statute.

Nursing Education Program Approval and Regulation by the Florida Board of Nursing

Background: Part I of Chapter 464, F.S., entitled the "Nurse Practice Act," (Act), provides for the regulation of the practice of nursing in Florida by the BON, which is established within the Department of Health (Department). The BON is comprised of 13 members appointed by the Governor and confirmed by the Senate who serve four year terms. Seven members must be RNs and three members must be LPNs. The remaining three members must be Florida residents who have never been licensed as nurses and who are in no way connected to the practice of nursing or to any health care facility, agency, or insurer.¹⁰ The BON meets six times per year and is staffed with 43 full-time positions.¹¹

Under the Act, an "approved program" means a nursing program conducted in a school, college, or university which is approved under s. 464.019, F.S., for the education of nurses.¹² Currently, there are 181 nursing education programs approved to operate in Florida. Of this number, 98 programs offer a LPN certificate, 58 programs offer an associate degree in nursing, and 25 programs offer a bachelor's degree in nursing.¹³ The Act requires individuals who seek licensure as a RN or LPN in Florida to, in relevant part, have graduated from an "approved program" or its equivalent, as determined by the BON, and to pass the Department's licensure exam.¹⁴ The exam used is the National Council Licensure Examination (NCLEX), developed by the National Council of State Boards of Nursing (NCSBN).

⁴ Florida Department of Health, Division of Medical Quality Assurance, Annual Report: July 1, 2008-June 30, 2009.

⁵ Florida Center for Nursing, *Workforce Demand in Nursing-Intensive Healthcare Settings, 2009 Vacancies and 2011 Growth Projections*, p. 8 (January 2010). Available at: <http://www.flcenterfornursing.org/workforce/researchreports.cfm> (last viewed March 6, 2010).

⁶ Florida Center for Nursing, *Forecasting Supply, Demand, and Shortage of RNs and LPNs in Florida, 2007-2020*, p. 5 (July 2008). Available at: <http://www.flcenterfornursing.org/workforce/researchreports.cfm> (last viewed March 6, 2010).

⁷ The projections were based on 2007 survey data. In a January 2010, report, the FCN noted that although the nationally economy has changed dramatically since the 2007 survey, the nursing shortage in Florida remains a critical issue. According to the FCN, "The nursing shortage, though perhaps temporarily eased by the increase in recession-related nursing employment, continues to be a looming problem for Florida. Drivers of the nursing shortage remain the same: older nurses who have returned to work will eventually retire, and an aging population will demand more healthcare. Once the recession eases, we will see the nursing shortage re-emerge. The Bureau of Labor Statistics (BLS) projects that demand for RNs will increase more than any other type of worker through 2016, with more than 587,000 new RN positions projected during this time in the United States. Hence, we expect long-term demand for nurses to increase in response to population trends." *Workforce Demand in Nursing-Intensive Healthcare Settings, 2009 Vacancies and 2011 Growth Projections*, supra note 5, at 4.

⁸ Florida Center for Nursing, *Florida Nursing Education Capacity and Nursing Faculty Supply/Demand 2007-2009 Trends*, pp. 8-9 (January 2010). Available at: <http://www.flcenterfornursing.org/nurseeducation/data.cfm> (last viewed March 6, 2010).

⁹ Chapter 2009-158, L.O.F.

¹⁰ Section 464.004, F.S.

¹¹ Office of Program Policy Analysis & Government Accountability, *Since Implementing Statutory Changes, the State Board of Nursing Has Approved More Nursing Programs; the Legislature Should Address Implementation Issues*, Report No. 10-14 at p. 2 (January 2010). Available at: <http://www.oppage.state.fl.us/Summary.aspx?reportNum=10-14> (last viewed March 6, 2010).

¹² Section 464.003(8), F.S.

¹³ See supra note 11.

¹⁴ Section 464.008, F.S.

Prior to July 1, 2009, the BON had extensive authority to establish the requirements applicable to nursing education program approval and regulation in Florida under s. 464.019, F.S. (2008). This section required the BON to adopt rules necessary to ensure that approved nursing programs graduated nurses capable of competent practice, including rules that addressed: program approval and oversight; site visits; requirements for educational objectives, faculty, curriculum, administrative procedures, and clinical training; and procedures for program probation, suspension, and termination.

During the 2009 Regular Session, the Legislature repealed the BON's rulemaking authority and, instead, prescribed the nursing education program approval and regulatory process in statute.¹⁵ This legislation specifically prohibited the BON from imposing any condition or requirement on an institution submitting a program application, an approved program, or a program on probationary status, except as expressly provided in s. 464.019, F.S. It further stated that the BON has no rulemaking authority to implement the section, except that the BON must adopt a rule that prescribes the format for submitting program applications and summary descriptions of program compliance, and it expressly directed the BON to repeal all rules in existence on July 1, 2009, that were inconsistent with the subsection.¹⁶

Existing Nursing Education Programs: Under the 2009 legislation, Florida nursing education programs in existence on June 30, 2009, were made subject to a "grandfathering clause" set forth in s. 464.019(2), F.S. This clause provides that a program approved by the BON as of June 30, 2009, notwithstanding whether that approval was full or provisional or whether the program was on probation, became an "approved program" on July 1, 2009, except for a program on probation due to inadequate graduate passage rates on the NCLEX. A program on such probation remains on probation until it achieves an average graduate passage rate for its first-time test takers on the NCLEX that is no more than 10 percent below the national average passage rate for first-time, U.S. educated test takers. This average graduate passage rate must be achieved by July 1, 2011, and, if not, the program must be terminated.¹⁷ As of June 30, 2009, six practical nursing programs and one professional associate degree nursing program were on probation for inadequate student performance on the NCLEX.¹⁸

New Program Approval: For an educational institution applying for approval of a prelicensure practical or professional nursing education program on or after July 1, 2009, the 2009 legislation amended s. 464.019(1), F.S., to require each program application to document that:

- At least 50 percent of the faculty and the program director are registered nurses in Florida who have, at a minimum, a bachelor's degree for a *practical* nursing program. For a *professional* nursing program, such faculty and program director must also have a master's degree in nursing or a related field.
- At least 50 percent of the curriculum consists of clinical training for a practical nursing program, professional associate's degree program, and professional diploma nursing program. For a bachelor's degree professional nursing program, at least 40 percent of the curriculum must consist of clinical training.
- No more than 25 percent of the program's clinical training consists of clinical simulation.
- The program has a signed agreement with each entity included in the curriculum plan as clinical training sites and community-based clinical experience sites.
- The program has written policies for direct supervision by faculty or clinical preceptors¹⁹ for students in clinical training consistent with specified standards.
- The curriculum plan documents clinical experience and theoretical instruction in specified subjects.

Within 90 days after receipt of a program application, s. 464.019(1), F.S., requires the BON to approve the application if it documents compliance with the standards above. If the program application is incomplete or does not document compliance, the BON is required to do the following:

¹⁵ Ch. 2009-168, L.O.F.

¹⁶ Section 464.019(7), F.S.

¹⁷ Ch. 2009-168, s. 2, L.O.F., codified at s. 464.019(2) and (5)(a), F.S.

¹⁸ Florida Center for Nursing, *Report of Findings and Recommendations – Ch. 2009-168, L.O.F., Florida Board of Nursing Education Program Approval & Oversight*, p. 2 (January 2010). Available at: <http://www.flcenterfornursing.org/nurseeducation/data.cfm> (last viewed March 6, 2010).

¹⁹ The term "clinical preceptor" is defined to mean, "a registered nurse employed by a clinical training facility who serves as a role model and clinical resource person for a specified period to an individual enrolled in an approved program." Section 464.003(10), F.S.

- For an incomplete application, the BON must notify the educational institution of any errors or omissions within 30 days after receipt and follow the procedures specified in s. 120.60, F.S., of the Administrative Procedure Act (APA). This section provides that an application is deemed complete upon receipt of an application that has corrected each identified error or omission and that the completed application must be approved or denied within 90 days after its receipt.²⁰
- For an application that does not document compliance, the BON must, within 90 days after receipt of the application, provide the educational institution with a notice of intent to deny that sets forth written reasons for the denial. The institution may request a hearing on such a notice pursuant to Chapter 120, F.S., the APA.²¹

If the BON does not act on an application within the timeframes specified above, the application is deemed approved and the program becomes an approved program under section 464.019, Florida Statutes.²²

BON Regulation of Approved Programs: In order to continue as an approved program, s. 464.019, F.S., as amended by the 2009 legislation, sets forth two requirements. First, all approved programs, including programs on probation, must submit a report to the BON by November 1 of each year. The annual report must include an affidavit certifying continued compliance with the requirements that must be documented in a new program application and provide a summary description of that compliance. The report must also document for the previous academic year: the number of student applications, qualified applicants, students accepted, and program graduates; the program's graduate passage rate on the NCLEX; the program's retention rates for students tracked from program entry to graduation; and the program's accreditation status, including identification of the accrediting body.²³ If a program fails to timely submit its annual report, the BON must place the program on probation. If the report is not submitted within six months following its due date, the BON must terminate the program.²⁴

Second, the BON is required to place an approved program on probation if the program's average graduate passage for first-time test takers on the NCLEX falls 10 percent or more below the national average passage rate for first-time NCLEX test takers educated in the United States, as annually published by the contract testing service of the NCSBN, for two consecutive years.²⁵ The program must remain on probationary status until it achieves compliance with the required passage rate and must be terminated by the BON if it does not achieve compliance within two calendar years.²⁶

A program placed on probation must disclose this status in writing to its students and applicants.²⁷

Data on Nursing Education Programs: To provide prospective students with greater access to information about nursing programs in Florida, the 2009 legislation requires the BON to have published the following information about Florida nursing programs on its website by December 31, 2009:

- The program application for each program approved on or after July 1, 2009.
- The summary description required to be submitted by each program in its annual report.
- A comprehensive list of nursing programs in the state.
- The accreditation status of each program, including identification of the accrediting body.
- Each program's approval or probationary status.
- Each program's graduate passage rate for the NCLEX.

²⁰ Section 120.60(1), F.S.

²¹ Section 464.019(1) and (3), F.S.

²² Section 464.019(1), F.S.

²³ Section 464.019(2)(b) and (c), F.S.

²⁴ Section 464.019(5)(b), F.S.

²⁵ Currently, s. 456.014, F.S., provides that all information required by the Department of any applicant for licensure is a public record with the exception of specified information that includes medical information, school transcripts, examination questions, answers, and grades. This information is confidential and exempt from s. 119.07(1), F.S., and may not be discussed with or made accessible to anyone except members of the relevant board, the department, and staff thereof. The Department has interpreted this section of law to mean that the NCLEX pass/fail results of an applicant for RN or LPN licensure may not be disclosed to the nursing education program from which the student graduated. Department of Health Bill Analysis for HB 1337, p. 2, March 4, 2010. Nursing education program stakeholders have expressed concerns that the non-disclosure of such data results in the program being unable to confirm whether the graduate passage rates are accurate.

²⁶ Section 464.019(5)(a), F.S.

²⁷ Section 464.019(5)(c), F.S.

- The national average passage rate for the NCLEX.
- Each program's student retention rates tracked from program entry to graduation.

The website must allow interactive searches and comparisons of specific nursing programs and must be updated at least quarterly.

Implementation Monitoring and Study: The 2009 legislation established a six-year monitoring process to evaluate the effectiveness of the changes made by the legislation in achieving quality nursing programs with a higher production of quality nursing graduates. To this end, the legislation required the Florida Center for Nursing (FCN) and the Office of Program Policy Analysis and Government Accountability (OPPAGA) to monitor the administration of the new nursing program approval process during its first year of implementation and to report their findings to the Governor and presiding officers of the Legislature by February 1, 2010.²⁸ These reports were submitted in January 2010 and are discussed below in the section entitled, "Implementation Monitoring."

The legislation also created s. 464.019(9), F.S., to require the FCN and OPPAGA to jointly study the bill's five-year implementation and to submit a report to the Governor and presiding officers of the Legislature on January 30, 2011, and annually thereafter through January 30, 2015. For this report, the OPPAGA is required to evaluate: the number of nursing education programs and student slots available; the number of applications submitted, qualified applicants, students accepted, and program graduates; program retention rates; graduate passage rates on the NCLEX; and the number of graduates who become employed in Florida as RNs or LPNs. The FCN is required to evaluate the BON's implementation of the program application approval process and program probation and termination processes.²⁹

Nursing Education Program State Regulation, Licensure, and Programmatic Accreditation

As discussed above, there are currently 181 nursing education programs approved under s. 464.019, F.S., to operate in Florida. These programs are offered by: state-regulated public school districts, Florida colleges, and state universities; private institutions that must be licensed and regulated by the state Commission for Independent Education (CIE);³⁰ and private institutions that are not under the CIE pursuant to s. 1005.06(1)(c) and (e), F.S.^{31,32}

Some of Florida's nursing education programs are also accredited by specialized accrediting agencies that are nationally recognized by the United States (US) Secretary of Education to accredit nursing programs.³³ Accreditation is a private, nongovernmental review of the quality of educational programs. Approved programs in Florida are not required to be accredited.

The Secretary recognizes two agencies that provide specialized accreditation for prelicensure nursing education programs, the National League for Nursing Accreditation Commission (NLNAC) and the Commission on Collegiate Nursing Education (CCNE).³⁴ With regard to prelicensure nursing education programs, the NLNAC accredits certificate LPN programs and diploma, associate degree, and bachelor degree RN programs and the CCNE accredits bachelor degree RN programs.

²⁸ Section 464.019(8), F.S.

²⁹ Section 464.019(9), F.S.

³⁰ Chapter 1005, F.S., establishes the CIE to regulate independent postsecondary educational institutions, which are defined as, "any postsecondary educational institution that operates in this state or makes application to operate in this state, and is not provided, operated, and supported by the State of Florida, its political subdivisions, or the Federal Government." Section 1005.02(11), F.S.

³¹ Section 1005.06(1)(c), F.S., exempts a school from the CIE's licensure requirements if the institution: is under the jurisdiction of the Department of Education, eligible to participate in the William L. Boyd, IV, Florida Resident Access Grant Program and is a nonprofit independent college or university located and chartered in this state and accredited by the Commission on Colleges of the Southern Association of Colleges and Schools to grant baccalaureate degrees. Twenty-eight institutions in Florida are subject to this exemption.

³² Section 1005.06(1)(e), F.S., exempts a school from the CIE's licensure requirements if the institution: had been exempted prior to 2001; is incorporated in this state; the institution's credits or degrees are accepted for credit by at least three colleges that are accredited by an agency recognized by the USDOE; and the institution does not enroll any students who receive state or federal financial aid. Only two institutions in Florida, Pensacola Christian College and Landmark Baptist College, are subject to this exemption. Landmark Baptist College does not offer a nursing program.

³³ See *supra* note 18 at p. 3.

³⁴ United States Department of Education, *Specialized Accrediting Agencies*. Available at: http://www.ed.gov/admins/finaid/accred/accreditation_pg8.html#health (last viewed March 6, 2010).

Both accrediting agencies have extensive standards for the programs they accredit in order to ensure the quality of the education offered. These standards specify requirements that accredited programs must meet in areas that include the following: program administrator and faculty education qualifications; curriculum content and clinical experience requirements, which provide for periodic review of such content and experience to ensure rigor and currency; expectations for the use of best teaching practices; demonstration of sufficient fiscal, physical facility, and academic support services for the program; review of individual and aggregate student outcome data and graduate passage rates on the NCLEX; and review of student, alumni, and employer satisfaction.^{35,36}

According to NLNAC, initial and continuing accreditation is granted when the nursing program demonstrates compliance with all NLNAC Accreditation Standards. Initial accreditation is for a period of five years and continuing accreditation is for a period of eight years.³⁷ The NLNAC requires accredited programs to file annual reports containing specified data that is reviewed to determine whether the program is continuing to comply with accreditation standards. Additionally, site visits are conducted for the initial and continuing accreditation determinations.³⁸ The NLNAC may place conditions on a program's accreditation if it finds that a program is in non-compliance with one or two of the accrediting standards and may place an accredited program on warning status if it is in non-compliance with three or more standards. In both cases, the NLNAC requires the accredited program within a specified period of time to report on its efforts to attain compliance and the NLNAC conducts a follow-up site visit. If the program fails to achieve compliance with the standards, the NLNAC will deny continuing accreditation. Achievement of compliance for a LPN program must occur within 18 months and for a RN program must occur within two years.³⁹ A program may appeal the NLNAC's denial of initial or continuing accreditation status within 30 days of receipt of notice of denial. The appeal process must be completed within 90 days.⁴⁰

Similarly, initial and reaffirmed accreditation by the CCNE is granted to programs that demonstrate compliance with CCNE's standards. Initial accreditation may be for a period up to five years. Thereafter, the accreditation may be reaffirmed for a period up to 10 years. The CCNE requires accredited programs to file annual reports containing specified data that are reviewed to determine whether the program is continuing to comply with accreditation standards. Additionally, site visits are conducted for the initial and reaffirmed accreditation determinations.⁴¹ Accreditation will be withdrawn by the CCNE when a program pursuing reaffirmed accreditation fails to demonstrate its ability to meet the accreditation standards or if the program fails to submit reports or payment of fees as requested by the CCNE. A program may challenge an adverse action by the CCNE with regard to its accreditation by filing a notice of appeal within 10 business days of the adverse action. If the program fails to file a notice of appeal within 10 business days, the CCNE's decision becomes final.⁴²

Of the 181 nursing education programs approved in Florida, data from the FCN indicates that: eight of the 98 LPN programs (8.2 percent) are accredited by the NLNAC; 31 of the 58 associate degree RN programs (53.4 percent) are accredited by the NLNAC or CCNE; and 22 of the 25 bachelor degree RN programs (88 percent) are accredited by the NLNAC or CCNE.⁴³

Implementation Monitoring

As discussed above, the 2009 legislation required the FCN and OPPAGA to monitor the administration of the new nursing program approval process during its first year of implementation and to report their findings by February 1, 2010. Additionally, staff of the Joint Administrative Procedures Committee (JAPC) monitored the BON's implementation of the legislation's requirements relating to rulemaking.

³⁵ National League for Nursing Accrediting Commission, Inc., *Accreditation Manual*, pp. 76-98, (2008). Available at: <http://www.nlnac.org/manuals/Manual2008.htm> (last viewed March 7, 2010).

³⁶ Commission on Collegiate Nursing Education, *Standards for Accreditation of Baccalaureate and Graduate Degree Nursing Programs*, pp. 7-18 (April 2009). Available at: <http://www.aacn.nche.edu/accreditation/PubsBaccGrad.htm> (last viewed March 7, 2010).

³⁷ See *supra* note 35 at p. 32.

³⁸ See *supra* note 35 at p. 12, 61-62.

³⁹ See *supra* note 35 at pp. 32-34.

⁴⁰ See *supra* note 35 at pp. 42-44.

⁴¹ See *supra* note 36 at pp. 7-8 & 17.

⁴² See *supra* note 36 at pp. 13-14 & 21-24.

⁴³ See *supra* note 18 at p. 3

With regard to the new legislation's impact on increasing nursing education program capacity, the OPPAGA indicated in its report that:

New program applications submitted to the board have more than doubled in the six months since Ch. 2009-168, Florida Statutes, [sic] became effective compared to the previous year. As shown by Exhibit 3, since the new law went into effect, the board has considered 25 new applications for nursing programs, compared to 10 new applications considered in all of 2008. The board has approved 20 new nursing programs during this timeframe, compared to 9 new programs approved in 2008. In addition, the board has received seven new applications that will be considered at its February meeting.⁴⁴

The OPPAGA and FCN also identified a number of issues related to implementation. These included:

- *Program Application Timeframe:* The OPPAGA and FCN found that the program application timeframe implemented by the BON is inconsistent with the timeframe established in the Administrative Procedure Act.⁴⁵ The BON begins the 90-day time frame for approval or denial of a program application on the day the application is received notwithstanding whether the application is complete or incomplete. Section 464.019(3), F.S., however, with regard to incomplete applications, directs the BON to notify the educational institution of any errors or omissions within 30 days after receipt of the application and to follow the procedures specified in s. 120.60, F.S., which specifies that the 90-day time frame for approval or denial of an application does not begin until the application is complete. The OPPAGA stated:

As a result of this practice and the timing of board meetings, [department] staff must quickly review applications and notify programs to appear at the next board meeting, even when applications are incomplete. Since the board meets every other month, a program may only have one opportunity during the 90-day period to have their application go before the board; if all required documents are not yet filed the application will be denied unless the program waives the timeframe. If the applicant is denied, programs must submit a new application and begin the process anew.⁴⁶

The FCN and OPPAGA both recommended that the Legislature clarify the timeframe the BON should follow when it considers applications for nursing programs to ensure that the BON's practice is consistent with s. 120.60, F.S.⁴⁷

- *Program Application:* The OPPAGA found, and the FCN concurred in the finding, that the BON's application for new nursing programs is not yet finalized.⁴⁸ The OPPAGA also indicated that the application includes requirements beyond those specified in statute, such as curriculum vitae of faculty members, course descriptions, approval dates by the Department of Education, and nursing program length. The OPPAGA recommended that the BON finalize and publish a program application consistent with statute.⁴⁹ This issue, as discussed below, is currently being addressed by the JAPC and will be discussed by the BON at its March 12, 2010 teleconference.
- *Probation:* The OPPAGA found that the BON's method for placing programs on probation is not yet finalized. According to OPPAGA, the BON determined at its October meeting to use graduate passage rates beginning in January 2009 for purposes of determining whether a program has had two consecutive years of inadequate passage rates. OPPAGA indicated that stakeholders expressed concern that this decision resulted in utilizing data that predated the July 1, 2009 effective date of the law, i.e., retroactive application of the law.⁵⁰

Additionally, OPPAGA found that the BON has not yet determined how programs will be placed on probation for failure to submit an annual report and affidavit or determined how programs will be removed from probationary status. The OPPAGA stated, "Statutory language states that programs shall remain on

⁴⁴ See *supra* note 11 at pp. 4-5.

⁴⁵ See *supra* note 11 at p. 5 and note 18 at p. 1.

⁴⁶ *Id.*

⁴⁷ See *supra* note 11 at p. 10 and note 18 at pp. 2 & 4.

⁴⁸ See *supra* note 11 at pp. 6-7 and note 18 at p. 1.

⁴⁹ See *supra* note 11 at pp. 6-7.

⁵⁰ See *supra* note 11 at pp. 7-8.

probation until they achieve compliance with the examination score requirement or submit their annual report. However, statutes do not specify the number of quarters that programs must maintain compliant scores before being removed from probation and the board has not yet addressed this issue.”⁵¹

The OPPAGA recommended that the Legislature, “delineate the criteria and timeframe the board should use to place nursing education programs on probation and remove programs from probation.”⁵²

- *Annual report:* The OPPAGA found that the BON’s instructions for the 2009 Annual Report and Workforce Survey did not specify which items programs had to complete in order to comply with the statute. According to OPPAGA, the BON worked with the FCN to include the data elements required to be submitted to the BON by approved programs under s. 464.019(3)(c), F.S., in the FCN’s annual electronic workforce survey. The instructions for the survey notified programs that they would be placed on probation if they failed to submit completed surveys by November 1, 2009. The survey, however, included items that were not required s. 464.019(3)(c), F.S., such as data on student demographics, changes to programs, and faculty information, which are used by the FCN to complete research reports. The OPPAGA indicated that the BON’s survey instructions did not clearly indicate that these data were not statutorily mandated, creating the impression that programs could be placed on probation if they failed to include these additional data elements in their responses. The OPPAGA recommended that the BON clarify future directions for submitting the report.⁵³
- *BON Website:* The OPPAGA found, and the FCN concurred with the finding, that the BON’s interactive website does not include all elements required by law.⁵⁴ OPPAGA indicated that the 2009 legislation required the BON to create an interactive website that enables the public to compare nursing programs using data points such as the program’s approval status, retention, and examination scores; however, the website does not provide the accreditation status for all programs or retention rates for any programs. Additionally, the website does not allow users to readily compare all required data elements across programs.⁵⁵

The JAPC also monitored the BON’s implementation of the 2009 legislation’s rulemaking requirements. Since the bill took effect, JAPC staff notified BON legal counsel in writing of numerous concerns with the lack of rulemaking, but these issues were not addressed by the BON. As a result, JAPC staff presented a report on the BON’s inaction at the committee’s meeting held February 15, 2010. Two of the issues presented to the JAPC members related to s. 464.019(7), F.S., which directs BON to:

- Prescribe by rule the format for submitting program applications for new nursing programs. JAPC staff indicated that the BON has been using an “Application for New Nursing Program” without adopting it as a rule. JAPC staff also indicated that the application requires information that is not authorized by statute, and imposes a timeframe for granting or denying applications that is inconsistent with the APA.
- Prescribe by rule the format for submitting summary descriptions of program compliance for the annual report. JAPC staff indicated that the BON has not adopted this rule. According to JAPC staff, an “Affidavit” on the Board’s website includes a section entitled “Summary Description.” This affidavit is included in an annual report to be completed by programs, which appears to require information not authorized by statute.⁵⁶

Since the JAPC hearing, the BON has noticed a teleconference meeting for March 12, 2010, which indicates that the BON will discuss the nursing education program application.⁵⁷

⁵¹ *Id.*

⁵² See *supra* note 11 at p. 10.

⁵³ See *supra* note 11 at pp. 8, 10, & 14.

⁵⁴ See *supra* note 11 at p. 9 and note 18 at p. 1.

⁵⁵ See *supra* note 11 at pp. 9, 14, & 17.

⁵⁶ Joint Administrative Procedures Committee, Meeting Packet for February 15, 2010. Available at: http://www.leg.state.fl.us/cgi-bin/View_Page.pl?File=index_css.html&Directory=committees/joint/Japc&Tab=committees (last viewed March 7, 2010).

⁵⁷ Florida Administrative Weekly, Board of Nursing Telephone Conference Meeting Notice for March 12, 2010, published February 26, 2010.

Effect of Proposed Changes

The bill builds upon the 2009 legislation's streamlining of the nursing education program regulation process by specifying that a nursing education program that is accredited by one of the two specialized accrediting agencies that are nationally recognized by the US Secretary of Education to accredit nursing education programs is no longer subject to BON regulation for as long as the program maintains its accreditation. The BON approval process for non-accredited programs, as adopted in last year's bill, is retained, but implementation issues identified by the OPPAGA and FCN and stakeholders are clarified. The following details the bill's proposed changes.

Nurse Practice Act

Definition Section: The bill makes technical amendments to s. 464.003, F.S., which sets forth definitions for the Act, to alphabetize section. It also amends existing definitions for two terms as follows:

- The definition for "approved program" is clarified to mean, "a program for the prelicensure education of practical or professional nurses that is conducted in the state at an educational institution and that is approved under s. 464.019." The definition also provides that, "the term includes a program placed on probationary status" so that the terms "approved program" and "program on probationary status" do not have to be separately and repeatedly stated throughout s. 464.019, F.S.
- The definition for "clinical preceptor" is amended to also authorize a LPN to act as a clinical preceptor. Current law only authorizes RNs to act as clinical preceptors. Further, the bill amends s. 464.019(1)(e), F.S., to specify that a clinical preceptor who supervises students in a professional nursing program must be a RN and that a clinical preceptor who supervises students in a practical nursing program must be a LPN.

The bill adds definitions for the following four new terms:

- "Accredited program" is defined to mean, "a program for the prelicensure education of professional or practical nurses that is conducted in the United States at an educational institution, whether in this state, another state, or the District of Columbia, and that is accredited by a specialized nursing accrediting agency that is nationally recognized by the United States Secretary of Education to accredit nursing education programs." The NLNAC and CCNE are the only such accrediting agencies currently recognized by the Secretary.
- "Educational institution" is defined to mean, "a school, college, or university."
- "Graduate passage rate" is defined to mean, "the percentage of a program's graduates who, as first-time test takers, pass the National Council of State Boards of Nursing Licensing Examination during a calendar year, as calculated by the contract testing service of the National Council of State Boards of Nursing."
- "Required passage rate" is defined to mean, "the graduate passage rate required for an approved program pursuant to s. 464.019(6)(a)1., F.S." This subparagraph provides that the required passage rate is 10 percentage points, rather than 10 percent as in current law, below the national average passage rate on the NCLEX for U.S. educated, first-time test takers. It further specifies that the applicable national average passage rate is based on the type of program, i.e., an associate degree, a bachelor's degree, or a diploma professional nursing program or a practical nursing program.

Reorganization of s. 464.019, F.S: The bill amends s. 464.019, F.S. to better organize the section by reordering and renumbering the existing subsections (1) through (9) to achieve the following order: (1) Program Applications; (2) Program Approval; (3) Status of Certain Programs; (4) Annual Report; (5) Internet Website; (6) Accountability; (7) Disclosure of Graduate Passage Rate Data; (8) Program Closure; (9) Rulemaking; (10) Applicability; and (11) Implementation Study.

Accredited Programs

The bill amends s. 464.019(10), F.S., to provide that "accredited programs" conducted in this state are no longer subject to regulation by the BON for as long as the program maintains its accreditation. The only requirements that an accredited program must comply with are those relating to program closure and the

requirement that programs conducted in this state respond to FCN and OPPAGA data requests.⁵⁸ The BON is specifically prohibited in s. 464.019(9), F.S., (formerly s. 464.019(7), F.S.) from imposing any condition or requirement on an accredited program except as expressly authorized in s. 464.019, F.S.

Because of the bill's recognition of accredited programs, the bill amends s. 464.008(1)(c), F.S., which sets forth the requirements an individual must meet to be eligible for licensure as a RN or LPN. Currently, this law specifies, in relevant part, that an individual must have graduated from an approved program, or its equivalent as determined by the BON. The bill retains these provisions, but adds that graduates of an accredited program on or after July 1, 2009, are also eligible, and further clarifies that persons who graduated from a prelicensure nursing education program before July 1, 2009, remain eligible for licensure if the program's graduates were eligible to sit for the exam at the time they graduated.⁵⁹

If an accredited program ceases to be accredited, the educational institution conducting the program:

- Must provide written notice of the date that the program ceased to be accredited to the BON, the program's students and applicants, and each entity providing clinical training sites or community-based clinical experience sites for the program within 10 business days after the program ceases to be accredited. Such notice must continue to be provided to new students, applicants, and entities providing clinical sites until the program becomes an approved program or is closed. Within 30 days after the program loses its accreditation, the president or chief executive officer of the institution must provide an affidavit to the board, which certifies the institution's compliance with the written notice requirements.
- May apply to the BON to become an approved program. If the institution applies within 30 days following the date upon which it ceased to be accredited, the program is deemed an approved program until the BON approves or denies the program application. If the institution does not apply within 30 days, the program is closed on the 31st day.

An accredited program that is closed must comply with the bill's requirements for the closure and termination of programs discussed below.⁶⁰

Approved Programs

The bill substantially retains the BON approval process for non-accredited programs as established by the 2009 legislation, but makes changes, as described below, to address implementation issues identified by the OPPAGA, FCN, and stakeholders.

Program Applications: The bill amends s. 464.019(1), F.S., to:

- Reflect current practice that requires a program application and fee to be submitted for each prelicensure nursing education program to be offered at a main campus, branch campus, or other instructional site.
- Specify that the program application must require provision of the legal name for the educational institution and nursing education program and the name of any accrediting agencies for the program other than the NLNAC and CCNE.
- Amend the faculty educational requirements that must be documented in a program application. Current law requires the program director and 50 percent of the faculty to have "a minimum" of a bachelor's degree in nursing; however, some individuals may have a master's or higher degree in nursing, but not a bachelor's degree in nursing. Accordingly, the bill provides that the program director and 50 percent of the faculty members for a : (a) RN program must have a master's or higher degree in nursing or a bachelor's degree in nursing and a master's or higher degree in a field related to nursing; and (b) LPN program must have a bachelor's or higher degree in nursing.

⁵⁸ Section 464.019(8) and (11), F.S.

⁵⁹ Prior to the July 1, 2009, effective date of ch. 2009-158, L.O.F., the BON recognized certain nursing education program graduates of Excelsior College (formerly Regents College) in New York as eligible for Florida RN licensure pursuant to a 1994 settlement agreement between the BON and the college. See *Regents College v. Florida Board of Nursing*, 2nd Judicial Circuit in Leon Co., Case No. 94-4314, Stipulation and Agreed Upon Order (1994). Subsequent to the 2009 legislation, the BON indicated that it would no longer automatically recognize these graduates as eligible for licensure; instead, the BON now individually determines whether each graduate is eligible by conducting a review of the individual's professional medical experience and education. Currently, there are almost 1,200 Florida residents enrolled in the college's nursing program. See Letter from Excelsior College dated November 4, 2009. Excelsior's nursing program is accredited by the NLNAC. Thus, under the bill, graduates of the college or any other CCNE or NLNAC accredited program located in the U.S. will be eligible for licensure, if the graduate meets other eligibility requirements specified in current law.

⁶⁰ Section 464.019(10), F.S.

- Add a provision stating that the educational degree requirements for the program director or faculty may be documented by an official transcript or written statement by the educational institution verifying that it conferred the degree.

The bill also specifies the timeframe for review of a program application. It specifies in s. 464.019(2), F.S. (formerly s. 464.019(3), F.S.), that the department upon receiving an application and fee must review the application to determine if it is complete. If it is incomplete, the department must notify the applicant in writing of any errors or omissions within 30 days. The bill further provides that an application is deemed complete upon the: (a) original date of receipt if the department does not notify the applicant of any errors or omissions within the 30-day period; or (b) date the department receives a revised application that corrects each error and omission. As in current law, the BON must approve or deny a completed application within 90 days after receipt.

Annual Report: The bill amends s. 464.019(4), F.S. (formerly s. 464.019(2)(c), F.S.), to clarify that the annual report consists of an affidavit certifying continued compliance with paragraphs (1)(a) through (g), a summary description of that compliance, and other specified data. The bill amends the data requirements to specify that such data must be submitted to the "extent applicable" in order to recognize that newly approved programs may not yet have data available for submission. It also adds new data requirements. Under the bill, approved programs must also document the: (a) number of accepted applicants who enroll in program and the total number of students enrolled in program; and (b) program's accrediting agency, if it is accredited by an agency other than the NLNAC or CCNE.

In s. 464.019(9), F.S. (formerly s. 464.019(7), F.S.), the bill directs the BON to adopt a rule prescribing the format for the annual report. Current law only authorizes the BON to prescribe the format for the summary descriptions of program compliance.

Internet Website: The bill adds a requirement in s. 464.019(5), F.S. (formerly s. 464.019(4), F.S.) that the BON must publish on its website a list of each accredited program and the program's graduate passage rates for the two most recent calendar years. The accredited programs are not required to provide the BON with this data; rather, the department is required to determine this information through the following sources: (a) the specialized accrediting agencies that are nationally recognized by the United States Secretary of Education to accredit nursing education programs; and (b) the contract testing service of the NCSBN.

The bill also makes technical conforming changes to s. 464.019(5)(b) & (c), F.S. (formerly s. 464.019(4)(a)-(h), F.S.), which relates to the data the BON must publish on its website for approved programs. The only substantive changes made by the bill are that: (a) approved program graduate passage rates and national average passage rates on the NCLEX must be published for two, rather than one, calendar years; and (b) the national average passage rate must be published for each individual program type.

BON Regulation of Approved Programs: For a program that was on probation on June 30, 2009, because it did not meet the BON's requirement for graduate passage rates, the bill specifies in s. 464.019(3), F.S. (formerly s. 464.019(2), F.S.), that such program is an approved program, but that it shall remain on probation until it achieves the required passage rate for either the 2009 or 2010 calendar year. As in current law, the program must be terminated by the BON if it does not timely achieve the required passage rate. This provision will no longer apply to an accredited program as of the bill's July 1, 2010 effective date. See s. 464.019(10), F.S.

For other approved programs, the bill continues, as in current law, to require the BON to monitor the programs' compliance with NCLEX graduate passage rate and annual report requirements. Regarding the requirements for graduate passage rates, the only substantive changes made by the bill in s. 464.019(6)(a), F.S. (formerly s. 464.019(5), F.S.), are that:

- The bill specifies that the required passage rate on the NCLEX for an approved program shall be 10 percentage points, rather than 10 percent, below the national average passage rate for the applicable program type.
- The bill clarifies that the requirements for graduate passage rates, which should have only been applied prospectively by the BON under the 2009 legislation, apply to graduate passage rates beginning with the 2010 calendar year.

- The bill clarifies that a program placed on probation for having had two consecutive calendar years of inadequate graduate passage rates must be removed from probation when the program achieves the required passage rate for one calendar year.

As in current law, the approved program must be terminated by the BON if it does not achieve the required passage rate within two calendar years.

Regarding the annual report requirements, the only substantive change made by the bill to s. 464.019(6)(b), F.S. (formerly s. 464.019(5)(b), F.S.), is that probation is eliminated as a penalty for an approved program's failure to timely submit the annual report. Instead, the bill requires the program director to appear before the BON to explain the delay. As in current law, the program must be terminated by the BON if it does not submit the report within six months after its due date.

Disclosure of Graduate Passage Rate Data

The bill amends s. 456.014, F.S., to provide that certain information relating to an applicant for licensure may be provided by the Department to a program director of an approved program or accredited program pursuant to s. 464.019(7), F.S. Subsection (7) states that a program director may make a written request to the department for the disclosure of the following information relating to each program graduate included in the program's graduate passage rate: the graduate's name, the date the graduate took the NCLEX, and the determination of whether the graduate passed or failed the NCLEX. The program director must maintain the confidentiality of the information in the same manner as department employees.

Program Closure or Termination

The bill amends s. 464.019(8), F.S., to specify the following requirements for approved programs and accredited programs that voluntarily close, approved programs that are terminated by the board, and accredited programs that lose their accreditation and are closed:

- *Voluntary Closure:* The educational institution must notify the BON in writing of the institution's reason for closing the program, intended closure date, institution's plan to provide for or assist the program's students in completing their training, and arrangements for storage of the program's permanent records. This notification must be provided by the institution at least 30 days prior to closure.
- *Involuntary Closure:* If an approved program is terminated by the BON or if an accredited program loses its accreditation and is closed, the educational institution conducting the program is prohibited from accepting or enrolling new students and must submit to the BON, within 30 days after termination or closure, a written description of how the institution will assist the program's students in completing their training and the institution's arrangements for storage of the program's permanent records.

If an educational institution fails to comply with the requirements for closure or termination of a program, the BON must provide written notice explaining the institution's noncompliance to the institution's president or chief executive officer and following entities:

- The Board of Governors (BOG), if the program is conducted by a state university.
- The district school board, if the program is conducted by an educational institution operated by a school district.
- The CIE, if the program is conducted by an educational institution licensed under ch. 1005, F.S.
- The State Board of Education, if the program is conducted by an educational institution in the Florida College System or an educational institution that is not subject to regulation by the BOG, a district school board, or the CIE.

Conforming Changes and Effective Date

The bill amends ss. 464.015 and 464.033, F.S., to make conforming changes for the bill's recognition of accredited programs. The bill amends ss. 458.348, 459.025, 464.012, and 960.28, F.S., to conform cross-references to changes made by the bill. The bill provides an effective date of July 1, 2010.

B. SECTION DIRECTORY:

Section 1: Amends s. 456.014, F.S., relating to public inspection of information required by applicants for licensure by the Department.

Section 2: Amends s. 464.003, F.S., relating to definitions for the Nurse Practice Act.

Section 3: Amends s. 464.008, F.S., relating to licensure by examination.

Section 4: Amends s. 464.015, F.S., relating to titles and abbreviations for nurses.

Section 5: Amends s. 464.019, F.S., relating to approval of nursing education programs.

Section 6: Amends s. 464.022, F.S., relating to the practice of nursing pending NCLEX results.

Sections 7-10: Amending ss. 458.348, 459.025, 464.012, and 960.28, F.S., conforming cross-references to changes made by the bill.

Section 11: Providing an effective date of July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Department of Health indicates it will incur costs of \$78,795 because it will have to modify its existing list of approved schools on its website to accommodate the bill's requirement that it list accredited programs. The DOH was required to establish this website by the 2009 legislation and to provide specified data on all approved programs, including approved programs that are accredited. Accordingly, this bill does not appear to create a fiscal impact, given that these requirements currently exist. Furthermore, as indicated above, the department should incur a savings a result of the bill's provisions that no longer require the department or BON to regulate accredited programs.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax sharing with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides that the BON shall adopt a rule that prescribes the format for the annual reports required under s. 464.019, F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 10, 2010, the State Universities & Private Colleges Policy Committee adopted four amendments to HB 1337 and reported the bill favorably as a committee substitute. These amendments technically clarified: (a) the definition of "accredited program" so that it reflects the terminology used by the federal Department of Education; and (b) that the bill applies to any prelicensure nursing program regardless of the credential awarded.

On March 26, 2010, the Health Care Appropriations Committee adopted four amendments to CS/HB 1337 and reported the bill favorably as a CS. These amendments: (a) technically clarified the definition of "accredited program" by adding the term "nursing"; (b) specified that the program application must require provision of the legal name of the educational institution and nursing education program and the name of any accrediting agencies for the program other than the NLNAC and CCNE; (c) extended the time allowed for the Department of Health to comply with the bill's website requirements by three months; and (d) specified requirements for programs that lose their accreditation and that are voluntarily or involuntarily closed. This analysis is addressed to the CS for CS.

1 A bill to be entitled
2 An act relating to nursing; amending s. 456.014, F.S.;
3 authorizing the disclosure of certain confidential
4 information required of nursing license applicants to
5 certain persons; amending s. 464.003, F.S.; providing and
6 revising definitions; amending s. 464.008, F.S.; revising
7 requirements for graduation from certain nursing education
8 programs for nursing license applicants seeking to take
9 the licensing examination; amending s. 464.015, F.S.;
10 revising restrictions on nursing graduates who may use
11 certain titles and abbreviations; amending s. 464.019,
12 F.S.; revising requirements for the approval of nursing
13 education programs by the Board of Nursing, including
14 application requirements and procedures for the review and
15 approval or denial of applications; revising requirements
16 for the approval of nursing education programs meeting
17 certain requirements before a specified date; providing
18 for retroactive application; revising requirements for the
19 submission of annual reports by approved programs;
20 revising requirements for the information published on the
21 board's Internet website; revising accountability
22 requirements for an approved program's graduate passage
23 rates on a certain licensing examination; revising
24 procedures for placing programs on, and removing such
25 programs, from probationary status; requiring termination
26 of programs under certain circumstances; requiring certain
27 representatives of programs that fail to submit annual
28 reports to appear before the board; requiring the

29 Department of Health to disclose certain confidential
 30 information about a program's graduates to the program
 31 director under certain circumstances; requiring program
 32 directors to maintain the confidentiality of such
 33 information; providing penalties for unlawful disclosure
 34 of confidential information; revising requirements for the
 35 closure of programs; revising the board's authority to
 36 adopt rules; exempting accredited programs from specified
 37 requirements; providing requirements for an accredited
 38 program that ceases to be accredited; conforming
 39 provisions; deleting obsolete provisions; revising
 40 requirements for the Florida Center for Nursing's
 41 evaluation of the board's implementation of certain
 42 accountability provisions; conforming cross-references;
 43 amending s. 464.022, F.S.; conforming provisions; amending
 44 ss. 458.348, 459.025, 464.012, and 960.28, F.S.;

45 conforming cross-references; providing an effective date.

46

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

48

49 Section 1. Subsection (1) of section 456.014, Florida
 50 Statutes, is amended to read:

51 456.014 Public inspection of information required from
 52 applicants; exceptions; examination hearing.-

53 (1) All information required by the department of any
 54 applicant shall be a public record and shall be open to public
 55 inspection pursuant to s. 119.07, except financial information,
 56 medical information, school transcripts, examination questions,

57 answers, papers, grades, and grading keys, which are
 58 confidential and exempt from s. 119.07(1) and shall not be
 59 discussed with or made accessible to anyone except the program
 60 director of an approved program or accredited program as
 61 provided in s. 464.019(7), members of the board, the department,
 62 and staff thereof, who have a bona fide need to know such
 63 information. Any information supplied to the department by any
 64 other agency which is exempt from the provisions of chapter 119
 65 or is confidential shall remain exempt or confidential pursuant
 66 to applicable law while in the custody of the department or the
 67 agency.

68 Section 2. Section 464.003, Florida Statutes, is reordered
 69 and amended to read:

70 464.003 Definitions.—As used in this part, the term:

71 (1) "Accredited program" means a program for the
 72 prelicensure education of professional or practical nurses that
 73 is conducted in the United States at an educational institution,
 74 whether in this state, another state, or the District of
 75 Columbia, and that is accredited by a specialized nursing
 76 accrediting agency that is nationally recognized by the United
 77 States Secretary of Education to accredit nursing education
 78 programs.

79 ~~(13)(1)~~ "Department" means the Department of Health.

80 ~~(5)(2)~~ "Board" means the Board of Nursing.

81 ~~(20)(3)(a)~~ "Practice of professional nursing" means the
 82 performance of those acts requiring substantial specialized
 83 knowledge, judgment, and nursing skill based upon applied
 84 principles of psychological, biological, physical, and social

85 sciences which shall include, but not be limited to:

86 (a)1. The observation, assessment, nursing diagnosis,
 87 planning, intervention, and evaluation of care; health teaching
 88 and counseling of the ill, injured, or infirm; and the promotion
 89 of wellness, maintenance of health, and prevention of illness of
 90 others.

91 (b)2. The administration of medications and treatments as
 92 prescribed or authorized by a duly licensed practitioner
 93 authorized by the laws of this state to prescribe such
 94 medications and treatments.

95 (c)3. The supervision and teaching of other personnel in
 96 the theory and performance of any of the ~~above~~ acts described in
 97 this subsection.

98
 99 A professional nurse is responsible and accountable for making
 100 decisions that are based upon the individual's educational
 101 preparation and experience in nursing.

102 (19)(b) "Practice of practical nursing" means the
 103 performance of selected acts, including the administration of
 104 treatments and medications, in the care of the ill, injured, or
 105 infirm and the promotion of wellness, maintenance of health, and
 106 prevention of illness of others under the direction of a
 107 registered nurse, a licensed physician, a licensed osteopathic
 108 physician, a licensed podiatric physician, or a licensed
 109 dentist. A ~~The professional nurse and the practical nurse~~ is
 110 ~~shall be~~ responsible and accountable for making decisions that
 111 are based upon the individual's educational preparation and
 112 experience in nursing.

113 (7)~~(e)~~ "Clinical nurse specialist practice" means the
 114 delivery and management of advanced practice nursing care to
 115 individuals or groups, including the ability to:

116 (a)~~1~~. Assess the health status of individuals and families
 117 using methods appropriate to the population and area of
 118 practice.

119 (b)~~2~~. Diagnose human responses to actual or potential
 120 health problems.

121 (c)~~3~~. Plan for health promotion, disease prevention, and
 122 therapeutic intervention in collaboration with the patient or
 123 client.

124 (d)~~4~~. Implement therapeutic interventions based on the
 125 nurse specialist's area of expertise and within the scope of
 126 advanced nursing practice, including, but not limited to, direct
 127 nursing care, counseling, teaching, and collaboration with other
 128 licensed health care providers.

129 (e)~~5~~. Coordinate health care as necessary and appropriate
 130 and evaluate with the patient or client the effectiveness of
 131 care.

132 (2)~~(d)~~ "Advanced or specialized nursing practice" means,
 133 in addition to the practice of professional nursing, the
 134 performance of advanced-level nursing acts approved by the board
 135 which, by virtue of postbasic specialized education, training,
 136 and experience, are appropriately performed by an advanced
 137 registered nurse practitioner. Within the context of advanced or
 138 specialized nursing practice, the advanced registered nurse
 139 practitioner may perform acts of nursing diagnosis and nursing
 140 treatment of alterations of the health status. The advanced

141 registered nurse practitioner may also perform acts of medical
 142 diagnosis and treatment, prescription, and operation which are
 143 identified and approved by a joint committee composed of three
 144 members appointed by the Board of Nursing, two of whom must be
 145 advanced registered nurse practitioners; three members appointed
 146 by the Board of Medicine, two of whom must have had work
 147 experience with advanced registered nurse practitioners; and the
 148 State Surgeon General or the State Surgeon General's designee.
 149 Each committee member appointed by a board shall be appointed to
 150 a term of 4 years unless a shorter term is required to establish
 151 or maintain staggered terms. The Board of Nursing shall adopt
 152 rules authorizing the performance of any such acts approved by
 153 the joint committee. Unless otherwise specified by the joint
 154 committee, such acts must be performed under the general
 155 supervision of a practitioner licensed under chapter 458,
 156 chapter 459, or chapter 466 within the framework of standing
 157 protocols which identify the medical acts to be performed and
 158 the conditions for their performance. The department may, by
 159 rule, require that a copy of the protocol be filed with the
 160 department along with the notice required by s. 458.348.

161 (17)~~(e)~~ "Nursing diagnosis" means the observation and
 162 evaluation of physical or mental conditions, behaviors, signs
 163 and symptoms of illness, and reactions to treatment and the
 164 determination as to whether such conditions, signs, symptoms,
 165 and reactions represent a deviation from normal.

166 (18)~~(f)~~ "Nursing treatment" means the establishment and
 167 implementation of a nursing regimen for the care and comfort of
 168 individuals, the prevention of illness, and the education,

169 restoration, and maintenance of health.

170 (22)~~(4)~~ "Registered nurse" means any person licensed in
171 this state to practice professional nursing.

172 (16)~~(5)~~ "Licensed practical nurse" means any person
173 licensed in this state to practice practical nursing.

174 (6) "Clinical nurse specialist" means any person licensed
175 in this state to practice professional nursing and certified in
176 clinical nurse specialist practice.

177 (3)~~(7)~~ "Advanced registered nurse practitioner" means any
178 person licensed in this state to practice professional nursing
179 and certified in advanced or specialized nursing practice,
180 including certified registered nurse anesthetists, certified
181 nurse midwives, and nurse practitioners.

182 (4)~~(8)~~ "Approved program" means a ~~nursing~~ program for the
183 prelicensure education of professional or practical nurses that
184 is conducted in the state at an educational institution and that
185 is in a school, college, or university which is approved under
186 s. 464.019 for the education of nurses. The term includes such a
187 program placed on probationary status.

188 (10)~~(9)~~ "Clinical training" means direct nursing care
189 experiences with patients or clients which offer the student the
190 opportunity to integrate, apply, and refine specific skills and
191 abilities based on theoretical concepts and scientific
192 principles.

193 (8)~~(10)~~ "Clinical preceptor" means a registered nurse or
194 licensed practical nurse who is employed by a clinical training
195 facility to serve ~~who serves~~ as a role model and clinical
196 resource person for a specified period to students ~~an individual~~

197 enrolled in an approved program.

198 (9)~~(11)~~ "Clinical simulation" means a strategy used to
 199 replicate clinical practice as closely as possible to teach
 200 theory, assessment, technology, pharmacology, and skills.

201 (11)~~(12)~~ "Community-based clinical experience" means
 202 activities consistent with the curriculum and involving
 203 individuals, families, and groups with the intent of promoting
 204 wellness, maintaining health, and preventing illness.

205 (12)~~(13)~~ "Curriculum" means a planned sequence of course
 206 offerings and learning experiences that comprise a nursing
 207 education program.

208 (21)~~(14)~~ "Probationary status" means the status of an
 209 approved a nursing education program that is placed on such
 210 status pursuant ~~subject~~ to s. 464.019~~(2)(a)2. or (5)(a) or (b).~~

211 (14) "Educational institution" means a school, college, or
 212 university.

213 (15) "Graduate passage rate" means the percentage of a
 214 program's graduates who, as first-time test takers, pass the
 215 National Council of State Boards of Nursing Licensing
 216 Examination during a calendar year, as calculated by the
 217 contract testing service of the National Council of State Boards
 218 of Nursing.

219 (23) "Required passage rate" means the graduate passage
 220 rate required for an approved program pursuant to s.
 221 464.019(6)(a)1.

222 Section 3. Subsection (1) of section 464.008, Florida
 223 Statutes, is amended to read:

224 464.008 Licensure by examination.—

225 (1) Any person desiring to be licensed as a registered
 226 nurse or licensed practical nurse shall apply to the department
 227 to take the licensure examination. The department shall examine
 228 each applicant who:

229 (a) Has completed the application form and remitted a fee
 230 set by the board not to exceed \$150 and has remitted an
 231 examination fee set by the board not to exceed \$75 plus the
 232 actual per applicant cost to the department for purchase of the
 233 examination from the National Council of State Boards of Nursing
 234 or a similar national organization.

235 (b) Has provided sufficient information on or after
 236 October 1, 1989, which must be submitted by the department for a
 237 statewide criminal records correspondence check through the
 238 Department of Law Enforcement.

239 (c) Is in good mental and physical health, is a recipient
 240 of a high school diploma or the equivalent, and has completed
 241 the requirements for:

- 242 1. Graduation from an approved program;
- 243 2. Graduation from a prelicensure nursing education
 244 program that the board determines is, ~~or its~~ equivalent to an
 245 approved program;
- 246 3. Graduation on or after July 1, 2009, from an accredited
 247 program; or
- 248 4. Graduation before July 1, 2009, from a prelicensure
 249 nursing education program whose graduates at that time were
 250 eligible for examination as determined by the board, for the
 251 preparation of registered nurses or licensed practical nurses,
 252 whichever is applicable.

253
 254 Courses successfully completed in a professional nursing
 255 education program ~~that which~~ are at least equivalent to a
 256 practical nursing education program may be used to satisfy the
 257 education requirements for licensure as a licensed practical
 258 nurse.

259 (d) Has the ability to communicate in the English
 260 language, which may be determined by an examination given by the
 261 department.

262 Section 4. Subsections (3) and (4) of section 464.015,
 263 Florida Statutes, are amended to read:

264 464.015 Titles and abbreviations; restrictions; penalty.—

265 (3) Only persons who are graduates of prelicensure nursing
 266 education approved programs listed in s. 464.008(1)(c) ~~or the~~
 267 ~~equivalent~~ may use the term "Graduate Nurse" and the
 268 abbreviation "G.N.," pending the results of the first licensure
 269 examination for which they are eligible.

270 (4) Only persons who are graduates of prelicensure nursing
 271 education approved programs listed in s. 464.008(1)(c) ~~or the~~
 272 ~~equivalent~~ may use the term "Graduate Practical Nurse" and the
 273 abbreviation "G.P.N.," pending the results of the first
 274 licensure examination for which they are eligible.

275 Section 5. Section 464.019, Florida Statutes, is reordered
 276 and amended to read:

277 464.019 Approval of nursing education programs.—

278 (1) PROGRAM APPLICATIONS.—An educational institution that
 279 wishes to conduct a program in this state for the prelicensure
 280 education of professional or practical nurses must ~~shall~~ submit

281 to the department a program application and a program review fee
 282 of \$1,000 for each prelicensure nursing education program to be
 283 offered at the institution's main campus, branch campus, or
 284 other instructional site the department. Within 90 days after
 285 receipt of a program application and program review fee, the
 286 board shall approve the program application if it documents
 287 compliance with the standards in paragraphs (a) - (h). If the
 288 program application is incomplete or does not document
 289 compliance, the board shall follow the procedures in subsection
 290 (3). a program application is deemed approved by the board if
 291 the board does not act on the application within the timeframes
 292 specified in subsection (3) or this subsection. Each program
 293 application must include the legal name of the educational
 294 institution, the legal name of the nursing education program,
 295 and, if such program is accredited by an accrediting agency
 296 other than an accrediting agency described in s. 464.003(1), the
 297 name of the accrediting agency. The application must also
 298 document that:

299 (a)1. For a professional nursing education program, the
 300 program director and at least 50 percent of the program's
 301 faculty members are registered nurses who have, ~~at a minimum,~~ a
 302 master's or higher bachelor's degree in nursing or a bachelor's
 303 and a master's degree in nursing and a master's or higher degree
 304 in a field or a related to nursing field.

305 2.~~(b)~~ For a practical nursing education program, the
 306 program director and at least 50 percent of the program's
 307 faculty members are registered nurses who have, ~~at a minimum,~~ a
 308 bachelor's or higher degree in nursing.

309
 310 The educational degree requirements of this paragraph may be
 311 documented by an official transcript or by a written statement
 312 from the educational institution verifying that the institution
 313 conferred the degree.

314 (b)~~(e)~~ The program's nursing major curriculum consists of
 315 at least:

316 1. Fifty percent clinical training for a practical nursing
 317 education program, an associate degree professional nursing
 318 education program, or a professional diploma nursing education
 319 program.

320 2. Forty percent clinical training for a bachelor's degree
 321 professional nursing education program.

322 (c)~~(d)~~ No more than 25 percent of the program's clinical
 323 training consists of clinical simulation.

324 (d)~~(e)~~ The program has signed agreements with each agency,
 325 facility, and organization included in the curriculum plan as
 326 clinical training sites and community-based clinical experience
 327 sites.

328 (e)~~(f)~~ The program has written policies for faculty which
 329 include provisions for direct or indirect supervision by program
 330 faculty or clinical preceptors for students in clinical training
 331 consistent with the following standards:

332 1. The number of program faculty members equals at least
 333 one faculty member directly supervising every 12 students unless
 334 the written agreement between the program and the agency,
 335 facility, or organization providing clinical training sites
 336 allows more students, not to exceed 18 students, to be directly

337 supervised by one program faculty member.

338 2. For a hospital setting, indirect supervision may occur
 339 only if there is direct supervision by an assigned clinical
 340 preceptor, a supervising program faculty member is available by
 341 telephone, and such arrangement is approved by the clinical
 342 facility.

343 3. For community-based clinical experiences that involve
 344 student participation in invasive or complex nursing activities,
 345 students must be directly supervised by a program faculty member
 346 or clinical preceptor and such arrangement must be approved by
 347 the community-based clinical facility.

348 4. For community-based clinical experiences not subject to
 349 subparagraph 3., indirect supervision may occur only when a
 350 supervising program faculty member is available to the student
 351 by telephone.

352
 353 A program's policies established under this paragraph must
 354 require a clinical preceptor, if supervising students in a
 355 professional nursing education program, to be a registered nurse
 356 or, if supervising students in a practical nursing education
 357 program, to be a registered nurse or licensed practical nurse.

358 ~~(f)(g)~~ The professional or practical nursing curriculum
 359 plan documents clinical experience and theoretical instruction
 360 in medical, surgical, obstetric, pediatric, and geriatric
 361 nursing. A professional nursing curriculum plan shall also
 362 document clinical experience and theoretical instruction in
 363 psychiatric nursing. Each curriculum plan must document clinical
 364 training experience in appropriate settings that include, but

365 are not limited to, acute care, long-term care, and community
 366 settings.

367 (g)~~(h)~~ The professional or practical nursing education
 368 program provides theoretical instruction and clinical
 369 application in personal, family, and community health concepts;
 370 nutrition; human growth and development throughout the life
 371 span; body structure and function; interpersonal relationship
 372 skills; mental health concepts; pharmacology and administration
 373 of medications; and legal aspects of practice. A professional
 374 nursing education program shall also provide theoretical
 375 instruction and clinical application in interpersonal
 376 relationships and leadership skills; professional role and
 377 function; and health teaching and counseling skills.

378
 379 ~~Upon the board's approval of a program application, the program~~
 380 ~~becomes an approved program under this section.~~

381 (3)~~(2)~~ STATUS OF CERTAIN PROGRAMS.

382 ~~(a)~~ A professional or practical nursing education program
 383 becomes an approved program if that, as of June 30, 2009, the
 384 program:

385 (a)~~1.~~ Has full or provisional approval from the board or,
 386 except as provided in paragraph (b), is on probationary status,
 387 ~~except as provided in subparagraph 2., becomes an approved~~
 388 ~~program under this section. In order to retain approved program~~
 389 ~~status, such program shall submit the report required under~~
 390 ~~paragraph (c) to the board by November 1, 2009, and annually~~
 391 ~~thereafter.~~

392 (b)~~2.~~ Is on probationary status because the program did

393 not meet the board's requirement for ~~program~~ graduate passage
 394 rates. Such program ~~on the National Council of State Boards of~~
 395 ~~Nursing Licensing Examination,~~ shall remain on probationary
 396 status until it the program achieves a graduate passage rate for
 397 calendar year 2009 or 2010 that equals or exceeds the required
 398 passage rate for the respective calendar year and ~~compliance~~
 399 ~~with the program graduate passage rate requirement in paragraph~~
 400 ~~(5)(a). A program that is subject to this subparagraph must~~
 401 disclose its probationary status in writing to the program's
 402 students and applicants ~~submit the report required under~~
 403 ~~paragraph (c) to the board by November 1, 2009, and annually~~
 404 ~~thereafter and must comply with paragraph (5)(c). If the program~~
 405 ~~does not achieve the required passage rate compliance by July 1,~~
 406 ~~2011, the board shall terminate the program pursuant to chapter~~
 407 120 as provided in paragraph (5)(d).

408 ~~(b) Each professional or practical nursing program that~~
 409 ~~has its application approved by the board under subsection (1)~~
 410 ~~on or after July 1, 2009, shall annually submit the report~~
 411 ~~required under paragraph (c) to the board by November 1 of each~~
 412 ~~year following initial approval of its application.~~

413 (4) ANNUAL REPORT.—By November 1 of each year, each
 414 approved program shall submit to the board an

415 ~~(c) The annual report~~ comprised of ~~required by this~~
 416 ~~subsection must include an affidavit certifying continued~~
 417 ~~compliance with paragraphs (1)(a)-(g) subsection (1), must~~
 418 ~~provide a summary description of the program's compliance with~~
 419 ~~paragraphs (1)(a)-(g) with subsection (1), and~~ documentation
 420 ~~must document for the previous academic year that, to the extent~~

421 applicable, sets forth for each professional and practical
 422 nursing program:

423 (a)1. The number of student applications received, the
 424 number of qualified applicants, applicants and the number of
 425 students accepted, accepted applicants who enroll in the
 426 program, students enrolled in the program, and-

427 2. the number of program graduates.

428 3. The program's graduate passage rate on the National
 429 Council of State Boards of Nursing Licensing Examination.

430 (b)4. The program's retention rates for students tracked
 431 from program entry to graduation.

432 (c)5. The program's accreditation status, including
 433 identification of the accrediting agency if such agency is not
 434 an accrediting agency described in s. 464.003(1) body.

435 (2)(3) PROGRAM APPROVAL.-

436 (a) Upon receipt of a If an institution's program
 437 application and review fee, the department shall examine the
 438 application to determine whether it is complete. If a program
 439 application is not complete incomplete, the department board
 440 shall notify the educational institution in writing of any
 441 apparent errors or omissions within 30 days after the
 442 department's receipt of the application and follow the
 443 procedures in s. 120.60. A program application is deemed
 444 complete upon the department's receipt of:

445 1. The initial application, if the department does not
 446 notify the educational institution of any errors or omissions
 447 within the 30-day period; or

448 2. A revised application that corrects each error and

449 omission of which the department notifies the educational
 450 institution within the 30-day period.

451 (b) Within 90 days after the department's receipt of a
 452 complete program application, the board shall:

453 1. Approve the ~~If an institution's program~~ application if
 454 it documents ~~does not document~~ compliance with paragraphs
 455 (1)(a)-(g); or the standards in subsection (1), within 90 days
 456 after the board's receipt of the program application, the board
 457 shall

458 2. Provide the educational institution with a notice of
 459 intent to deny the ~~program~~ application if it does not document
 460 compliance with paragraphs (1)(a)-(g) that sets forth written
 461 reasons for the denial. The notice must set forth written
 462 reasons for the board's denial of the application. The board may
 463 not deny a program application because of an educational
 464 institution's failure to correct any error or omission of which
 465 the department does not notify the institution within the 30-day
 466 notice period under paragraph (a). The educational institution
 467 may request a hearing on the notice of intent to deny the
 468 program application pursuant to chapter 120.

469 (c) A program application is deemed approved if the board
 470 does not act within the 90-day review period provided under
 471 paragraph (b).

472 (d) Upon the board's approval of a program application,
 473 the program becomes an approved program.

474 (5)(4) INTERNET WEBSITE.—By October 1, 2010, the board
 475 shall publish the following information on its Internet website:

476 (a) A list of each accredited program conducted in the

477 state and the program's graduate passage rates for the most
 478 recent 2 calendar years, which the department shall determine
 479 through the following sources:

480 1. For a program's accreditation status, the specialized
 481 accrediting agencies that are nationally recognized by the
 482 United States Secretary of Education to accredit nursing
 483 education programs.

484 2. For a program's graduate passage rates, the contract
 485 testing service of the National Council of State Boards of
 486 Nursing.

487 (b) The following data for each approved program, which on
 488 nursing programs located in the state. The data shall include,
 489 to the extent applicable:

490 1.(a) All documentation provided by the program in its
 491 applicant for each approved nursing program application if
 492 submitted on or after July 1, 2009.

493 2.(b) The summary description of the each program's
 494 compliance as submitted under subsection (4) paragraph (2)(c).

495 ~~(c) A comprehensive list of each practical and~~
 496 ~~professional nursing program in the state.~~

497 3.(d) The program's accreditation status for each program,
 498 including identification of the accrediting agency if such
 499 agency is not an accrediting agency described in s. 464.003(1)
 500 body.

501 4.(e) The Each program's approval or probationary status.

502 5.(f) The Each program's graduate passage rates for the
 503 most recent 2 calendar years rate on the National Council of
 504 State Boards of Nursing Licensing Examination.

505 ~~(g) The national average for passage rates on the National~~
 506 ~~Council of State Boards of Nursing Licensing Examination.~~

507 6.(h) Each program's retention rates for students tracked
 508 from program entry to graduation.

509 (c) The average passage rates for United States educated
 510 first-time test takers on the National Council of State Boards
 511 of Nursing Licensing Examination for the most recent 2 calendar
 512 years, as calculated by the contract testing service of the
 513 National Council of State Boards of Nursing. The average passage
 514 rates shall be published separately for each type of comparable
 515 degree program listed in sub-subparagraphs (6)(a)1.a.-d.

516
 517 The information data required to be published under this
 518 subsection shall be made available in a manner that allows
 519 interactive searches and comparisons of individual specific
 520 ~~nursing education~~ programs selected by the website user. The
 521 board shall ~~publish the data by December 31, 2009,~~ and update
 522 the Internet website at least quarterly with the available
 523 information data.

524 (6)(5) ACCOUNTABILITY.-

525 (a)1. An approved program must achieve a graduate passage
 526 rate that is not lower than 10 percentage points less than the
 527 average passage rate for graduates of comparable degree programs
 528 who are United States educated first-time test takers on the
 529 National Council of State Boards of Nursing Licensing
 530 Examination during a calendar year, as calculated by the
 531 contract testing service of the National Council of State Boards
 532 of Nursing. For purposes of this subparagraph, an approved

533 program is comparable to all degree programs of the same program
 534 type from among the following program types:

535 a. Professional nursing education programs that terminate
 536 in a bachelor's degree.

537 b. Professional nursing education programs that terminate
 538 in an associate degree.

539 c. Professional nursing education programs that terminate
 540 in a diploma.

541 d. Practical nursing education programs.

542 2. Beginning with graduate passage rates for calendar year
 543 2010, if an approved ~~a professional or practical nursing~~
 544 program's average graduate passage rates do not equal or exceed
 545 the required passage rates rate for first-time test takers on
 546 the National Council of State Boards of Nursing Licensing
 547 Examination falls 10 percent or more below the national average
 548 passage rate for first-time test takers educated in the United
 549 States, as annually published by the contract testing service of
 550 the National Council of State Boards of Nursing, for 2
 551 consecutive calendar years, the board shall place the program on
 552 probationary status pursuant to chapter 120 ~~probation~~ and the
 553 program director must ~~shall be required to~~ appear before the
 554 board to present a plan for remediation. The program shall
 555 remain on probationary status until it achieves a compliance
 556 with the graduate passage rate that equals or exceeds the
 557 required passage rate for any one calendar year.

558 3. Upon the program's achievement of a graduate passage
 559 rate that equals or exceeds the required passage rate,
 560 ~~requirement and shall be terminated by the board, at its next~~

561 regularly scheduled meeting following release of the program's
 562 graduate passage rate by the National Council of State Boards of
 563 Nursing, shall remove the program's probationary status.
 564 However, under paragraph (d) if the program, during the 2
 565 calendar years following its placement on probationary status,
 566 does not achieve the required passage rate for any one
 567 compliance within 2 calendar year, the board shall terminate the
 568 program pursuant to chapter 120 years.

569 (b) If an approved a program fails to submit the annual
 570 report required in subsection (4) (2), the board shall notify
 571 the program director and president or chief executive officer of
 572 the educational institution in writing within 15 days after the
 573 due date of the annual report. The program director must appear
 574 before the board at the board's next regularly scheduled meeting
 575 to explain the reason for the delay place the program on
 576 probation. The board program shall terminate the program
 577 pursuant to chapter 120 remain on probationary status until it
 578 submits the annual report and shall be terminated by the board
 579 under paragraph (d) if it does not submit the annual report
 580 within 6 months after the report's due date.

581 (c) An approved A program placed on probationary status
 582 shall disclose its probationary status in writing to the
 583 program's students and applicants.

584 ~~(d) The board shall terminate a program that fails to~~
 585 ~~comply with subparagraph (2)(a)2., paragraph (a), or paragraph~~
 586 ~~(b) pursuant to chapter 120.~~

587 (7) DISCLOSURE OF GRADUATE PASSAGE RATE DATA.-

588 (a) For each of an approved program's or accredited

589 program's graduates included in the calculation of the program's
 590 graduate passage rate, the department shall disclose to the
 591 program director, upon his or her written request, the name,
 592 examination date, and determination of whether each graduate
 593 passed or failed the National Council for State Boards of
 594 Nursing Licensing Examination, to the extent that such
 595 information is provided to the department by the contract
 596 testing service of the National Council for State Boards of
 597 Nursing. The written request must specify the calendar years for
 598 which the information is requested.

599 (b) A program director to whom confidential information
 600 exempt from public disclosure pursuant to s. 456.014 is
 601 disclosed under this subsection must maintain the
 602 confidentiality of the information and is subject to the same
 603 penalties provided in s. 456.082 for department employees who
 604 unlawfully disclose confidential information.

605 (8)(6) PROGRAM CLOSURE.-

606 (a) An educational institution conducting an approved
 607 program or accredited a nursing program in this state, at least
 608 30 days before voluntarily closing the program, that closes
 609 shall notify the board in writing of the institution's reason
 610 for closing the program, the intended closure date, the
 611 institution's plan to provide for or assist in the completion of
 612 training by the program's students, and advise the board of the
 613 arrangements for storage of the program's permanent records.

614 (b) An educational institution conducting a nursing
 615 education program that is terminated under subsection (6) or
 616 closed under subparagraph (10)(b)3.:

617 1. May not accept or enroll new students.
 618 2. Must submit to the board within 30 days after the
 619 program is terminated or closed a written description of how the
 620 institution will assist in the completion of training by the
 621 program's students and the institution's arrangements for
 622 storage of the program's permanent records.

623 (c) If an educational institution does not comply with
 624 paragraph (a) or paragraph (b), the board shall provide a
 625 written notice explaining the institution's noncompliance to the
 626 following persons and entities:

627 1. The president or chief executive officer of the
 628 educational institution.

629 2. The Board of Governors, if the program is conducted by
 630 a state university.

631 3. The district school board, if the program is conducted
 632 by an educational institution operated by a school district.

633 4. The Commission for Independent Education, if the
 634 program is conducted by an educational institution licensed
 635 under chapter 1005.

636 5. The State Board of Education, if the program is
 637 conducted by an educational institution in the Florida College
 638 System or by an educational institution that is not subject to
 639 subparagraphs 2.-4.

640 (9) (7) RULEMAKING.—The board does not have any rulemaking
 641 authority to administer this section, except that the board
 642 shall adopt a rule that prescribes the format for submitting
 643 program applications under subsection (1) and annual reports
 644 submitting summary descriptions of program compliance under

645 subsection (4) paragraph (2)(c). The board may not impose any
 646 condition or requirement on an educational institution
 647 submitting a program application, an approved program, or an
 648 accredited program, ~~a program on probationary status~~ except as
 649 expressly provided in this section. The board shall repeal all
 650 rules, or portions thereof, in existence on July 1, 2009, that
 651 are inconsistent with this subsection.

652 (10) APPLICABILITY TO ACCREDITED PROGRAMS.—

653 (a) Subsections (1)-(4), paragraph (5)(b), and subsection
 654 (6) do not apply to an accredited program. An accredited program
 655 on probationary status before July 1, 2010, ceases to be subject
 656 to the probationary status.

657 (b) If an accredited program ceases to be accredited, the
 658 educational institution conducting the program:

659 1. Within 10 business days after the program ceases to be
 660 accredited, must provide written notice of the date that the
 661 program ceased to be accredited to the board, the program's
 662 students and applicants, and each entity providing clinical
 663 training sites or community-based clinical experience sites for
 664 the program. The educational institution must continue to
 665 provide the written notice to new students, applicants, and
 666 entities providing clinical training sites or community-based
 667 clinical experience sites for the program until the program
 668 becomes an approved program or is closed under subparagraph 3.

669 2. Within 30 days after the program ceases to be
 670 accredited, must submit an affidavit to the board, signed by the
 671 educational institution's president or chief executive officer,
 672 that certifies the institution's compliance with subparagraph 1.

673 The board shall notify the persons listed in subparagraph
674 (8)(c)1. and the applicable entities listed in subparagraphs
675 (8)(c)2.-5. if an educational institution does not submit the
676 affidavit required by this subparagraph.

677 3. May apply to become an approved program under this
678 section. If the educational institution:

679 a. Within 30 days after the program ceases to be
680 accredited, submits a program application and review fee to the
681 department under subsection (1) and the affidavit required under
682 subparagraph 2., the program shall be deemed an approved program
683 from the date that the program ceased to be accredited until the
684 date that the board approves or denies the program application.
685 The program application must be denied by the board pursuant to
686 chapter 120 if it does not contain the affidavit. If the board
687 denies the program application under subsection (2) or because
688 the program application does not contain the affidavit, the
689 program shall be closed and the educational institution
690 conducting the program must comply with paragraph (8)(b).

691 b. Does not apply to become an approved program pursuant
692 to sub-subparagraph a., the program shall be deemed an approved
693 program from the date that the program ceased to be accredited
694 until the 31st day after that date. On the 31st day after the
695 program ceased to be accredited, the program shall be closed and
696 the educational institution conducting the program must comply
697 with paragraph (8)(b).

698 ~~(8) The Florida Center for Nursing and the Office of~~
699 ~~Program Policy Analysis and Government Accountability shall~~
700 ~~each:~~

701 ~~(a) Monitor the administration of this section and~~
 702 ~~evaluate the effectiveness of this section in achieving quality~~
 703 ~~nursing programs with a higher production of quality nursing~~
 704 ~~graduates.~~

705 ~~(b) Report its findings and make recommendations, if~~
 706 ~~warranted, to improve the effectiveness of this section to the~~
 707 ~~Governor, the President of the Senate, and the Speaker of the~~
 708 ~~House of Representatives by February 1, 2010.~~

709 (11)(9) IMPLEMENTATION STUDY.—The Florida Center for
 710 Nursing and the education policy area of the Office of Program
 711 Policy Analysis and Government Accountability shall study the 5-
 712 year administration of this section and submit reports to the
 713 Governor, the President of the Senate, and the Speaker of the
 714 House of Representatives by January 30, 2011, and annually
 715 thereafter through January 30, 2015. The annual reports shall
 716 address the previous academic year; set forth data on the
 717 measures specified in paragraphs (a) and (b) ~~for each~~
 718 ~~prelicensure practical and professional nursing program in the~~
 719 ~~state~~, as such data becomes available; and include an evaluation
 720 of such data for purposes of determining whether this section is
 721 increasing the availability of nursing education programs and
 722 the production of quality nurses. The department and each
 723 approved program or accredited program shall comply with
 724 requests for data from the Florida Center for Nursing and the
 725 education policy area of the Office of Program Policy Analysis
 726 and Government Accountability.

727 (a) The education policy area of the Office of Program
 728 Policy Analysis and Government Accountability shall evaluate

729 program-specific data for each approved program and accredited
 730 program conducted in the state, including, but not limited to:

731 1. The number of ~~nursing education~~ programs and student
 732 slots available.

733 2. The number of student applications submitted, the
 734 number of qualified applicants, and the number of students
 735 accepted.

736 3. The number of program graduates.

737 4. Program retention rates of students tracked from
 738 program entry to graduation.

739 5. Graduate passage rates on the National Council of State
 740 Boards of Nursing Licensing Examination.

741 6. The number of graduates who become employed as
 742 practical or professional nurses in the state.

743 (b) The Florida Center for Nursing shall evaluate the
 744 board's implementation of the:

745 1. Program application approval process, including, but
 746 not limited to, the number of program applications submitted
 747 under subsection (1); the number of program applications
 748 approved and denied by the board under subsection (2)
 749 ~~subsections (1) and (3);~~ the number of denials of program
 750 applications reviewed under chapter 120; and a description of
 751 the outcomes of those reviews.

752 2. Accountability ~~Probation and termination~~ processes,
 753 including, but not limited to, the number of programs ~~placed~~ on
 754 probationary status, the number of approved programs for which
 755 the program director is required to appear before the board
 756 under subsection (6), the number of approved programs terminated

757 by the board ~~under paragraph (5)(d)~~, the number of terminations
 758 reviewed under chapter 120, and a description of the outcomes of
 759 those reviews.

760 Section 6. Subsection (4) of section 464.022, Florida
 761 Statutes, is amended to read:

762 464.022 Exceptions.—No provision of this part shall be
 763 construed to prohibit:

764 (4) The practice of nursing by graduates of prelicensure
 765 nursing education approved programs listed in s. 464.008(1)(c)
 766 ~~or the equivalent~~, pending the result of the first licensing
 767 examination for which they are eligible following graduation,
 768 provided they practice under direct supervision of a registered
 769 professional nurse. The board shall by rule define what
 770 constitutes direct supervision.

771 Section 7. Paragraph (a) of subsection (1) and subsection
 772 (2) of section 458.348, Florida Statutes, are amended to read:

773 458.348 Formal supervisory relationships, standing orders,
 774 and established protocols; notice; standards.—

775 (1) NOTICE.—

776 (a) When a physician enters into a formal supervisory
 777 relationship or standing orders with an emergency medical
 778 technician or paramedic licensed pursuant to s. 401.27, which
 779 relationship or orders contemplate the performance of medical
 780 acts, or when a physician enters into an established protocol
 781 with an advanced registered nurse practitioner, which protocol
 782 contemplates the performance of medical acts identified and
 783 approved by the joint committee pursuant to s. 464.003(2)~~(3)(d)~~
 784 or acts set forth in s. 464.012(3) and (4), the physician shall

785 submit notice to the board. The notice shall contain a statement
 786 in substantially the following form:

787 I, ...(name and professional license number of
 788 physician)..., of ...(address of physician)... have hereby
 789 entered into a formal supervisory relationship, standing orders,
 790 or an established protocol with ...(number of persons)...
 791 emergency medical technician(s), ...(number of persons)...
 792 paramedic(s), or ...(number of persons)... advanced registered
 793 nurse practitioner(s).

794 (2) ESTABLISHMENT OF STANDARDS BY JOINT COMMITTEE.—The
 795 joint committee created under s. 464.003(2)~~(3)(d)~~ shall
 796 determine minimum standards for the content of established
 797 protocols pursuant to which an advanced registered nurse
 798 practitioner may perform medical acts identified and approved by
 799 the joint committee pursuant to s. 464.003(2)~~(3)(d)~~ or acts set
 800 forth in s. 464.012(3) and (4) and shall determine minimum
 801 standards for supervision of such acts by the physician, unless
 802 the joint committee determines that any act set forth in s.
 803 464.012(3) or (4) is not a medical act. Such standards shall be
 804 based on risk to the patient and acceptable standards of medical
 805 care and shall take into account the special problems of
 806 medically underserved areas. The standards developed by the
 807 joint committee shall be adopted as rules by the Board of
 808 Nursing and the Board of Medicine for purposes of carrying out
 809 their responsibilities pursuant to part I of chapter 464 and
 810 this chapter, respectively, but neither board shall have
 811 disciplinary powers over the licensees of the other board.

CS/CS/HB 1337

2010

812 Section 8. Paragraph (a) of subsection (1) of section
 813 459.025, Florida Statutes, is amended to read:
 814 459.025 Formal supervisory relationships, standing orders,
 815 and established protocols; notice; standards.-

816 (1) NOTICE.-

817 (a) When an osteopathic physician enters into a formal
 818 supervisory relationship or standing orders with an emergency
 819 medical technician or paramedic licensed pursuant to s. 401.27,
 820 which relationship or orders contemplate the performance of
 821 medical acts, or when an osteopathic physician enters into an
 822 established protocol with an advanced registered nurse
 823 practitioner, which protocol contemplates the performance of
 824 medical acts identified and approved by the joint committee
 825 pursuant to s. 464.003(2)~~(3)~~~~(d)~~ or acts set forth in s.
 826 464.012(3) and (4), the osteopathic physician shall submit
 827 notice to the board. The notice must contain a statement in
 828 substantially the following form:

829 I, ...(name and professional license number of osteopathic
 830 physician)..., of ...(address of osteopathic physician)... have
 831 hereby entered into a formal supervisory relationship, standing
 832 orders, or an established protocol with ...(number of
 833 persons)... emergency medical technician(s), ...(number of
 834 persons)... paramedic(s), or ...(number of persons)... advanced
 835 registered nurse practitioner(s).

836 Section 9. Paragraph (c) of subsection (3) of section
 837 464.012, Florida Statutes, is amended to read:

838 464.012 Certification of advanced registered nurse
 839 practitioners; fees.-

840 (3) An advanced registered nurse practitioner shall
 841 perform those functions authorized in this section within the
 842 framework of an established protocol that is filed with the
 843 board upon biennial license renewal and within 30 days after
 844 entering into a supervisory relationship with a physician or
 845 changes to the protocol. The board shall review the protocol to
 846 ensure compliance with applicable regulatory standards for
 847 protocols. The board shall refer to the department licensees
 848 submitting protocols that are not compliant with the regulatory
 849 standards for protocols. A practitioner currently licensed under
 850 chapter 458, chapter 459, or chapter 466 shall maintain
 851 supervision for directing the specific course of medical
 852 treatment. Within the established framework, an advanced
 853 registered nurse practitioner may:

854 (c) Perform additional functions as may be determined by
 855 rule in accordance with s. 464.003 (2) ~~(3)~~ ~~(d)~~.

856 Section 10. Subsection (2) of section 960.28, Florida
 857 Statutes, is amended to read:

858 960.28 Payment for victims' initial forensic physical
 859 examinations.—

860 (2) The Crime Victims' Services Office of the department
 861 shall pay for medical expenses connected with an initial
 862 forensic physical examination of a victim of sexual battery as
 863 defined in chapter 794 or a lewd or lascivious offense as
 864 defined in chapter 800. Such payment shall be made regardless of
 865 whether the victim is covered by health or disability insurance
 866 and whether the victim participates in the criminal justice
 867 system or cooperates with law enforcement. The payment shall be

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868 made only out of moneys allocated to the Crime Victims' Services
869 Office for the purposes of this section, and the payment may not
870 exceed \$500 with respect to any violation. The department shall
871 develop and maintain separate protocols for the initial forensic
872 physical examination of adults and children. Payment under this
873 section is limited to medical expenses connected with the
874 initial forensic physical examination, and payment may be made
875 to a medical provider using an examiner qualified under part I
876 of chapter 464, excluding s. 464.003(16)~~(5)~~; chapter 458; or
877 chapter 459. Payment made to the medical provider by the
878 department shall be considered by the provider as payment in
879 full for the initial forensic physical examination associated
880 with the collection of evidence. The victim may not be required
881 to pay, directly or indirectly, the cost of an initial forensic
882 physical examination performed in accordance with this section.

883 Section 11. This act shall take effect July 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1363 Postsecondary Student Fees
SPONSOR(S): State Universities & Private Colleges Policy Committee and Glorioso
TIED BILLS: IDEN./SIM. BILLS: SB 1148

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) State Universities & Private Colleges Policy Committee	12 Y, 0 N, As CS	Thomas	Tilton
2) State Universities & Private Colleges Appropriations Committee	(ref. removed)		
3) Education Policy Council		White <i>tr</i>	Lowell <i>PL</i>
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The Committee Substitute for House Bill 1363 (CS/HB 1363) addresses conflicting interpretations of current statute by clarifying time limitations for public postsecondary fee exemptions available to specified students who are or have been in the custody of the Department of Children and Family Services (DCFS). Specifically, the bill provides that the following students are eligible for postsecondary fee exemptions until the students reach 28 years of age: (a) a student who is or was, at the time he or she reached 18 years of age, in the custody of the DCFS; (b) a student who was placed in a guardianship by the court after spending specified time in DCFS custody; (c) a student who is or was, at the time he or she reached 18 years of age, in the custody of a relative under the Relative Caregiver Program; and (d) a student who was adopted from the DCFS after May 5, 1997.

The fiscal impact of the bill is indeterminate. (See FISCAL COMMENTS section of this analysis.)

The effective date provided is July 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Current law provides an exemption from the payment of tuition and certain fees at a school district that provides postsecondary career programs, a community college, or a state university for a student:

- Who is or was, at the time he or she reached 18 years of age, in the custody of the DCFS;
- Who is or was, at the time he or she reached 18 years of age, in the custody of a relative under s. 39.5085, F.S. (the Relative Caregiver Program);
- Who was adopted from the DCFS after May 5, 1997; or
- Who, after spending at least six months in the custody of the DCFS after reaching 16 years of age, was placed in a guardianship by the court.¹

The Department of Education (DOE) reported that 1,283 students took advantage of the fee exemption at a community college during the 2008-2009 academic year, taking a total of 16,320 credit hours at a cost of \$1.9 million dollars.² According to the Board of Governors, 189 students took advantage of the fee exemption at a state university during the 2008-2009 academic year, at a cost of \$633,088 dollars.³ No information was provided on the number of students, if any, using the fee exemption in a school district postsecondary career program.

The DCFS reported that in the 2008-2009 Fiscal Year: 1,266 children were 18 years of age and in the custody of the DCFS; 603 children were placed in the custody of a relative under the Relative Caregiver Program; 3,777 children were adopted; and 218 children were placed in a guardianship by the court after spending at least six months in custody. Information on the number of students who are currently eligible for the fee exemption was not available.

Use of the exemption is not limited to any specific type or level of educational program. It appears that the exemption may be used, to the extent the specified time limit permits, for any workforce education program, any associate degree program, any baccalaureate degree program, any graduate degree program, or any professional degree program.

The fee exemption includes fees associated with enrollment in career-preparatory instruction and completion of the college-level communication and computation skills testing program (CLAST).⁴ The CLAST was repealed by Section 21 of Ch. 2009-50, L.O.F. However, an associate in arts or

¹ Section 1009.25(2)(c), F.S.

² E-mail correspondence with Department of Education staff on March 16, 2010.

³ E-mail correspondence with Board of Governors staff on March 24, 2010.

⁴ Section 1009.25(2)(c), F.S.

baccalaureate degree may not be conferred upon any student who fails to successfully complete one of the following requirements:

- Achieve a score that meets or exceeds a minimum score on a nationally standardized examination, as established by the State Board of Education in conjunction with the Board of Governors,⁵ or
- Demonstrate successful remediation of any academic deficiencies and achieve a cumulative GPA of 2.5 or above on a 4.0 scale in postsecondary-level coursework identified by the State Board of Education in conjunction with the Board of Governors.

The provisions of s. 1009.25(2)(c), F.S., establish a time limitation for use of the exemption and state that, “. . . the exemption remains valid for no more than four years after the date of graduation from high school.”⁶ There has been some confusion regarding which of the four categories of students are covered by the four-year time limitation. Representatives of the DCFS indicate that the four-year time limitation applies only to students in the custody of a relative under the Relative Caregiver Program or adopted from the DCFS. The DCFS states that the four-year time limitation does not apply to the two categories of students that were added to the exemption in 2006, i.e., students in the custody of the DCFS at the age of 18 and students placed in guardianship by the court.⁷

The DOE reported that many postsecondary institutions have expressed confusion regarding the time limitation on the eligibility of students who qualified for this exemption. Consequently, some institutions may have improperly imposed a time limitation on some students.⁸

The Board of Governors (BOG) interprets the time limitation on the exemption for all four classifications as extending until the time the student reaches the age of 23.⁹ The BOG’s interpretation is also consistent with the state¹⁰ and federal Foster Care Independent Living Program¹¹ which allows young adults to remain eligible for postsecondary benefits until they reach the age of 23.¹²

Effect of Proposed Changes

CS/HB 1363 amends s. 1009.25(2)(c) and (d), F.S., to provide that the following students are eligible for postsecondary fee exemptions until the students reach 28 years of age: (a) a student who is or was, at the time he or she reached 18 years of age, in the custody of the DCFS; (b) a student who was placed in a guardianship by the court after spending six months in the custody of the DCFS after reaching 16 years of age; (c) a student who is or was, at the time he or she reached 18 years of age, in the custody of a relative under the Relative Caregiver Program; and (d) a student who was adopted from the DCFS after May 5, 1997.

The bill also deletes obsolete law referencing the CLAST, which was repealed during the 2009 Legislative session.

B. SECTION DIRECTORY:

Section 1. Amends s.1009.25, F.S., revising fee exemptions.

Section 2. Provides an effective date of July 1, 2010.

⁵ The State Board of Education (Rule 6A-10.0311, F.A.C.) and Board of Governors (Regulation 6.017) have adopted rules and regulations relating to scores and national standardized exams, i.e. the Accuplacer, SAT Reasoning Test, and ACT.

⁶ Section 1009.25(2)(c), F.S.

⁷ Department of Children and Family Services analysis of HB 1363 dated March 16, 2010.

⁸ Department of Education analysis of HB 1363 dated March 16, 2010.

⁹ Board of Governors analysis of HB 1363 dated March 22, 2010.

¹⁰ Section 409.1451(2)(b), F.S.

¹¹ <http://frwebgate6.access.gpo.gov/cgi-bin/PDFgate.cgi?WALSdocID=274728252639+0+2+0&WALSaction=retrieve> (last visited March 22, 2010).

¹² Board of Governors analysis of HB 136e dated March 22, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

According to the DOE, the bill does not change the existing fiscal impact of the amended fee exemptions.¹³

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:

None.

¹³ Department of Education analysis of HB 1363 dated March 16, 2010.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 25, 2010, the State Universities & Private Colleges Policy Committee adopted one amendment to HB 1363 and reported the bill favorably as a Committee Substitute (CS). The amendment revises the time limitation for use of the fee exemption by providing that an eligible student may use the exemption until he or she reaches the age of 28. The amendment also removes obsolete language referencing the CLAST. This analysis is drafted to the CS.

1 A bill to be entitled
 2 An act relating to postsecondary student fees; amending s.
 3 1009.25, F.S.; clarifying an exemption from fee
 4 requirements provided for a student who is or was at the
 5 time he or she reached 18 years of age in the custody of a
 6 relative under the Relative Caregiver Program or who was
 7 adopted from the Department of Children and Family
 8 Services after a specified date; providing that certain
 9 exemptions include fees associated with enrollment in
 10 career-preparatory instruction; deleting an exemption
 11 associated with completion of the college-level
 12 communication and computation skills testing program;
 13 providing that the exemptions remain valid for a specified
 14 time; providing an effective date.

15
 16 Be It Enacted by the Legislature of the State of Florida:

17
 18 Section 1. Subsection (2) of section 1009.25, Florida
 19 Statutes, is amended to read:

20 1009.25 Fee exemptions.—

21 (2) The following students are exempt from the payment of
 22 tuition and fees, including lab fees, at a school district that
 23 provides postsecondary career programs, community college, or
 24 state university:

25 (a) A student enrolled in a dual enrollment or early
 26 admission program pursuant to s. 1007.27 or s. 1007.271.

27 (b) A student enrolled in an approved apprenticeship
 28 program, as defined in s. 446.021.

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29 (c) A student who is or was at the time he or she reached
 30 18 years of age in the custody of the Department of Children and
 31 Family Services or ~~a relative under s. 39.5085, who is adopted~~
 32 ~~from the Department of Children and Family Services after May 5,~~
 33 ~~1997, or~~ who, after spending at least 6 months in the custody of
 34 the department after reaching 16 years of age, was placed in a
 35 guardianship by the court. Such exemption includes fees
 36 associated with enrollment in career-preparatory instruction ~~and~~
 37 ~~completion of the college-level communication and computation~~
 38 ~~skills testing program. Such an exemption is available to any~~
 39 ~~student who was in the custody of a relative under s. 39.5085 at~~
 40 ~~the time he or she reached 18 years of age or was adopted from~~
 41 ~~the Department of Children and Family Services after May 5,~~
 42 ~~1997; however,~~ The exemption remains valid until the student
 43 reaches 28 years of age ~~for no more than 4 years after the date~~
 44 ~~of graduation from high school.~~

45 (d) A student who is or was at the time he or she reached
 46 18 years of age in the custody of a relative under s. 39.5085 or
 47 who was adopted from the Department of Children and Family
 48 Services after May 5, 1997. Such exemption includes fees
 49 associated with enrollment in career-preparatory instruction.
 50 The exemption remains valid until the student reaches 28 years
 51 of age.

52 (e) ~~(d)~~ A student enrolled in an employment and training
 53 program under the welfare transition program. The regional
 54 workforce board shall pay the state university, community
 55 college, or school district for costs incurred for welfare
 56 transition program participants.

57 (f)~~(e)~~ A student who lacks a fixed, regular, and adequate
 58 nighttime residence or whose primary nighttime residence is a
 59 public or private shelter designed to provide temporary
 60 residence for individuals intended to be institutionalized, or a
 61 public or private place not designed for, or ordinarily used as,
 62 a regular sleeping accommodation for human beings.

63 (g)~~(f)~~ A student who is a proprietor, owner, or worker of
 64 a company whose business has been at least 50 percent negatively
 65 financially impacted by the buy-out of property around Lake
 66 Apopka by the State of Florida. Such a student may receive a fee
 67 exemption only if the student has not received compensation
 68 because of the buy-out, the student is designated a Florida
 69 resident for tuition purposes, pursuant to s. 1009.21, and the
 70 student has applied for and been denied financial aid, pursuant
 71 to s. 1009.40, which would have provided, at a minimum, payment
 72 of all student fees. The student is responsible for providing
 73 evidence to the postsecondary education institution verifying
 74 that the conditions of this paragraph have been met, including
 75 supporting ~~support~~ documentation provided by the Department of
 76 Revenue. The student must be currently enrolled in, or begin
 77 coursework within, a program area by fall semester 2000. The
 78 exemption is valid for a period of 4 years after ~~from~~ the date
 79 that the postsecondary education institution confirms that the
 80 conditions of this paragraph have been met.

81 Section 2. This act shall take effect July 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1505

John M. McKay Scholarships for Students with Disabilities

Program

SPONSOR(S): Flores and others

TIED BILLS:

IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) PreK-12 Policy Committee	12 Y, 0 N, As CS	Duncan	Ahearn
2) PreK-12 Appropriations Committee	8 Y, 0 N	Seifert	Heflin
3) Education Policy Council		White <i>tw</i>	Lowell <i>P</i>
4)			
5)			

SUMMARY ANALYSIS

The Committee Substitute for HB 1505 (CS/HB 1505) changes student eligibility requirements for the McKay Scholarship Program. Specifically, a student is eligible for the program if the student was enrolled and reported by a school district for funding during *any* previous October and February FEFP surveys during the same school year in kindergarten through grade 12 or was enrolled and reported by the Florida School for the Deaf and the Blind during the preceding October and February student membership surveys in grades kindergarten through grade 12.

The bill also opens eligibility to kindergarten students who would not previously have met the prior year attendance requirement. The bill requires a child with a developmental delay who has received early intervention services under the Voluntary Prekindergarten Education Program to be reevaluated before entering kindergarten. An Individual Education Plan must be developed if he or she is eligible for the Exceptional Student Education Program.

CS/HB 1505 provides an exception to the requirement that a McKay Scholarship recipient have regular and direct contact with his or her private school teachers at the school's physical location by authorizing the use of an alternative site for instruction and services if the student's parent provides a notarized statement from the licensed physician or psychologist treating the student's disability. The statement must certify that the student's welfare or the welfare of other students in the classroom will be jeopardized if the student is required to regularly attend class at the physical location of the school. The statement must be provided annually to the Department of Education at least 60 days prior to the date of the first scholarship payment for each school year and based on an annual review of the student's disability by the student's physician or psychologist.

The bill authorizes the Commissioner of Education (COE) to deny, suspend, or revoke a private school's participation in the scholarship program if the COE determines that an owner or operator of the private school is operating, or has operated, an educational institution in this state or another state or jurisdiction in a manner contrary to the health, safety, or welfare of the public. The bill provides factors that the COE may consider in making such a determination.

This bill has an indeterminate fiscal impact on the state and school districts. See FISCAL COMMENTS section of this analysis.

The bill provides an effective date of July 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Law

Educational Services for Students with Disabilities

An "exceptional student" is defined as any student who has been determined eligible for a special program in accordance with the rules adopted by the State Board of Education (SBE).¹ District school boards are statutorily required to provide exceptional students in grades K-12 with special education services, also known as exceptional student education (ESE), which include related services such as transportation, appropriate diagnosis, evaluation, special instruction, facilities, and services such as physical and occupational therapy.² Special instruction, classes, and services may be provided within the district school system, in cooperation with other district school systems, or through contractual arrangements with approved private schools or community facilities that meet certain standards.³

If a student is eligible for an ESE program, an education plan is developed for the student. This plan is referred to as an:

- Individual educational plan (IEP) for students with disabilities ages three through 21.⁴
- Individualized family support plan (IFSP) for children ages birth through two (and may also be used for children ages three through five years in lieu of an IEP).⁵
- Educational plan (EP) for gifted students.⁶

¹ The term exceptional student includes students who are gifted and students with disabilities who have an intellectual disability; autism spectrum disorder; a speech impairment; a language impairment; an orthopedic impairment; an other health impairment; traumatic brain injury; a visual impairment; an emotional or behavioral disability; or a specific learning disability, including, but not limited to dyslexia, dyscalculia, or developmental aphasia; students who are deaf or hard of hearing or dual sensory impaired; students who are hospitalized or homebound; children with developmental delays ages birth through 5 years, or children, ages birth through 2 years, with established conditions identified in the SBE rules. s. 1003.01(3)(a), F.S.

² s. 1003.01(3)(b), F.S.

³ s. 1003.57(1), F.S.

⁴ Rule 6A-6.03028, F.A.C.

⁵ Rule 6A-6.03029, F.A.C.

⁶ Rule 6A-6.030191, F.A.C.

Parents participate in the development of the plans, which cannot be implemented until the parent provides written consent for initial placement in the ESE program.⁷

Within 30 days of determining a student's eligibility to receive ESE or related services by a school district or other state agency, an EP, IEP, or IFSP team must meet to develop a plan to address the student's needs.⁸ The multidisciplinary team includes school and district staff, parents, and other experts, if necessary. The IEP must be reviewed at least annually and reevaluated at least once every three years, unless the school district, parent, or teacher requests a reevaluation to ensure eligibility to receive special education and related services.⁹

The John M. McKay Scholarships for Students with Disabilities Program

The John M. McKay Scholarships for Students with Disabilities Program was originally created in 1999 as a pilot program.¹⁰ The program provides the option for a student with a disability for whom an IEP has been written in accordance with rules of the State Board of Education (SBE), to attend a public school other than the one to which the student is assigned or to accept a scholarship to a private school of choice.

Students with disabilities include K-12 students who are documented as having: an intellectual disability; a speech impairment; a language impairment; a hearing impairment, including deafness; a visual impairment, including blindness; a dual sensory impairment; an orthopedic impairment; an other health impairment; an emotional or behavioral disability; a specific learning disability, including, but not limited to, dyslexia, dyscalculia, or developmental aphasia; a traumatic brain injury; a developmental delay;¹¹ or autism spectrum disorder.¹²

Student Eligibility and Prior-Year Public School Attendance

Any parent of a public school student with a disability who is dissatisfied with the student's progress may request and receive a McKay Scholarship in order for the child to enroll in and attend a private school. The student must have spent "the prior school year in attendance" at a Florida public school or the Florida School for the Deaf and the Blind and be accepted for admission to an eligible private school. The parent must request a scholarship from the Department of Education (DOE) at least 60 days prior to the date of the first scholarship payment.¹³ The DOE must notify the school district of the parent's intent upon the receipt of the parent's request and is required to, in cooperation with the school district, determine the student's eligibility for a McKay Scholarship.¹⁴

"Prior school year in attendance" means the student was enrolled and reported by:

- A school district for funding during the preceding October and February Florida Education Finance Program (FEFP) surveys¹⁵ in kindergarten through grade 12, which includes time spent in a Department of Juvenile Justice commitment program if funded under the FEFP;

⁷ Rule 6A-6.0331(9), F.A.C.

⁸ Rule 6A-6.03028(3)(f), F.A.C. and Rule 6A-6.030191(6)(b), F.A.C.

⁹ Rule 6A-6.03028(3)(f), F.A.C. and Rule 6A-6.0331(7), F.A.C.

¹⁰ s. 3, Ch. 99-398, L.O.F. The pilot program was in the Sarasota school district.

¹¹ A child who is developmentally delayed is 3 through 5 years of age and is delayed in one or more of the following areas: adaptive or self-help development, cognitive development, social or emotional development, and physical development including fine, or gross, or perceptual motor. Rule 6A-6.03027(1)(a)-(e), F.A.C.

¹² s. 1002.39(1), F.S.

¹³ McKay Scholarship payments to an eligible private school are required to be made in four equal amounts no later than September 1, November 1, February 1, and April 1 of each academic year in which the scholarship is in force. s. 1002.39(10)(e), F.S. and Rule 6A-6.0970(5), F.A.C.

¹⁴ s. 1002.39(2), F.S., and Rule 6A-6.0970(1)(b), F.A.C.

¹⁵ The Florida Education Finance Program (FEFP) is the mechanism used by the state to fund the operating costs of Florida's school districts. The FEFP bases financial support for education upon individual students participating in certain education programs. FEFP funds are primarily generated by multiplying the number of full-time equivalent (FTE) students in each of the funded education programs by cost factors to obtain weighted FTE students. During each of several school weeks, including scheduled intercessions of a year-round school program during the fiscal year, a program membership survey of each school must be made by each district by aggregating the FTE student membership of each program by school and by district. The DOE establishes the number and interval of membership calculations. s. 1011.62(1)(a), F.S. For 2009-2010, the DOE will conduct four surveys: July 2009, October 2009, February 2010, and June 2010. <http://www.fldoe.org/fefp> FTE Survey Dates (last visited February 22, 2010).

- The Florida School for the Deaf and the Blind during the preceding October and February student membership surveys in kindergarten through grade 12; or
- A school district for funding during the preceding October and February FEFP surveys, was at least 4 years old when the student was enrolled and reported, and was eligible for services under the school attendance requirements for prekindergarten aged children with disabilities.¹⁶

However, a dependent child of a member of the United States Armed Forces who transfers to a Florida school from out of state or from a foreign country pursuant to a parent's permanent change of station orders is exempt from these requirements, but must meet all other eligibility requirements to participate in the McKay Scholarship Program.

The "prior school year in attendance" requirement limits eligibility to students who are identified and confirmed by the school district as having a disability and received special education services during the prior year.¹⁷ During the September and November 2009 and February 2010 payment periods, 941 private schools serving 20,524 students participated in the McKay Scholarship Program. Of that number, 592 private schools are sectarian and 349 are non-sectarian.¹⁸

McKay Scholarship Prohibitions

A student is not eligible for a McKay Scholarship while he or she is:¹⁹

- Enrolled in a Department of Juvenile Justice commitment program or the Florida School for the Deaf and the Blind;
- Receiving a Florida Tax Credit Scholarship;²⁰
- Participating in a home education program²¹ or private tutoring program;²²
- Participating in a state-funded virtual school, correspondence school, or distance learning program unless the participation is limited to no more than two courses per school year; or

¹⁶ Although not required to attend a public school, children with disabilities who have attained the age of 3 years are eligible for admission to public special education programs and related services. See s. 1003.21(1)(e), F.S.

¹⁷ However, in a recent decision, *Forest Grove School District v. T.A.*, the U.S. Supreme Court ruled that, under certain circumstances, a court or hearing officer can require a school district to reimburse a parent of a student with a disability for the cost of private school, even if the student had not previously received special education services from the school district. *Forest Grove School District v. T.A.* 557 U.S. ____ (2009). The Individuals with Disabilities Education Act (IDEA) allows a court or hearing officer to require the school district to reimburse the parent for the cost of the private school if the court or hearing officer finds that the school district did not provide a free appropriate public education to the child in a timely manner. More particularly, 20 U.S.C. § 1412(a)(10)(C)(ii) provides: "If the parents of a child with a disability, *who previously received special education and related services under the authority of a public agency*, enroll the child in a private elementary school or secondary school without the consent of or referral by the public agency, a court or hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education available to the child in a timely manner prior to that enrollment." The U.S. Supreme Court held that the provision relating to the student previously receiving special education services did not categorically bar students who had not received such services from receiving reimbursement, if the court or hearing officer determined that the school district had not appropriately provided services. In this case, the school district did not diagnose the student as having a disability and did not provide special education services. The student was subsequently diagnosed by a private specialist and provided special education services at a private school.

¹⁸ Florida Department of Education, Office of Independent Education and School Choice, John M. McKay Scholarship Program Quarterly Report, February 2010. http://www.floridaschoolchoice.org/Information/McKay/quarterly_reports.asp (last visited February 22, 2010).

¹⁹ s. 1002.39(3), F.S.

²⁰ s. 220.187, F.S.

²¹ A "home education program" means the sequentially progressive instruction of a student directed by his or her parent in order to satisfy specific attendance requirements. s. 1002.01(1), F.S.

²² Regular school attendance as defined by state law may be achieved by attendance in a private tutoring program if the person tutoring holds a valid Florida certificate to teach the subjects or grades in which instruction is given, keeps all records and makes all reports required by the state and district school board, and makes regular reports on the attendance of students required under s. 1003.23(2), F.S.; and requires students to be in actual attendance for the minimum length of time prescribed by s. 1011.60(2), F.S. and s. 1002.43, F.S.

- Not receiving *regular and direct contact*²³ with a classroom teacher at the private school's physical location.²⁴

A McKay Scholarship remains available until the student returns to a public school, graduates from high school, or reaches the age of 22, whichever occurs first.²⁵

Regular and Direct Contact

In 2006, the Legislature made a number of changes to the McKay Scholarship Program in response to recommendations from the Senate Task Force on McKay Scholarship Program Accountability and Senate Interim Projects.²⁶ One of the changes was to require a student who receives a McKay Scholarship to have regular and direct contact with private school teachers at the school's physical location.²⁷

The Coalition of McKay Scholarship Schools estimated that 50 to 90 students with disabilities who received McKay Scholarships during the 2005-2006 school year became ineligible for McKay Scholarships the following school year because of the "regular and direct contact" requirement.²⁸ In response, there has been some effort to provide an exception from this requirement for students who meet certain criteria.²⁹ The requirement for regular and direct contact prohibits students who are homebound or hospitalized from meeting the eligibility requirements for a McKay Scholarship.

Commissioner of Education Authority

The Commissioner of Education (COE) has the authority to deny, suspend, or revoke a private school's participation in the McKay Scholarship Program if it is determined that the private school has failed to comply with the provisions governing the program. When noncompliance can be corrected within a reasonable amount of time and the health, safety, or welfare of the students is not threatened, the COE may issue a notice of noncompliance. The notice must give the private school a timeframe within which to provide evidence of compliance prior to the COE taking action to suspend or revoke the private school's participation in the program.³⁰

Since 2006, 61 schools have been removed from the McKay Scholarship Program. Most of those schools failed to provide compliance documentation by the statutory deadlines and some of those schools returned to the program after a year of removal.³¹

Private School Eligibility

Participation in the McKay Scholarship Program is open to all sectarian and nonsectarian private schools that:

- Comply with all requirements for private schools participating in state school choice scholarship

²³ "Regular and direct contact" is defined as "a program of instruction that provides for a minimum of 170 actual school instruction days with the required instructional hours under the direct instruction of the private school teacher." Rule 6A-6.03315(1)(c), F.A.C.

²⁴ "School's physical location" is defined as "the location where regular and direct contact with the private school teacher occurs and must meet applicable state and local health, safety, and welfare laws, codes, and rules." Rule 6A-6.03315(1)(d), F.A.C.

²⁵ s. 1002.39(4)(a), F.S.

²⁶ Senate Staff Analysis, CS/CS/SB 256 (2006), Government Efficiency Appropriations Committee.

²⁷ s. 1, Ch. 2006-75, L.O.F., *codified as* s. 1002.39(3)(h), F.S.

²⁸ House of Representatives Staff Analysis, HB 7153 (2008), Healthcare Council.

²⁹ In the 2009 Regular Session, HB 353 and HB 1385 both contained an exception allowing a student to receive special education and services at an alternate location if that student's parent submits a note from a medical doctor or psychologist certifying that the welfare of the student or other students in the classroom would be jeopardized by the student's regular attendance at the school's physical location. In addition, the bills required a private school to employ a case manager to monitor the student's instruction and required school personnel to submit documentation of any instruction or services provided to the student at the alternate location. Neither bill became law.

³⁰ s. 1002.39(7), F.S.

³¹ E-mail correspondence from Department of Education staff, March 4, 2010.

programs.³²

- Annually provide the parent with a written explanation of the student's progress.
- Cooperate with a student whose parent chooses to have the student participate in the statewide assessment tests.
- Submit all documentation to the DOE required for a student's participation, including the private school's and student's fee schedules, at least 30 days prior to the first quarterly scholarship payment.
- Maintain a physical location in Florida where a scholarship student regularly attends classes.³³

Failure to meet these requirements, as determined by the DOE, constitutes a basis for a private school to become ineligible to participate in the program.³⁴

Effect of Proposed Changes

Student Eligibility and Prior-Year Public School Attendance

The bill changes the student eligibility requirements under the McKay Scholarship Program. Specifically, a student is eligible for the program if the student was enrolled and reported by a school district for funding during *any* previous October and February FEFP surveys during the same school year in kindergarten through grade 12 or was enrolled and reported by the Florida School for the Deaf and the Blind during the preceding October and February student membership surveys in kindergarten through grade 12.

The bill also opens eligibility to kindergarten students who would not previously have met the prior year public school attendance requirement. To conform with this provision, the bill deletes the stipulation for eligibility that requires a student to be at least 4 years old when enrolled and reported by a school district for funding in the October and February FEFP surveys.

The bill requires a child with a developmental delay³⁵ who has received early intervention services under the Voluntary Prekindergarten Education Program (VPK) to be reevaluated before entering kindergarten. An IEP must be developed if he or she is eligible for the Exceptional Student Education Program.³⁶

Regular and Direct Contact

The bill provides an exception to the requirement that a McKay Scholarship recipient have regular and direct contact with his or her private school teachers at the school's physical location by authorizing the use of an alternative site for instruction and services. The bill does not identify any specific alternative location or sites, which could include a hospital or home.³⁷

Under the exception, the student eligible for a McKay Scholarship may receive direct instruction and services from a private school at a site other than the physical location of the school if:

³² Private schools participating in state school choice scholarship programs are required to comply with statutorily-specified fiscal and operational accountability requirements. s. 1002.421, F.S.

³³ s. 1002.39(8), F.S.

³⁴ *Id.*

³⁵ See *supra* note 11.

³⁶ See *supra* text accompanying fn 11 and s. 1003.57, F.S.

³⁷ Students who are hospitalized or homebound are defined as exceptional students and eligible to receive exceptional student education. A homebound or hospitalized student is a student who has a medically diagnosed physical or psychiatric condition which is acute or catastrophic in nature, or a chronic illness, or a repeated intermittent illness due to a persisting medical problem and which confines the student to home or hospital, and restricts activities for an extended period of time. The medical diagnosis must be made by a licensed physician. s. 1003.01(3)(a) and (b), F.S., and Rule 6A-6.03020(1), F.A.C.

- The student's parent provides a notarized statement from the licensed physician or psychologist treating the student's disability certifying that the student's welfare or the welfare of other students in the classroom will be jeopardized if the student is required to regularly attend class at the physical location of the school. The bill does not identify any specific criteria that the physician or psychologist must use in making this determination.
- The notarized statement is provided annually to the DOE at least 60 days prior to the date of the first scholarship payment for each school year and based on an annual review of the student's disability by the student's physician or psychologist.

The private school serving the student must:

- Employ or contract with a case manager³⁸ who coordinates and monitors the student's instruction and services, reviews and maintains documentation submitted by the student's physician or psychologist, and provides the student's parent and private school with monthly reports on the student's progress.
- Require private school employees or contracted personnel who provide regular and direct instruction or services to a student at a site other than the private school's physical location to submit to the case manager documentation of the instruction, services, and progress of the student. It is not clear as to how a student's attendance would be recorded and monitored to ensure attendance requirements are being met.
- Notify the DOE of each student receiving instruction and services at an alternative site.

Commissioner of Education Authority

For purposes of private school compliance, the bill provides that "owner or operator" includes an owner, operator, superintendent, or principal of, or a person with equivalent decision making authority over, a private school participating in the scholarship program.

The bill authorizes the COE to deny, suspend, or revoke a private school's participation in the scholarship program if the COE determines that an owner or operator of the private school is operating or has operated an educational institution in this state or another state or jurisdiction in a manner contrary to the health, safety, or welfare of the public.

In making the determination, the COE may consider factors that include:

- Acts or omissions by an owner or operator that led to a previous denial or revocation of participation in an education scholarship program;
- An owner's or operator's failure to reimburse the DOE for scholarship funds improperly received or retained by a school;
- Imposition of a prior criminal sanction related to an owner's or operator's management or operation of an educational institution;
- Imposition of a civil fine, administrative fine, license revocation or suspension, or program eligibility suspension, termination, or revocation related to an owner's or operator's management or operation of an educational institution; or

³⁸ "Case manager" is not defined in HB 1505; however, the term is defined in Florida law to mean an individual who works with clients, and their families and significant others, to provide case management (s. 394.4573, F.S.) or a person who is responsible for participating in the development of and implementing a services plan, linking service providers to a child or adolescent and his or her family, monitoring the delivery of services, providing advocacy services, and collecting information to determine the effect of services and treatment (s. 394.492, F.S.)

- Other types of criminal proceedings in which the owner or operator was found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense involving fraud, deceit, dishonesty, or moral turpitude.

B. SECTION DIRECTORY:

Section 1: Amends s. 1002.39, F.S., relating to the John M. McKay Scholarships for Students with Disabilities Program.

Section 2: Amends s. 1002.20, F.S., relating to K-12 student and parent rights.

Section 3: Provides an effective date of July 1, 2010.

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:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

DOE Comments:

The bill would require school districts to reevaluate children who are developmentally delayed prior to entering kindergarten. It is not clear as to the extent to which districts may need to reevaluate and provide an updated IEP for students who have been homeschooled with learning disabilities and students with disabilities currently in private school, without a McKay scholarship, who may have been in public school at some point and reported in an October and February FTE survey. However, there is the potential of increasing school district expenditures if it is necessary to hire more staff to conduct the evaluations and develop student IEPs. The fiscal impact on school districts is indeterminate since the number of students who would need to be evaluated is unknown.

It is anticipated that the proposed bill would increase the number of students who meet eligibility requirements for participation in the scholarship program. New eligible populations would include all currently homeschooled students with learning disabilities and all students with disabilities currently in private school, without a McKay scholarship, who may have at some point been reported in a public school in Florida in an October and February survey. Further, the

exception to the “regular and direct contact” requirement to allow a student to attend a site other than a private school’s physical location could have a slight impact on program participation. However, the overall impact of the bill on scholarship program participation is currently indeterminate since there is no way to know for certain how many students in these groups exist or how many would choose to avail themselves of the scholarship option.

It is anticipated that the proposed bill would increase the number of students who meet eligibility requirements for participation in the scholarship program and then enroll in private schools. However, the number of students in this group is unknown and the fiscal impact on private schools is indeterminate.

The bill establishes a requirement that a child who is eligible to enter kindergarten, and is developmentally delayed, must have a re-evaluation to determine if a disability continues to exist that would require the development of an IEP and provision of special education services. This may establish a requirement that would result in conducting unnecessary evaluations – with associated fiscal and work load impact for school districts. [See (2)(a)1.] For example, if a child had an evaluation, was determined eligible, and had an IEP developed in December during the year prior to kindergarten, it would appear that another evaluation would be required closer to entry to kindergarten.

The bill extends eligibility for a McKay Scholarship to a student who was enrolled and reported for funding during any previous [rather than the preceding as currently established] October and February FEFP surveys during the same school year. This would create significant issues for students who have been withdrawn from public school for an extended period of time. Given that the student had been withdrawn from public school, eligibility for services as a student with a disability would need to be re-determined. For example, a student who may have received speech or language services as a kindergartener, may no longer meet eligibility requirements as a student with a disability as a fourth grader. Given recent revisions to State Board of Education Rules, determination of eligibility now requires the review of the research-based instruction and interventions provided to the student through a problem-solving process which has been implemented to address the struggling learner’s needs. This framework requires significantly greater data gathering and analysis on the part of staff and presents some unique challenges when the student is enrolled in a private school or is home schooled. No longer is the determination of eligibility based solely upon administration of formal testing instruments.

Additionally, the matrix of service would have to be developed and aligned to the current IEP in order to establish the amount of funding.

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:

No new specific authority is granted. However, the State Board of Education would have to modify the McKay Scholarship Program rule if the bill becomes law.

C. DRAFTING ISSUES OR OTHER COMMENTS:

DOE Comments:

The bill allows a physician or psychologist to provide a notarized statement certifying that the student's welfare or the welfare of other students in the classroom will be jeopardized if the student is required to regularly attend class at the school's physical location; however, the language does not develop a framework or identify factors necessary for physicians or psychologists to consider when making such decisions.

Private schools are required to meet all applicable state and local health, safety, and welfare laws for fire safety and building safety. This legislation does not require other locations where students are educated to meet the same health and safety requirements. While it is likely that the other location will be a residential home or apartment where the child lives, that has not been clarified.

Private schools are subject to the compulsory attendance requirements for children between the ages of 6 and 16 years old. Rule 6A-1.09512, Florida Administrative Code, provides that in order to meet the compulsory attendance requirements, a child must maintain regular attendance for a minimum of 170 actual school days with the required instructional hours as determined by grade level. If instruction and services are provided to students at alternative sites instead of at the school's physical location, there is concern that an adequate number of school days and instructional hours may not be provided.

The bill also does not specify whether the "contracted personnel" providing the child's education could include the child's parents which would allow the school to pay the parents some of the scholarship money for home schooling the child.

The bill provisions regarding contracting with a case manager who will document instruction and services and provide monthly progress reports to the student's parent will require rulemaking to establish a procedure for private schools to follow in annually notifying the department of each student subject to this exception and providing a notarized statement.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 17, 2010, the PreK-12 Policy Committee adopted two amendments and reported the bill favorably as a Committee Substitute (CS). The differences between the CS and the bill are:

- With regard to eligibility for a McKay Scholarship, the CS substituted the phrase, "has attended a Florida public school or the Florida School for the Deaf and the Blind" for current law stating, "has spent the prior year in attendance at a Florida public school or the Florida School for the Deaf and the Blind."
- HB 1505 required a private school to notify DOE of "each student subject to this subsection." The CS clarifies that a private school must notify DOE of "each student *receiving services* under this subsection."

29 Statutes, are amended, subsections (11), (12), and (13) are
 30 renumbered as subsections (12), (13), and (14), respectively,
 31 and a new subsection (11) is added to that section, to read:

32 1002.39 The John M. McKay Scholarships for Students with
 33 Disabilities Program.—There is established a program that is
 34 separate and distinct from the Opportunity Scholarship Program
 35 and is named the John M. McKay Scholarships for Students with
 36 Disabilities Program.

37 (2) JOHN M. MCKAY SCHOLARSHIP ELIGIBILITY.—The parent of a
 38 ~~public school~~ student with a disability ~~who is dissatisfied with~~
 39 ~~the student's progress~~ may request and receive from the state a
 40 John M. McKay Scholarship for the child to enroll in and attend
 41 a private school in accordance with this section if:

42 (a) The student:

43 1. Is eligible to enter kindergarten. A child identified
 44 with a developmental delay who has received early intervention
 45 services under the Voluntary Prekindergarten Education Program
 46 must be reevaluated prior to entering kindergarten so that an
 47 individual education plan shall be developed if he or she is
 48 deemed eligible for the exceptional student education program;

49 or

50 2. Has attended ~~spent the prior school year in attendance~~
 51 ~~at~~ a Florida public school or the Florida School for the Deaf
 52 and the Blind. For purposes of this subparagraph, Prior school
 53 ~~year in attendance~~ means that the student was+

54 ~~1.~~ enrolled and reported by:

55 a. A school district for funding during any prior the
 56 ~~preceding~~ October and February Florida Education Finance Program

57 surveys during the same school year in kindergarten through
 58 grade 12, which shall include time spent in a Department of
 59 Juvenile Justice commitment program if funded under the Florida
 60 Education Finance Program; or

61 b.2. ~~Enrolled and reported by~~ The Florida School for the
 62 Deaf and the Blind during the preceding October and February
 63 student membership surveys in kindergarten through grade 12. ~~or~~

64 ~~3. Enrolled and reported by a school district for funding~~
 65 ~~during the preceding October and February Florida Education~~
 66 ~~Finance Program surveys, was at least 4 years old when so~~
 67 ~~enrolled and reported, and was eligible for services under s.~~
 68 ~~1003.21(1)(c).~~

69
 70 However, a dependent child of a member of the United States
 71 Armed Forces who transfers to a school in this state from out of
 72 state or from a foreign country pursuant to a parent's permanent
 73 change of station orders is exempt from this paragraph but must
 74 meet all other eligibility requirements to participate in the
 75 program.

76 (b) The parent has obtained acceptance for admission of
 77 the student to a private school that is eligible for the program
 78 under subsection (8) and has requested from the department a
 79 scholarship at least 60 days prior to the date of the first
 80 scholarship payment. The request must be through a communication
 81 directly to the department in a manner that creates a written or
 82 electronic record of the request and the date of receipt of the
 83 request. The Department of Education must notify the district of
 84 the parent's intent upon receipt of the parent's request.

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85 (3) JOHN M. MCKAY SCHOLARSHIP PROHIBITIONS.—A student is
 86 not eligible for a John M. McKay Scholarship while he or she is:

87 (h) Not having regular and direct contact with his or her
 88 private school teachers at the school's physical location,
 89 except as provided in subsection (11).

90 (4) TERM OF JOHN M. MCKAY SCHOLARSHIP.—

91 (a) For purposes of continuity of educational choice, a
 92 John M. McKay Scholarship shall remain in force until the
 93 student enrolls in ~~returns to~~ a public school, graduates from
 94 high school, or reaches the age of 22, whichever occurs first.

95 (7) COMMISSIONER OF EDUCATION AUTHORITY AND OBLIGATIONS.—

96 (a) 1. The Commissioner of Education shall deny, suspend,
 97 or revoke a private school's participation in the scholarship
 98 program if it is determined that the private school has failed
 99 to comply with the provisions of this section. However, in
 100 instances in which the noncompliance is correctable within a
 101 reasonable amount of time and in which the health, safety, or
 102 welfare of the students is not threatened, the commissioner may
 103 issue a notice of noncompliance which shall provide the private
 104 school with a timeframe within which to provide evidence of
 105 compliance prior to taking action to suspend or revoke the
 106 private school's participation in the scholarship program.

107 2.a. For purposes of this subparagraph, the term "owner or
 108 operator" includes an owner, operator, superintendent, or
 109 principal of, or a person with equivalent decisionmaking
 110 authority over, a private school participating in the
 111 scholarship program.

112 b. The Commissioner of Education may deny, suspend, or

113 revoke a private school's participation in the scholarship
 114 program if the commissioner determines that an owner or operator
 115 of the private school is operating or has operated an
 116 educational institution in this state or another state or
 117 jurisdiction in a manner contrary to the health, safety, or
 118 welfare of the public. In making this determination, the
 119 commissioner may consider factors that include, but are not
 120 limited to: acts or omissions by an owner or operator that led
 121 to a previous denial or revocation of participation in an
 122 education scholarship program; an owner's or operator's failure
 123 to reimburse the Department of Education for scholarship funds
 124 improperly received or retained by a school; imposition of a
 125 prior criminal sanction related to an owner's or operator's
 126 management or operation of an educational institution;
 127 imposition of a civil fine or administrative fine, license
 128 revocation or suspension, or program eligibility suspension,
 129 termination, or revocation related to an owner's or operator's
 130 management or operation of an educational institution; or other
 131 types of criminal proceedings in which an owner or operator was
 132 found guilty of, regardless of adjudication, or entered a plea
 133 of nolo contendere or guilty to, any offense involving fraud,
 134 deceit, dishonesty, or moral turpitude.

135 (8) PRIVATE SCHOOL ELIGIBILITY AND OBLIGATIONS.—To be
 136 eligible to participate in the John M. McKay Scholarships for
 137 Students with Disabilities Program, a private school may be
 138 sectarian or nonsectarian and must:

139 (d) ~~Maintain in this state~~ Maintain in this
 140 state where a scholarship student regularly attends classes or

141 provide instruction and services pursuant to subsection (11).

142

143 The inability of a private school to meet the requirements of
 144 this subsection shall constitute a basis for the ineligibility
 145 of the private school to participate in the scholarship program
 146 as determined by the department.

147 (10) JOHN M. MCKAY SCHOLARSHIP FUNDING AND PAYMENT.—

148 (a)1. The maximum scholarship granted for an eligible
 149 student with disabilities shall be a calculated amount
 150 equivalent to the base student allocation in the Florida
 151 Education Finance Program multiplied by the appropriate cost
 152 factor for the educational program that would have been provided
 153 for the student in the district school to which he or she was
 154 assigned, multiplied by the district cost differential.

155 2. In addition, a share of the guaranteed allocation for
 156 exceptional students shall be determined and added to the
 157 calculated amount. The calculation shall be based on the
 158 methodology and the data used to calculate the guaranteed
 159 allocation for exceptional students for each district in chapter
 160 2000-166, Laws of Florida. Except as provided in subparagraphs
 161 3. and 4., the calculation shall be based on the student's
 162 grade, matrix level of services, and the difference between the
 163 2000-2001 basic program and the appropriate level of services
 164 cost factor, multiplied by the 2000-2001 base student allocation
 165 and the 2000-2001 district cost differential for the sending
 166 district. Also, the calculated amount shall include the per-
 167 student share of supplemental academic instruction funds,
 168 instructional materials funds, technology funds, and other

169 categorical funds as provided for such purposes in the General
 170 Appropriations Act.

171 3. The calculated scholarship amount for a student who is
 172 eligible under sub-subparagraph (2)(a)2.b. ~~subparagraph (2)(a)2.~~
 173 shall be calculated as provided in subparagraphs 1. and 2.
 174 However, the calculation shall be based on the school district
 175 in which the parent resides at the time of the scholarship
 176 request.

177 4. Until the school district completes the matrix required
 178 by paragraph (5)(b), the calculation shall be based on the
 179 matrix that assigns the student to support level I of service as
 180 it existed prior to the 2000-2001 school year. When the school
 181 district completes the matrix, the amount of the payment shall
 182 be adjusted as needed.

183 (c)1. The school district shall report all students who
 184 are attending a private school under this program. The students
 185 with disabilities attending private schools on John M. McKay
 186 Scholarships shall be reported separately from other students
 187 reported for purposes of the Florida Education Finance Program.

188 2. For program participants who are eligible under sub-
 189 subparagraph (2)(a)2.b. ~~subparagraph (2)(a)2.~~, the school
 190 district that is used as the basis for the calculation of the
 191 scholarship amount as provided in subparagraph (a)3. shall:

192 a. Report to the department all such students who are
 193 attending a private school under this program.

194 b. Be held harmless for such students from the weighted
 195 enrollment ceiling for group 2 programs in s. 1011.62(1)(d)3.b.
 196 during the first school year in which the students are reported.

197 (d) Following notification on July 1, September 1,
 198 December 1, or February 1 of the number of program participants,
 199 the department shall transfer, from General Revenue funds only,
 200 the amount calculated under paragraph (b) from the school
 201 district's total funding entitlement under the Florida Education
 202 Finance Program and from authorized categorical accounts to a
 203 separate account for the scholarship program for quarterly
 204 disbursement to the parents of participating students. Funds may
 205 not be transferred from any funding provided to the Florida
 206 School for the Deaf and the Blind for program participants who
 207 are eligible under sub-subparagraph (2)(a)2.b. ~~subparagraph~~
 208 ~~(2)(a)2.~~ For a student exiting a Department of Juvenile Justice
 209 commitment program who chooses to participate in the scholarship
 210 program, the amount of the John M. McKay Scholarship calculated
 211 pursuant to paragraph (b) shall be transferred from the school
 212 district in which the student last attended a public school
 213 prior to commitment to the Department of Juvenile Justice. When
 214 a student enters the scholarship program, the department must
 215 receive all documentation required for the student's
 216 participation, including the private school's and student's fee
 217 schedules, at least 30 days before the first quarterly
 218 scholarship payment is made for the student.

219 (11) ALTERNATIVE SITES FOR INSTRUCTION AND SERVICES.—A
 220 student eligible for a scholarship under this section may
 221 receive regular and direct instruction and services from a
 222 private school at a site other than the physical location of the
 223 school if the following criteria are met:

224 (a) The student's parent must provide a notarized

225 statement from an individual treating the student's disability
 226 who is a physician licensed under chapter 458 or chapter 459 or
 227 a psychologist licensed under chapter 490, which certifies that
 228 the student's welfare or the welfare of other students in the
 229 classroom will be jeopardized if the student is required to
 230 regularly attend class at the physical location of the school.

231 The notarized statement must be:

232 1. Annually provided to the department at least 60 days
 233 prior to the date of the first scholarship payment for each
 234 school year.

235 2. Based on an annual review of the student's disability
 236 by the physician or psychologist treating the student's
 237 disability.

238 (b) The private school serving the student must:

239 1. Employ or contract with a case manager who coordinates
 240 and monitors the student's instruction and services, reviews and
 241 maintains the documentation submitted under subparagraph 2., and
 242 provides the student's parent and the private school with
 243 monthly reports on the student's progress.

244 2. Require private school employees or contracted
 245 personnel who provide regular and direct instruction or services
 246 to a student at a site other than the private school's physical
 247 location to submit to the case manager documentation of the
 248 instruction, services, and progress of the student.

249 3. Notify the department of each student receiving
 250 services under this subsection.

251 Section 2. Paragraph (b) of subsection (6) of section
 252 1002.20, Florida Statutes, is amended to read:

253 1002.20 K-12 student and parent rights.—Parents of public
 254 school students must receive accurate and timely information
 255 regarding their child's academic progress and must be informed
 256 of ways they can help their child to succeed in school. K-12
 257 students and their parents are afforded numerous statutory
 258 rights including, but not limited to, the following:

259 (6) EDUCATIONAL CHOICE.—

260 (b) Private school choices.—Parents of public school
 261 students may seek private school choice options under certain
 262 programs.

263 1. Under the Opportunity Scholarship Program, the parent
 264 of a student in a failing public school may request and receive
 265 an opportunity scholarship for the student to attend a private
 266 school in accordance with the provisions of s. 1002.38.

267 2. Under the McKay Scholarships for Students with
 268 Disabilities Program, the parent of a ~~public school~~ student with
 269 a disability ~~who is dissatisfied with the student's progress~~ may
 270 request and receive a McKay Scholarship for the student to
 271 attend a private school in accordance with the provisions of s.
 272 1002.39.

273 3. Under the Florida Tax Credit Scholarship Program, the
 274 parent of a student who qualifies for free or reduced-price
 275 school lunch may seek a scholarship from an eligible nonprofit
 276 scholarship-funding organization in accordance with the
 277 provisions of s. 220.187.

278 Section 3. This act shall take effect July 1, 2010.