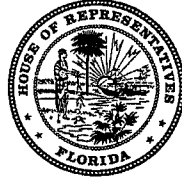




PreK-12 Appropriations Subcommittee

Meeting Packet

**March 29, 2011
9:30 a.m. – 11:00 a.m.
Morris Hall**



The Florida House of Representatives
APPROPRIATION COMMITTEE

PreK-12 Appropriations Subcommittee

Dean Cannon
Speaker

Marti Coley
Chair




MEETING AGENDA

Morris Hall
March 29, 2011

- I.** Meeting Called To Order
- II.** Opening Remarks by Chair
- III.** Consideration of the following bills:
- IV.** HB 61 – Code of Student Conduct by Rep. Rogers
HB 797 – Interscholastic and Interscholastic Sports by Rep. Perry
HB 1331 School Choice by Rep. Bileca
- V.** Meeting Adjourned

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 61 Code of Student Conduct
SPONSOR(S): Rogers and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 228

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) K-20 Innovation Subcommittee	14 Y, 0 N	 Ourand	Sherry
2) PreK-12 Appropriations Subcommittee		 Keith	Heflin 
3) Education Committee			

SUMMARY ANALYSIS

The bill prohibits students from wearing their clothing in a manner that exposes underwear or body parts in an indecent or vulgar manner. Wearing clothing in such a manner is often referred to as "sagging." The bill requires school boards to include an explanation of the responsibilities of each student regarding appropriate dress within their code of student conduct. Additionally, each school board must adopt a dress code policy which forbids wearing clothing in such a way as to expose underwear or body parts in an indecent or vulgar manner or in a manner that disrupts the orderly learning environment. The bill also provides both an escalating series of disciplinary actions for students who violate the dress code, as well as a requirement for adherence to appropriate dress and other student conduct codes as a prerequisite for participation in interscholastic extracurricular activities.

This bill amends ss. 1006.07 and 1006.15, F.S. The bill reenacts s. 1002.23, F.S.

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

The bill has an effective date of July 1, 2011.

For a discussion of the applicable First Amendment precedent, see the Part entitled "Constitutional Issues."

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The "Sagging" Phenomenon

The bill is a response to the manner of wearing pants known colloquially as "sagging." Although no rigidly academic analysis of the history of "sagging" has yet been conducted, it is commonly thought that "sagging" originated in prisons where belts are not issued because they may be used to commit suicide or used as weapons.¹ The lack of belts combined with loose, ill-fitting pants result in pants falling below the waist. "Sagging" has been banned in several cities, with anti-sagging advocates going so far as to call for statewide bans.² The town of Opa-locka recently enacted a ban on "saggy pants in city parks, city hall and other city properties."³ Moreover, several Florida school districts have confronted the issue of "sagging." For instance, the Duval County School Board's Code of Student Conduct states: "The waistband of shorts, slacks, skirts, and similar garments shall not be worn below the hips. Underwear, midriff and backs should not be exposed."⁴ The Orange County School Board's student code specifies that: "[c]lothes shall be worn as they are designed-suspenders over the shoulders, pants secured at the waist, belts buckled, no underwear as outerwear, no underwear exposed."⁵ The Santa Rosa County School Board's Code of Student Conduct specifies that undergarments shall not be shown.⁶

Current Student Code of Conduct Statutory Requirements

District school boards are required to "[a]dopt a code of student conduct for elementary schools and a code of student conduct for middle and high schools and distribute the appropriate code to all teachers, school personnel, students, and parents, at the beginning of every school year."⁷ Currently, a district school board's code of student conduct must include such items as:

- "[c]onsistent policies and specific grounds for disciplinary action, including in-school suspension, out-of-school suspension, expulsion, and any disciplinary action that may be imposed for the possession or use of alcohol on school property or while attending a school function or for the illegal use, sale, or possession of controlled substances;"⁸
- "[p]rocedures to be followed for acts requiring discipline, including corporal punishment;"⁹ and
- "[a]n explanation of the responsibilities and rights of students with regard to attendance, respect for persons and property, knowledge and observation of rules of conduct, the right to learn, free

¹ Niko Koppel, *Are Your Pants Sagging? Go Directly to Jail.*, THE NEW YORK TIMES (Aug. 30, 2007), available at: <http://www.nytimes.com/2007/08/30/fashion/30baggy.html> (last accessed Jan. 20, 2011).

² *Id.*

³ Art Levy, *Can State Legally Outlaw Saggy Pants?*, FLORIDA TREND (Apr. 1, 2008), available at http://www.floridatrend.com/print_article.asp?aID=48655 (last visited Jan. 19, 2011).

⁴ Duval County Public Schools, *Code of Appearance*, available at <http://www.duvalschools.org/static/students/codeofconduct/codeofappearance.asp> (last visited Jan. 19, 2011).

⁵ Orange County Public Schools, *Code of Student Conduct*, 5 (2010-11), available at <https://www.ocps.net/SiteCollectionDocuments/Docs%20Continually%20Updated/Code%20of%20Conduct.pdf> (last visited Jan. 19, 2011).

⁶ Santa Rosa County School District, *Code of Student Conduct* (Aug. 23, 2010), available at <http://www.santarosa.k12.fl.us/files/csc.pdf> (last visited Jan. 19, 2011).

⁷ Section 1006.07(2), F.S.

⁸ Section 1006.07(2)(a), F.S.

⁹ Section 1006.07(2)(b), F.S.

speech and student publications, assembly, privacy, and participation in school programs and activities.”¹⁰

District school boards may also impose dress code restrictions, including the requirement of school uniforms, where “those requirements are necessary for the safety or welfare of the student body or school personnel.”¹¹ Section 1006.07, F.S., does not specifically address the issue of dress code requirements, but it does state that “[t]he district school board shall provide . . . for proper attention to health, safety, and other matters relating to the welfare of students.”¹² There are no specific statutory prohibitions on exposing undergarments by students at public schools.

Student Requirements to Participate in Extracurricular Activities

Section 1006.15, F.S, establishes that in order to participate in interscholastic and intrascholastic extracurricular activities, a public school student must:

- Maintain a grade point average of 2.0 or above on a 4.0 scale, or its equivalent, in the previous semester or a cumulative grade point average of 2.0 or above on a 4.0 scale, or its equivalent, in the courses required by s. 1003.43(1), F.S.;¹³
- Execute and fulfill the requirements of an academic performance contract between the student, the district school board, the appropriate governing association, and the student’s parents, if the student’s cumulative grade point average falls below 2.0, or its equivalent, on a 4.0 scale in the courses required by s. 1003.43(1), F.S.;¹⁴
- Have a cumulative grade point average of 2.0 or above on a 4.0 scale, or its equivalent, in the courses required by s. 1003.43(1), F.S, during his or her junior or senior year;¹⁵ and
- Maintain satisfactory conduct.¹⁶

The school board may also implement additional requirements for participation.¹⁷

Proposed Changes

This bill amends section 1006.07, F.S, to require school districts to include within their student conduct codes provisions relating to appropriate dress. Additionally, school boards must adopt a dress code policy prohibiting students from wearing clothing which exposes underwear or body parts in an indecent or vulgar manner or that disrupts the orderly learning environment during the school day while on school grounds.

Moreover, the bill requires the code of conduct to prescribe the following punishments for violations of the dress code policy:

- First offense: verbal warning and the school principal shall call the student’s parent or guardian;
- Second offense: ineligibility to participate in any extracurricular activity for at most five days and a meeting between the student’s parent or guardian and the principal;
- Third offense: in-school suspension pursuant to section 1003.01(5)(b), F.S.,¹⁸ for a maximum of 3 days; ineligibility to participate in extracurricular activities for a maximum of 30 days; and the principal shall call the student’s parent or guardian and send the parent or guardian a written

¹⁰ Section 1006.07(2)(c), F.S.

¹¹ Section 1001.43(1)(b), F.S.

¹² Section 1006.07, F.S.

¹³ Section 1006.15(3)(a)1., F.S.

¹⁴ Section 1006.15(3)(a)2., F.S.

¹⁵ Section 1006.15(3)(b)3., F.S.

¹⁶ Section 1006.15(3)(b)4., F.S.

¹⁷ Section 1006.15(4), F.S.

¹⁸ Section 1003.01(5)(b), F.S., provides that “[i]n-school suspension means the temporary removal of a student from the student’s regular school program and placement in an alternative program, such as that provided in s. 1003.53, under the supervision of district school board personnel, for a period not to exceed 10 school days.”

letter regarding the student's in-school suspension and ineligibility to participate in extracurricular activities.

The bill also amends section 1006.15, F.S., to make adherence to the dress code requirements described above a prerequisite for participation in interscholastic extracurricular activities.

The bill has an effective date of July 1, 2011.

B. SECTION DIRECTORY:

Section 1: Amends section 1006.07, F.S., requiring school boards to include within their dress codes provisions relating to appropriate dress and specifying escalating punishments based upon the number of violations of these provisions.

Section 2: Amends section 1006.15, F.S., providing that adherence to appropriate dress and other codes of student conduct is a prerequisite for a student to be eligible to participate in interscholastic extracurricular student activities.

Section 3: Reenacts section 1002.23(7), F.S., relating to a parent guide to successful student achievement to be adopted by each school district board, to incorporate the amendment made to section 1006.07.

Section 4: Provides an effective date of July 1, 2011.

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:

This bill would have a minimal fiscal impact to district school boards. District school boards may incur costs for adding student dress policy to the existing codes on student conduct. The bill would also require monitoring and enforcement of the student dress component of the conduct code.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

This bill has indeterminate cost impacts for adding student dress policy to existing codes on student conduct as well as monitoring and enforcing the conduct code.

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:

The First Amendment of the United States Constitution states that "Congress shall make no law . . . abridging the freedom of speech."¹⁹ The Supreme Court has extended the protection afforded by this provision to include expressive conduct as well as actual spoken words.²⁰ Moreover, the Court has stated that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate,"²¹ but has also recognized the authority of states and schools "to prescribe and control conduct in the schools."²²

However, it is also true that "the constitutional rights of students in public school are not automatically coextensive with the rights of adults in other settings."²³ Additionally, the Court has drawn a distinction between political speech and lewd and obscene speech, providing greater protection to political speech.²⁴

There have been numerous examples of dress restrictions which have been found constitutional in that they did not limit expressive conduct, including a ban on wearing "clothing that is too tight, revealing or baggy as well as tops and bottoms that do not 'overlap,'"²⁵ and preventing a group of students from wearing their own class t-shirt exclaiming their "gifted" status.²⁶

A United States District Court found that wearing "sagging" pants was not shown to be expressive conduct.²⁷ There, the court applied the following test for determining expressive conduct: "First, the actor must intend to convey a particularized message, and, second, there must be a great likelihood that the message would be understood by those who observe the conduct."²⁸ The Defendant presented evidence that the "Plaintiff's subjective message supposedly conveyed by wearing sagging pants is by no means apparent to those who view it."²⁹ Specifically, the evidence showed that while "sagging is understood by some as associated with street gang activity and as a sign of gang affiliation . . . it is also understood by some as would-be gang affiliation, because it is often adopted by 'wannabes,' those who are seeking to become affiliated with a gang."³⁰ The Defendant also presented evidence that "[s]agging is not necessarily associated with a single racial or cultural group, and sagging is seen by some merely as a fashion trend followed by many adolescents all over the United States."³¹ The court then held that the Plaintiff's mere statement that "there is a great likelihood that those who observe this expressive conduct will understand the message" was

¹⁹ U.S. Const., Amend. 1.

²⁰ *Texas v. Johnson*, 491 U.S. 397, 404 (1989).

²¹ *Tinker v. Des Moines Independent Community School Dist.*, 393 U.S. 503, 506 (1969).

²² *Id.* at 507.

²³ *Bethel School Dist. No. 403 v. Fraser*, 478 U.S. 675, 682 (1986).

²⁴ *Id.* at 682.

²⁵ *Blau v. Fort Thomas Public School Dist.*, 401 F.3d 381, 385 (6th Cir. 2005).

²⁶ *Brandt v. Board of Educ. of City of Chicago*, 480 F.3d 460, 468 (7th Cir. 2007).

²⁷ *Bivens By and Through Green v. Albuquerque Public Schools*, 899 F.Supp. 556, 561 (U.S.D.C. N.M., 1995).

²⁸ *Id.* at 560, citing *Johnson*, 491 U.S. at 404.

²⁹ *Bivens*, 899 F. Supp. at 561.

³⁰ *Id.*

³¹ *Id.*

insufficient “to demonstrate a genuine issue for trial as to whether his wearing of sagging pants is constitutionally protected speech under the First Amendment.”³²

Moreover, even where a Plaintiff is able to show that the conduct at issue is “sufficiently ‘imbued with elements of communication’” to engender some First Amendment protection, the regulation may still be found to be constitutional under intermediate scrutiny where it is “content-neutral on its face and as applied.”³³ For instance, the Eleventh Circuit, in an unreported decision, stated that even if a restriction on wearing non-otic pierced jewelry were to place an “incidental restriction . . . on expressive conduct [that] is viewpoint and content-neutral on its face and as applied,” the Plaintiff still failed to show an unconstitutional abridgement of her rights.³⁴ The court reasoned that “the content and viewpoint neutral Dress Code was promulgated in furtherance of legitimate educational objectives,” which were “avoid[ing] extreme dress or appearance which might create a school disturbance, or which could be hazardous to the student or to others.”³⁵ In addition, “the jewelry limitation was narrowly tailored,” and there remained “ample communicative alternatives.”³⁶

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill does not include a definition for either “indecent” or “vulgar,” and as such the school boards would have to define these terms. The school boards would have to ensure that the definitions they craft are not overly broad or vague in order to avoid First Amendment concerns.³⁷

This could also result in differentiated enactment between school boards. Additionally, the previously discussed student conduct codes which prevent the display of undergarments may lose effect depending upon how the terms “indecent” and “vulgar” are defined within those codes. However, the bill’s reference to the “disruption of the orderly learning environment” may be able to remedy this unintended effect.

The bill states that this requirement applies to students “while on the grounds of a public school during the regular school day.” As such, this may not apply to after-school programs, events taking place on school grounds but occurring after the “regular school day,” school-sanctioned field trips, and bus stops. Furthermore, it is not specified whether this prohibition is to extend to school transportation.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

³² *Id.* But see *Canady v. Bossier Parish School Bd.*, 240 F.3d 437, 440-41 (5th Cir. 2001) (discussing, but not deciding, the possibility of student dress being expressive conduct, stating that: “[S]tudents in particular often choose their attire with the intent to signify the social group to which they belong, their participation in different activities, and their general attitudes toward society and the school environment. While the message students intend to communicate about their identity and interests may be of little value to some adults, it has a considerable affect, whether positive or negative, on a young person’s social development. Although this sort of expression may not convey a particularized message to warrant First Amendment protection in every instance, we cannot declare that expression of one’s identity and affiliation to unique social groups through choice of clothing will never amount to protected speech.”)

³³ *Bar-Navon v. Brevard County School Bd.*, 290 Fed. Appx. 273, 277 (11th Cir. 2008), quoting *Spence v. State of Wash.*, 418 U.S. 405, 409 (1974).

³⁴ *Bar-Navon*, 290 Fed. Appx. at 277 (citations omitted). Non-otic pierced jewelry refers to jewelry worn in piercings that are not located in the ear. *Id.* at 274.

³⁵ *Id.* at 277.

³⁶ *Id.*

³⁷ See *Board of Airport Com’rs of City of Los Angeles v. Jews for Jesus, Inc.*, 482 U.S. 569, 570 (1987) (finding “a resolution banning all ‘First Amendment activities’ at Los Angeles International Airport” unconstitutional under the overbreadth doctrine).

1 A bill to be entitled
 2 An act relating to the code of student conduct; amending
 3 s. 1006.07, F.S.; requiring the district school board to
 4 include in the code of student conduct adopted by the
 5 board an explanation of the responsibilities of each
 6 student with regard to appropriate dress and respect for
 7 self and others, and the role that appropriate dress and
 8 respect for self and others has on an orderly learning
 9 environment; requiring each district school board to adopt
 10 a dress code policy that prohibits a student, while on the
 11 grounds of a public school during the regular school day,
 12 from wearing clothing that exposes underwear or body parts
 13 in an indecent or vulgar manner or that disrupts the
 14 orderly learning environment; providing disciplinary
 15 actions for students who violate the dress code; amending
 16 s. 1006.15, F.S.; providing that adherence to appropriate
 17 dress and other codes of student conduct is a prerequisite
 18 for a student to be eligible to participate in
 19 interscholastic extracurricular student activities;
 20 reenacting s. 1002.23(7), F.S., relating to a parent guide
 21 to successful student achievement to be adopted by each
 22 school district board, to incorporate the amendment made
 23 to s. 1006.07, F.S., in a reference thereto; providing an
 24 effective date.

25
 26 Be It Enacted by the Legislature of the State of Florida:

27
 28 Section 1. Present paragraphs (d) through (l) of

HB 61

2011

29 subsection (2) of section 1006.07, Florida Statutes, are
 30 redesignated as paragraphs (e) through (m), respectively, and a
 31 new paragraph (d) is added to that subsection to read:

32 1006.07 District school board duties relating to student
 33 discipline and school safety.—The district school board shall
 34 provide for the proper accounting for all students, for the
 35 attendance and control of students at school, and for proper
 36 attention to health, safety, and other matters relating to the
 37 welfare of students, including:

38 (2) CODE OF STUDENT CONDUCT.—Adopt a code of student
 39 conduct for elementary schools and a code of student conduct for
 40 middle and high schools and distribute the appropriate code to
 41 all teachers, school personnel, students, and parents, at the
 42 beginning of every school year. Each code shall be organized and
 43 written in language that is understandable to students and
 44 parents and shall be discussed at the beginning of every school
 45 year in student classes, school advisory council meetings, and
 46 parent and teacher association or organization meetings. Each
 47 code shall be based on the rules governing student conduct and
 48 discipline adopted by the district school board and shall be
 49 made available in the student handbook or similar publication.
 50 Each code shall include, but is not limited to:

51 (d)1. An explanation of the responsibilities of each
 52 student with regard to appropriate dress, respect for self and
 53 others, and the role that appropriate dress and respect for self
 54 and others has on an orderly learning environment. Each district
 55 school board shall adopt a dress code policy that prohibits a
 56 student, while on the grounds of a public school during the

57 regular school day, from wearing clothing that exposes underwear
 58 or body parts in an indecent or vulgar manner or that disrupts
 59 the orderly learning environment.

60 2. Any student who violates the dress policy described in
 61 subparagraph 1. is subject to the following disciplinary
 62 actions:

63 a. For a first offense, a student will be given a verbal
 64 warning and the school principal shall call the student's parent
 65 or guardian.

66 b. For a second offense, the student will be ineligible to
 67 participate in any extracurricular activity for a period of time
 68 not to exceed 5 days and the school principal shall meet with
 69 the student's parent or guardian.

70 c. For a third offense or subsequent offense, a student
 71 will receive an in-school suspension pursuant to s.
 72 1003.01(5)(b) for a period of time not to exceed 3 days, the
 73 student will be ineligible to participate in any extracurricular
 74 activity for a period of time not to exceed 30 days, and the
 75 school principal shall call the student's parent or guardian and
 76 send the parent or guardian a written letter regarding the
 77 student's in-school suspension and ineligibility to participate
 78 in extracurricular activities.

79 Section 2. Paragraph (a) of subsection (3) of section
 80 1006.15, Florida Statutes, is amended to read:

81 1006.15 Student standards for participation in
 82 interscholastic and intrascholastic extracurricular student
 83 activities; regulation.—

84 (3)(a) To be eligible to participate in interscholastic

85 extracurricular student activities, a student must:

86 1. Maintain a grade point average of 2.0 or above on a 4.0
 87 scale, or its equivalent, in the previous semester or a
 88 cumulative grade point average of 2.0 or above on a 4.0 scale,
 89 or its equivalent, in the courses required by s. 1003.43(1).

90 2. Execute and fulfill the requirements of an academic
 91 performance contract between the student, the district school
 92 board, the appropriate governing association, and the student's
 93 parents, if the student's cumulative grade point average falls
 94 below 2.0, or its equivalent, on a 4.0 scale in the courses
 95 required by s. 1003.43(1) or, for students who entered the 9th
 96 grade prior to the 1997-1998 school year, if the student's
 97 cumulative grade point average falls below 2.0 on a 4.0 scale,
 98 or its equivalent, in the courses required by s. 1003.43(1)
 99 which ~~that~~ are taken after July 1, 1997. At a minimum, the
 100 contract must require that the student attend summer school, or
 101 its graded equivalent, between grades 9 and 10 or grades 10 and
 102 11, as necessary.

103 3. Have a cumulative grade point average of 2.0 or above
 104 on a 4.0 scale, or its equivalent, in the courses required by s.
 105 1003.43(1) during his or her junior or senior year.

106 4. Maintain satisfactory conduct, including adherence to
 107 appropriate dress and other codes of student conduct policies
 108 described in s. 1006.07(2). ~~and,~~ If a student is convicted of,
 109 or is found to have committed, a felony or a delinquent act that
 110 ~~which~~ would have been a felony if committed by an adult,
 111 regardless of whether adjudication is withheld, the student's
 112 participation in interscholastic extracurricular activities is

113 contingent upon established and published district school board
 114 policy.

115 Section 3. For the purpose of incorporating the amendment
 116 made by this act to section 1006.07, Florida Statutes, in a
 117 reference thereto, subsection (7) of section 1002.23, Florida
 118 Statutes, is reenacted to read:

119 1002.23 Family and School Partnership for Student
 120 Achievement Act.—

121 (7) Each school district shall develop and disseminate a
 122 parent guide to successful student achievement, consistent with
 123 the guidelines of the Department of Education, which addresses
 124 what parents need to know about their child's educational
 125 progress and how parents can help their child to succeed in
 126 school. The guide must:

- 127 (a) Be understandable to students and parents;
- 128 (b) Be distributed to all parents, students, and school
 129 personnel at the beginning of each school year;
- 130 (c) Be discussed at the beginning of each school year in
 131 meetings of students, parents, and teachers;
- 132 (d) Include information concerning services,
 133 opportunities, choices, academic standards, and student
 134 assessment; and
- 135 (e) Provide information on the importance of student
 136 health and available immunizations and vaccinations, including,
 137 but not limited to:
 - 138 1. A recommended immunization schedule in accordance with
 139 United States Centers for Disease Control and Prevention
 140 recommendations.

HB 61

2011

141 2. Detailed information regarding the causes, symptoms,
 142 and transmission of meningococcal disease and the availability,
 143 effectiveness, known contraindications, and appropriate age for
 144 the administration of any required or recommended vaccine
 145 against meningococcal disease, in accordance with the
 146 recommendations of the Advisory Committee on Immunization
 147 Practices of the United States Centers for Disease Control and
 148 Prevention.

149

150 The parent guide may be included as a part of the code of
 151 student conduct that is required in s. 1006.07(2).

152 Section 4. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 797 Interscholastic and Intrascholastic Sports
SPONSOR(S): Perry and others
TIED BILLS: IDEN./SIM. BILLS: SB 1000

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) K-20 Competitiveness Subcommittee	12 Y, 0 N	Graf	Ahearn
2) PreK-12 Appropriations Subcommittee	XX	Keith	Heflin KU
3) Education Committee			

SUMMARY ANALYSIS

The bill allows a student attending a private middle school or high school to participate in interscholastic or intrascholastic sports at a public school that is zoned for the physical address at which the student resides if the private school does not offer an athletic program and is not a member of the Florida High School Athletic Association (FHSAA). The bill limits participation in the athletic program to students from non-FHSAA member private schools that have 125 or fewer students in any given year.

Current law only allows eligible home school and charter school students to participate in interscholastic extracurricular student activities at assigned public schools pursuant to district controlled open-enrollment policies. These students are subject to the same eligibility requirements as other public school students.

A student attending a private school that is not a member of the FHSAA must meet the same standards of eligibility, code of conduct, and academic performance that apply to other students participating in interscholastic or intrascholastic sports at a public school or a FHSAA member private school.

The bill also requires the athletic director at each participating FHSAA member public school to maintain student records on eligibility, compliance, and participation for the participating students in the program. The bill provides authority to the FHSAA to request all student-level data from the participating private schools that are not members of their association.

The bill repeals a two-year pilot program involving Bradford County, Duval County, and Nassau County school districts. This program allowed private middle school and high school students to participate in interscholastic or intrascholastic sports at a public school zoned for the address of the participating student if that private school was not a member of the FHSAA, and did not offer an interscholastic or intrascholastic athletic program. The pilot program expired at the end of the 2009-2010 academic year.

The fiscal impact on school districts is indeterminate, but, insignificant. See Fiscal Comments.

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Interscholastic Athletics

Eligible home school and charter school students may participate in interscholastic extracurricular activities at assigned public schools pursuant to district controlled open-enrollment policies.¹ A student from a charter school may be eligible to participate in these activities at the public school to which the student is assigned according to district school board attendance area policies if such activity is not offered by that charter school.² Both home school and charter school students must register with the public school their intent to participate in interscholastic extracurricular activities, and are subject to the same eligibility requirements as other public school students.³

To be eligible to participate in interscholastic extracurricular activities, a student must maintain a 2.0 grade point average (GPA) in the semester prior to participation, or a 2.0 cumulative GPA in specified high school courses. If a student's cumulative GPA falls below 2.0 in the specified courses, the student must execute an academic performance contract with the district school board, the Florida High School Athletic Association (FHSAA), and the student's parents. At a minimum, the contract must require the student to attend summer school to improve his or her GPA.⁴ A student must also maintain good conduct to remain eligible to participate in interscholastic extracurricular activities. The district school board policy governs the eligibility of a student to participate in these activities if he or she is found to be involved in a felony or delinquent act.⁵

Florida High School Athletic Association (FHSAA)

The FHSAA is a non-profit organization that governs interscholastic athletic programs in Florida's schools from grades 6 through 12. The organizational structure and governing authority for the FHSAA were established in law in 1997. Unless specifically provided for in law, the FHSAA may adopt bylaws governing athletic participation of member schools and individual student athletes.⁶ FHSAA is required to adopt bylaws that include student eligibility, residence, transfer, and recruitment.⁷

Pilot Program

In 2008, the Legislature identified Bradford County, Duval County, and Nassau County school districts to participate in a two-year pilot program in cooperation with the FHSAA. Middle school and high school students attending a private school were allowed to participate in interscholastic or intrascholastic sports at the public school zoned for the address of the participating student if that private school was not a member of the FHSAA, and did not offer an interscholastic or intrascholastic athletic program. The pilot program was conducted during the 2008-2009 and 2009-2010 academic years.⁸ The FHSAA

¹ Sections 1002.41(4) and 1006.15(3)(c) and (d), F.S. "Interscholastic activities" are limited to high school athletic competitions. Section 1006.20(1), F.S. The Florida High School Athletic Association defines interscholastic contest as "any competition between organized teams of different schools in a sport recognized or sanctioned" by the FHSAA. Florida High School Athletic Association, *Interscholastic Contests*, available at, <http://www.fhsaa.org/about> (last visited March 17, 2011). "Extracurricular" activities include any school-authorized or education-related activity occurring during or outside the regular instructional school day. Section 1006.15(2), F.S.

² Section 1006.15(3)(d), F.S.

³ Section 1006.15(3), F.S.

⁴ Sections 1006.15(3)(a)(1) and (2) and 1003.43(1), F.S.

⁵ Section 1006.15(3)(a)4., F.S.

⁶ Section 1006.20(1), F.S.; see also Florida High School Athletic Association, *About the FHSAA*, available at, <http://www.fhsaa.org/about> (last visited March 15, 2011).

⁷ Section 1006.20(2), F.S.

⁸ Section 1006.15(8)(a), F.S.

reported that 23 students participated in the pilot program. None of the three school districts that participated reported any problems with the implementation of the program.⁹

Current law does not allow a student attending a private school that is not a member of the FHSAA to participate in interscholastic extracurricular activities at a public school.

Effect of Proposed Changes

The bill allows a student attending a private middle school or high school to participate in interscholastic or intrascholastic sports at a public school that is zoned for the physical address at which the student resides if the private school where the student is enrolled is not a member of the FHSAA, and does not offer an interscholastic or intrascholastic athletic program. The bill limits participation in the athletic program to students from non-FHSAA member private schools that have 125 or fewer students in any given year. Schools with more than 125 students typically become members of the FHSAA.¹⁰

In order to participate in an interscholastic or intrascholastic athletic program, parents of a student attending a private school that is not a member of the FHSAA must register with the assigned public school in writing affirming their intent for their child to participate in a specific sport through the FHSAA program application process. The parents must also be responsible for transporting their child to and from the public school at which the student participates.

A student from a non-FHSAA member school participating in the athletic program must meet the same standards of eligibility, code of conduct, and academic performance that apply to other students participating in interscholastic or intrascholastic sports at a public school or a FHSAA member private school.¹¹ In addition, the bill requires these students to remain enrolled at the public school that they first registered to maintain their eligibility for continued participation in the interscholastic or intrascholastic athletic program during each academic year.

The bill also requires the athletic director at each participating FHSAA member public school to maintain student records on eligibility, compliance, and participation for the participating students in the program. A participating private school that is not a member of the FHSAA must provide all student-level data to FHSAA upon request.

Finally, the bill repeals the two-year pilot program that concluded in 2010.

B. SECTION DIRECTORY:

Section 1. Amends s. 1006.15(8)(a), F.S.; to expand participation in interscholastic or intrascholastic sports to students attending non-FHSAA member private schools; and repeals the two-year pilot program in Bradford County, Duval County, and Nassau County.

Section 2. Provides that the bill shall take effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

⁹ Letter, Report on the progress of the pilot program pursuant to s. 1006.15, F.S., Florida High School Athletic Association (Dec. 15, 2009).

¹⁰ Telephone interview with staff from the Florida High School Athletic Association (March 18, 2011).

¹¹ E-mail, Florida High School Athletic Association (March 14, 2011). The FHSAA reported that 218 private schools are currently members of their association. The actual number of non-FHSAA member private middle schools and high schools that do not offer an athletic program, and the number of students who will participate in this program, are unknown.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

There may be insignificant costs for local schools and the FHSAA to maintain and provide the records required by this bill.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The administrative workload associated with the maintenance of student records for eligibility, compliance and program participation is indeterminate; however, it is not expected to have a significant fiscal impact on the school districts or the FHSAA.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Student Athlete Participation: The bill allows a student attending a non-FHSAA member private school that does not offer an athletic program to participate in interscholastic sports at a public school. Current law already allows home school and charter school students to participate in the program.¹² The FHSAA has established bylaws allowing participation by home school and charter school students in the program.¹³ The FHSAA bylaws will need to be amended to reflect the provisions for students attending non-FHSAA member private schools.

Student Athlete Transfer: The bill restricts student eligibility to participation in a middle school or high school athletic competition in the school he or she first enrolls each year or practices as a candidate for an athletic team before enrolling in a FHSAA-member school. To the contrary, the FHSAA bylaws governing student transfer allow for exceptions to the transfer regulations. A transfer student may continue to remain eligible to participate in interscholastic athletics if the student moves with a parent or

¹² Sections 1002.41(4) and 1006.15(3)(c) and (d), F.S.

¹³ Section 3.2.2, Types of Member Schools, *FHSAA Bylaws*, 2010-11 FHSAA Handbook, available at, <http://www.fhsaa.org/rules/fhsaa-handbook>.

guardian with whom he or she lives to a different attendance area than the school that the student first enrolled in a given year.¹⁴ Irrespective of the FHSAA bylaws, the bill's provisions govern.

Enforcement of Bylaws: The FHSAA member schools must comply with all FHSAA bylaws and other rules of the association.¹⁵ The bill provides the FHSAA with authority to request student-level data including, but not limited to, academic, financial, disciplinary, and attendance records from the non-FHSAA member private schools.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

¹⁴ Section 9.3, Transfer Regulations, *FHSAA Bylaws*, 2010-11 FHSAA Handbook, available at, <http://www.fhsaa.org/rules/fhsaa-handbook>.

¹⁵ Section 3.5.2, Compliance with Rules, *FHSAA Bylaws*, 2010-11 FHSAA Handbook, available at, <http://www.fhsaa.org/rules/fhsaa-handbook>.

1 A bill to be entitled
 2 An act relating to interscholastic and intrascholastic
 3 sports; amending s. 1006.15, F.S.; removing certain
 4 provisions relating to a pilot program in which a middle
 5 school student or a high school student in a private
 6 school may participate in athletics at a public school;
 7 providing for statewide implementation of the program;
 8 requiring that the athletic director of each public school
 9 maintain the records of students participating in the
 10 program; requiring that any private school that is not a
 11 member of the Florida High School Athletic Association
 12 make the records of participating students available to
 13 the association upon request; requiring that a student
 14 apply to participate in the program through the
 15 appropriate application process; limiting participation in
 16 the program to students who are enrolled in non-FHSAA
 17 member private schools consisting of a maximum number of
 18 students; providing an effective date.

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

21
 22 Section 1. Subsection (8) of section 1006.15, Florida
 23 Statutes, is amended to read:

24 1006.15 Student standards for participation in
 25 interscholastic and intrascholastic extracurricular student
 26 activities; regulation.—

27 (8) (a) The Florida High School Athletic Association
 28 (FHSAA), in cooperation with each ~~the~~ district school board

29 ~~boards of Bradford County, Duval County, and Nassau County,~~
 30 shall facilitate a ~~2-year pilot~~ program during the ~~2008-2009 and~~
 31 ~~2009-2010 academic years~~ in which a middle school or high school
 32 student who attends a private school shall be eligible to
 33 participate in an interscholastic or intrascholastic sport at a
 34 public high school, a public middle school, or a 6-12 public
 35 school that is zoned for the physical address at which the
 36 student resides if:

37 1. The private school in which the student is enrolled is
 38 not a member of the FHSAA and does not offer an interscholastic
 39 or intrascholastic athletic program.

40 2. The private school student meets the guidelines for the
 41 conduct of the ~~pilot~~ program established by the FHSAA's board of
 42 directors and the ~~participating~~ district school board ~~boards~~. At
 43 a minimum, such guidelines shall provide:

44 a. A deadline for each sport by which the private school
 45 student's parents must register with the public school in
 46 writing their intent for their child to participate at that
 47 school in the sport.

48 b. Requirements for a private school student to
 49 participate, including, but not limited to, meeting the same
 50 standards of eligibility, acceptance, behavior, educational
 51 progress, and performance which ~~that~~ apply to other students
 52 participating in interscholastic or intrascholastic sports at a
 53 public school or FHSAA member private school.

54 (b) The parents of a private school student participating
 55 in a public school sport under this subsection are responsible
 56 for transporting their child to and from the public school at

57 which the student participates. The private school the student
 58 attends, the public school at which the student participates in
 59 a sport, the district school board, and the FHSAA are exempt
 60 from civil liability arising from any injury that occurs to the
 61 student during such transportation.

62 (c) For each academic year, a private school student may
 63 only participate at the public school in which the student is
 64 first registered under sub-subparagraph (a)2.a. or makes himself
 65 or herself a candidate for an athletic team by engaging in a
 66 practice.

67 (d) The athletic director of each participating FHSAA
 68 member public school shall maintain the student records
 69 necessary for eligibility, compliance, and participation in the
 70 program.

71 (e) Any non-FHSAA member private school that has a student
 72 who wishes to participate in this program must make all student
 73 records, including, but not limited to, academic, financial,
 74 disciplinary, and attendance records, available upon request of
 75 the FHSAA.

76 (f) A student must apply to participate in this program
 77 through the FHSAA program application process.

78 (g) Only students who are enrolled in non-FHSAA member
 79 private schools consisting of 125 students or fewer are eligible
 80 to participate in the program in any given academic year.



81 ~~(d) The FHSAA and participating district school boards~~
 82 ~~shall submit to the Governor, the President of the Senate, and~~
 83 ~~the Speaker of the House of Representatives:~~

84 ~~1. A copy of the guidelines established under subparagraph~~

85 ~~(a)2. for the pilot program no later than August 1, 2008.~~
 86 ~~2. A report on the progress of the pilot program no later~~
 87 ~~than January 1, 2010. The report shall include the number of~~
 88 ~~students registered under sub-subparagraph (a)2.a., the number~~
 89 ~~of students found eligible to participate in the pilot program,~~
 90 ~~the number of students who transfer to the public schools at~~
 91 ~~which the students participated under the pilot program,~~
 92 ~~implementation issues experienced with the pilot program, and~~
 93 ~~recommendations on how the pilot program may be improved and~~
 94 ~~expanded to include other counties.~~
 95 ~~(c) This subsection shall stand repealed on June 30, 2010,~~
 96 ~~unless reviewed and reenacted by the Legislature.~~
 97 Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1331 School Choice
SPONSOR(S): Bileca and others
TIED BILLS: IDEN./SIM. BILLS: SB 1822

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) K-20 Innovation Subcommittee	13 Y, 0 N	Valenstein	Sherry
2) PreK-12 Appropriations Subcommittee		Seifert 	Heflin 
3) Education Committee			

SUMMARY ANALYSIS

The bill expands the definition of a failing school for purposes of student eligibility for the Opportunity Scholarship Program (OSP). The bill changes the classification of a failing school from a school receiving two "F's" in a four-year period to a school that has received a "D" for two school years in a four year period or an "F" for one school year in a two year period, and meets certain other requirements.

The bill changes the authorization parents currently have to choose a higher-performing public school that has space available in an adjacent school district to any other school district in the state. The bill maintains the transportation requirements for school districts, thus, if a parent chooses a public school outside of the assigned school district, the parent is responsible for providing transportation. However, if a parent chooses a higher-performing public school within the assigned district, the school district is required to provide transportation. The authorization for use of categorical funds remains an option for school districts to provide the transportation required for opportunity scholarship recipients.

The bill repeals all portions of the law relating to the OSP private school choice options. This complies with existing case law that found this portion of the OSP unconstitutional.

The bill also makes necessary conforming changes relating to the expanded definition of a failing school for the OSP.

See FISCAL COMMENTS and DRAFTING ISSUES OR OTHER COMMENTS.

This bill provides an effective date of July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Overview

Opportunity Scholarship Program

The Opportunity Scholarship Program (OSP) was created in 1999 as part of a broad education reform package known as the A+ Plan.¹ The OSP was designed to provide parents of public school students in failing schools the opportunity to send their children to another public school performing satisfactorily or to an eligible private school. For purposes of the OSP, a failing school is a school that has received a performance grade of "F" for two years in a four-year period, this currently encompasses 24 schools.²

When created, both sectarian and nonsectarian private schools were eligible to receive an Opportunity Scholarship, if the school met all the requirements established in law.³ However, in 2006, the Florida Supreme Court ruled that the private school scholarship option of the OSP violates the State Constitution. The Court's narrowly tailored opinion addressed only the issue of whether the State Constitution prohibits the state from expending public funds to allow students to use an Opportunity Scholarship to obtain a private school education. The Court held that "through the OSP the state is fostering plural, nonuniform systems of education in direct violation of the constitutional mandate for a uniform system of free public schools."⁴ Accordingly, an Opportunity Scholarship may now only be used to attend a public school of choice.

Due to the Court's ruling, a student may use an Opportunity Scholarship to attend either, a public school within the school district designated by the state as performing higher than that in which the student is currently enrolled or to which the student has been assigned, but not less than performance grade category "C," or a public school in an adjacent school district with available space designated by the state as a higher-performing public school. If a parent chooses a school in an adjacent school district, the parent is responsible for transporting the student to and from the school.⁵

Currently, a student that receives an Opportunity Scholarship may continue attending a higher performing public school within the district or in an adjacent district until he or she graduates from high school.⁶

Differentiated Accountability

Differentiated accountability is a system of categorizing schools based upon student achievement and determining appropriate interventions. Schools are categorized according to the causes and severity of substandard student achievement. School improvement interventions are then applied to the school based upon the school's categorization. A school's categorization determines the type and intensity of school improvement interventions and whether interventions are directed by the school, school district, or state. The lowest performing schools receive more comprehensive interventions, while schools that are closer to meeting student achievement goals receive less intensive interventions.⁷

The six categories that comprise the differentiated accountability system include: Schools Not Required to Participate in Differentiated Accountability Strategies; Prevent I, Correct I, Prevent II, Correct II, and

¹ Section 2, ch. 99-398, L.O.F.

² Email, Department of Education Staff (March 16, 2011).

³ Section 2, ch. 99-398, L.O.F.

⁴ *Bush v. Holmes*, 919 So.2d 392 (Fla. 2006).

⁵ Section 1002.38(3)(a) and (b), F.S.

⁶ Section 1002.38(3)(a) and (b), F.S.

⁷ Section 1008.33, F.S.; rule 6A-1.099811, F.A.C.

Intervene.⁸ In 2010 there were 22 schools in the Intervene category and 961 schools in the Correct II category.⁹

Each category is based upon the school's grade, progress towards adequate yearly progress under the federal No Child Left Behind requirements, and changes in student performance. A school's categorization determines the type and intensity of the intervention and whether the intervention is directed by the school, school district, or the Department of Education.

Effect of Proposed Changes

The bill expands the definition of a failing school for purposes of student eligibility for the OSP. The bill changes the classification of a failing school from a school receiving two "F"s in a four-year period to a school that has received a "D" for two school years in a four-year period or an "F" for one school year in a two-year period, and has been classified in one of the two lowest-performing categories within the differentiated accountability program (i.e. Correct II or Intervene). This expands the number of eligible schools from 24 to 194.¹⁰

The bill maintains the duration of eligibility for a student that receives an Opportunity Scholarship. The bill amends this to allow a student to choose to continue attending the higher-performing public school feeder pattern¹¹ until graduation. This appears to allow students to remain in the same schools as their classmates, regardless of the performance level of the feeder pattern school or their assigned school.

The bill changes the authorization parents currently have to choose a higher-performing public school that has space available in an adjacent school district to any other school district in the state. The bill maintains the transportation requirements for school districts, thus, if a parent chooses a public school outside of the assigned school district, the parent is responsible for providing transportation. However, if a parent chooses a higher-performing public school within the assigned district, the school district is required to provide transportation. The authorization for use of categorical funds remains an option for school districts to provide the transportation required for opportunity scholarship recipients.

The bill repeals all portions of the law relating to the OSP private school choice options. The bill removes these portions of the law to comply with existing case law regarding the constitutionality of using state funds to attend a private school.¹²

The bill also makes necessary conforming changes relating to the expanded definition of a failing school for the OSP.

B. SECTION DIRECTORY:

Section 1. Amends s. 1002.38, F.S., to revise legislative intent and eligibility requirements for participation in the Opportunity Scholarship Program; deleting provisions that authorize an Opportunity Scholarship for attendance at a private school; requiring that an Opportunity Scholarship remain in force until the student graduates from high school; and revising school district obligations and deleting provisions relating to private schools to conform to changes made by the bill.

Section 2. Amends s. 1001.42, F.S., to conform provisions to changes made by the bill.

Section 3. Amends s. 1002.20, F.S., to conform provisions to changes made by the bill.

Section 4. Provides an effective date of July 1, 2011.

⁸ Rule 6A-1.0099811, F.A.C.

⁹ Email, Florida Department of Education Staff (Sept. 7, 2010).

¹⁰ Email, Florida Department of Education Staff (March 24, 2011).

¹¹ See Drafting Issues or Other Comments section of this analysis for discussion of feeder pattern schools.

¹² See *Bush v. Holmes*, 919 So.2d 392 (Fla. 2006).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See FISCAL COMMENTS.

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

As of March 24, 2011, the Department of Education estimates the number of schools that meet the expanded definition of a failing school, after excluding currently eligible schools and schools eligible for the federal public choice option, is an additional 30 schools. It should be noted the federal program is limited by:

- Choice under NCLB is limited to schools that meet AYP. This may mean that there are very few schools or no schools in the district that parents could choose as an option for their student. If these schools provided choice under the OSP program students would have the choice of schools graded C or above.
- School districts are provided a portion of their Title 1 Part A funds to be used to transport NCLB choice students to other schools. When those funds are used up the district no longer is required to provide choice with transportation. So, there may be parents that would like to exercise a choice option under NCLB that can't, because the transportation funding does not stretch far enough.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill allows students to attend a higher-performing public school in any district within the state. This may impact the Florida Education Finance Program, because different school districts are funded at different rates based on the cost of living adjustment for the district.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

- The bill defines a failing school in part as a school that receives one "F" in a two year period. Providing a time period for receiving a single "F" is unnecessary because a school is deemed failing for purposes of the OSP as soon as the school receives an "F," as long as the school meets the other established criteria.
- Current law states, "The opportunity to continue attending the higher performing public school shall remain in force until the student graduates from high school." If the bill passes, the law will state, "The student shall have the opportunity to continue attendance in the higher-performing public school feeder pattern until the student graduates from high school." If 60 percent of an elementary school's students attend a particular middle school, that middle school is identified as the feeder pattern school.¹³ The bill, for example, would allow an elementary school student participating in the OSP to continue to the feeder pattern middle school, regardless of that school's performance level.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

¹³ Section 1008.34(3)(a)3., F.S.

1 A bill to be entitled
 2 An act relating to school choice; amending s. 1002.38 ,
 3 F.S.; revising legislative intent and eligibility
 4 requirements for participation in the Opportunity
 5 Scholarship Program; deleting provisions that authorize an
 6 opportunity scholarship for attendance at a private
 7 school; requiring that an opportunity scholarship remain
 8 in force until the student graduates from high school;
 9 revising school district obligations and deleting
 10 provisions relating to private schools to conform to
 11 changes made by the act; amending ss. 1001.42 and 1002.20,
 12 F.S.; conforming provisions to changes made by the act;
 13 deleting an obsolete provision relating to the John M.
 14 McKay Scholarships for Students with Disabilities Program;
 15 providing an effective date.

16
 17 Be It Enacted by the Legislature of the State of Florida:
 18

19 Section 1. Section 1002.38, Florida Statutes, is amended
 20 to read:

21 1002.38 Opportunity Scholarship Program.—

22 (1) FINDINGS AND INTENT.—The purpose of this section is to
 23 provide enhanced opportunity for students in this state to gain
 24 the knowledge and skills necessary for postsecondary education,
 25 a career education, or the world of work. The Legislature
 26 recognizes that the voters of the State of Florida, in the
 27 November 1998 general election, amended s. 1, Art. IX of the
 28 Florida Constitution so as to make education a paramount duty of

29 the state. The Legislature finds that the State Constitution
 30 requires the state to provide a uniform, safe, secure,
 31 efficient, and high-quality system which allows the opportunity
 32 to obtain a high-quality education. The Legislature further
 33 finds that a student should not be compelled, against the wishes
 34 of the student's parent, to remain in a school found by the
 35 state to be failing ~~for 2 years in a 4-year period~~. The
 36 Legislature shall make available opportunity scholarships in
 37 order to give parents the opportunity for their children to
 38 attend a public school that is performing satisfactorily ~~or to~~
 39 ~~attend an eligible private school when the parent chooses to~~
 40 ~~apply the equivalent of the public education funds generated by~~
 41 ~~his or her child to the cost of tuition in the eligible private~~
 42 ~~school as provided in paragraph (6)(a). Eligibility of a private~~
 43 ~~school shall include the control and accountability requirements~~
 44 ~~that, coupled with the exercise of parental choice, are~~
 45 ~~reasonably necessary to secure the educational public purpose,~~
 46 ~~as delineated in subsection (4).~~

47 (2) OPPORTUNITY SCHOLARSHIP ELIGIBILITY.—

48 (a) A public school student's parent may request and
 49 receive ~~from the state~~ an opportunity scholarship for the
 50 student to enroll in and attend a public ~~private~~ school in
 51 accordance with the provisions of this section if:

52 ~~(a)~~1. By assigned school attendance area or by special
 53 assignment, the student has spent the prior school year in
 54 attendance at a public school that has been designated pursuant
 55 to s. 1008.34 as performance grade category "D" for 2 school
 56 years in a 4-year period or "F₇" for 1 school year in a 2-year

57 ~~period failing to make adequate progress,~~ and that is in one of
 58 the two lowest-performing categories pursuant to s. 1008.33 ~~has~~
 59 ~~had 2 school years in a 4-year period of such low performance,~~
 60 and the student's attendance occurred during a school year in
 61 which such designation was in effect;

62 2. The student has been in attendance elsewhere in the
 63 public school system and has been assigned to such school for
 64 the next school year; or

65 3. The student ~~is entering kindergarten or first grade and~~
 66 has been notified that he or she ~~the student~~ has been assigned
 67 to such school for the next school year.

68 ~~(b) The parent has obtained acceptance for admission of~~
 69 ~~the student to a private school eligible for the program~~
 70 ~~pursuant to subsection (4), and has notified the Department of~~
 71 ~~Education and the school district of the request for an~~
 72 ~~opportunity scholarship no later than July 1 of the first year~~
 73 ~~in which the student intends to use the scholarship.~~

74 (b) ~~The provisions of~~ This section does ~~shall~~ not apply to
 75 a student who is enrolled in a school operating for the purpose
 76 of providing educational services to youth in Department of
 77 Juvenile Justice commitment programs. For purposes of continuity
 78 of educational choice, the opportunity scholarship shall remain
 79 in force until the student graduates from high school ~~returns to~~
 80 ~~a public school or, if the student chooses to attend a private~~
 81 ~~school the highest grade of which is grade 8, until the student~~
 82 ~~matriculates to high school and the public high school to which~~
 83 ~~the student is assigned is an accredited school with a~~
 84 ~~performance grade category designation of "C" or better.~~

HB 1331

2011

85 ~~However, at any time upon reasonable notice to the Department of~~
 86 ~~Education and the school district, the student's parent may~~
 87 ~~remove the student from the private school and place the student~~
 88 ~~in a public school, as provided in subparagraph (3)(a)2.~~

89 (3) SCHOOL DISTRICT OBLIGATIONS.—

90 (a) A school district shall, for each student enrolled in
 91 or assigned to a school that has been designated as provided in
 92 subsection (2) performance grade category "F" for 2 school years
 93 in a 4-year period:

94 1. Timely notify the parent of the student as soon as such
 95 designation is made of all options available pursuant to this
 96 section.

97 2. Offer that student's parent an opportunity to enroll
 98 the student in a ~~the~~ public school within the district that has
 99 been designated by the state pursuant to s. 1008.34 as a school
 100 performing higher than that in which the student is currently
 101 enrolled or to which the student has been assigned, but not less
 102 than performance grade category "C." ~~The parent is not required~~
 103 ~~to accept this offer in lieu of requesting a state opportunity~~
 104 ~~scholarship to a private school.~~ The student shall have the
 105 opportunity to continue attendance in attending the higher-
 106 performing higher-performing public school feeder pattern shall
 107 ~~remain in force~~ until the student graduates from high school.

108 (b) The parent of a student enrolled in or assigned to a
 109 school that has been designated as provided in subsection (2)
 110 performance grade category "F" for 2 school years in a 4-year
 111 period may choose as an alternative to subparagraph (a)2. to
 112 enroll the student in and transport the student to a higher-

HB 1331

2011

113 performing public school that has available space in any other
 114 ~~an adjacent~~ school district in the state, and that school
 115 district shall accept the student and report the student for
 116 purposes of the district's funding pursuant to the Florida
 117 Education Finance Program.

118 (c) For students in the school district who are
 119 participating in the state Opportunity Scholarship Program, the
 120 school district shall provide locations and times to take all
 121 statewide assessments required pursuant to s. 1008.22.

122 (d) Students with disabilities who are eligible to receive
 123 services from the school district under federal or state law,
 124 and who participate in this program, remain eligible to receive
 125 services from the school district as provided by federal or
 126 state law.

127 (e) ~~If for any reason a qualified private school is not~~
 128 ~~available for the student or~~ If the parent chooses to request
 129 that the student be enrolled in a higher-performing ~~the higher~~
 130 ~~performing~~ public school in the school district, ~~rather than~~
 131 ~~choosing to request the state opportunity scholarship,~~
 132 transportation costs to the higher-performing ~~higher-performing~~
 133 public school shall be the responsibility of the school
 134 district. The district may utilize state categorical
 135 transportation funds or state-appropriated public school choice
 136 incentive funds for this purpose.

137 ~~(4) PRIVATE SCHOOL ELIGIBILITY. To be eligible to~~
 138 ~~participate in the Opportunity Scholarship Program, a private~~
 139 ~~school must be a Florida private school, may be sectarian or~~
 140 ~~nonsectarian, and must:~~

141 ~~(a) Demonstrate fiscal soundness by being in operation for~~
 142 ~~1 school year or provide the Department of Education with a~~
 143 ~~statement by a certified public accountant confirming that the~~
 144 ~~private school desiring to participate is insured and the owner~~
 145 ~~or owners have sufficient capital or credit to operate the~~
 146 ~~school for the upcoming year serving the number of students~~
 147 ~~anticipated with expected revenues from tuition and other~~
 148 ~~sources that may be reasonably expected. In lieu of such a~~
 149 ~~statement, a surety bond or letter of credit for the amount~~
 150 ~~equal to the opportunity scholarship funds for any quarter may~~
 151 ~~be filed with the department.~~

152 ~~(b) Notify the Department of Education and the school~~
 153 ~~district in whose service area the school is located of its~~
 154 ~~intent to participate in the program under this section by May 1~~
 155 ~~of the school year preceding the school year in which it intends~~
 156 ~~to participate. The notice shall specify the grade levels and~~
 157 ~~services that the private school has available for the~~
 158 ~~Opportunity Scholarship Program.~~

159 ~~(c) Comply with the antidiscrimination provisions of 42~~
 160 ~~U.S.C. s. 2000d.~~

161 ~~(d) Meet state and local health and safety laws and codes.~~

162 ~~(e) Accept scholarship students on an entirely random and~~
 163 ~~religious-neutral basis without regard to the student's past~~
 164 ~~academic history; however, the private school may give~~
 165 ~~preference in accepting applications to siblings of students who~~
 166 ~~have already been accepted on a random and religious-neutral~~
 167 ~~basis.~~

168 ~~(f) Be subject to the instruction, curriculum, and~~

169 ~~attendance criteria adopted by an appropriate nonpublic school~~
 170 ~~accrediting body and be academically accountable to the parent~~
 171 ~~for meeting the educational needs of the student. The private~~
 172 ~~school must furnish a school profile which includes student~~
 173 ~~performance.~~

174 ~~(g) Employ or contract with teachers who hold a~~
 175 ~~baccalaureate or higher degree, or have at least 3 years of~~
 176 ~~teaching experience in public or private schools, or have~~
 177 ~~special skills, knowledge, or expertise that qualifies them to~~
 178 ~~provide instruction in subjects taught.~~

179 ~~(h) Comply with all state statutes relating to private~~
 180 ~~schools.~~

181 ~~(i) Accept as full tuition and fees the amount provided by~~
 182 ~~the state for each student.~~

183 ~~(j) Agree not to compel any student attending the private~~
 184 ~~school on an opportunity scholarship to profess a specific~~
 185 ~~ideological belief, to pray, or to worship.~~

186 ~~(k) Adhere to the tenets of its published disciplinary~~
 187 ~~procedures prior to the expulsion of any opportunity scholarship~~
 188 ~~student.~~

189 ~~(5) OBLIGATION OF PROGRAM PARTICIPATION.~~

190 ~~(a) Any student participating in the Opportunity~~
 191 ~~Scholarship Program must remain in attendance throughout the~~
 192 ~~school year, unless excused by the school for illness or other~~
 193 ~~good cause, and must comply fully with the school's code of~~
 194 ~~conduct.~~

195 ~~(b) The parent of each student participating in the~~
 196 ~~Opportunity Scholarship Program must comply fully with the~~

197 ~~private school's parental involvement requirements, unless~~
 198 ~~excused by the school for illness or other good cause.~~

199 ~~(c) The parent shall ensure that the student participating~~
 200 ~~in the Opportunity Scholarship Program takes all statewide~~
 201 ~~assessments required pursuant to s. 1008.22.~~

202 ~~(d) A participant who fails to comply with this subsection~~
 203 ~~shall forfeit the opportunity scholarship.~~

204 ~~(6) OPPORTUNITY SCHOLARSHIP FUNDING AND PAYMENT.~~

205 ~~(a) The maximum opportunity scholarship granted for an~~
 206 ~~eligible student shall be a calculated amount equivalent to the~~
 207 ~~base student allocation in the Florida Education Finance Program~~
 208 ~~multiplied by the appropriate cost factor for the educational~~
 209 ~~program that would have been provided for the student in the~~
 210 ~~district school to which he or she was assigned, multiplied by~~
 211 ~~the district cost differential. In addition, the calculated~~
 212 ~~amount shall include the per-student share of instructional~~
 213 ~~materials funds, technology funds, and other categorical funds~~
 214 ~~as provided for this purpose in the General Appropriations Act.~~

215 ~~(b) The amount of the opportunity scholarship shall be the~~
 216 ~~calculated amount or the amount of the private school's tuition~~
 217 ~~and fees, whichever is less. Fees eligible shall include~~
 218 ~~textbook fees, lab fees, and other fees related to instruction,~~
 219 ~~including transportation.~~

220 ~~(c) The school district shall report all students who are~~
 221 ~~attending a private school under this program. The students~~
 222 ~~attending private schools on opportunity scholarships shall be~~
 223 ~~reported separately from those students reported for purposes of~~
 224 ~~the Florida Education Finance Program.~~

225 ~~(d) The public or private school that provides services to~~
 226 ~~students with disabilities shall receive the weighted funding~~
 227 ~~for such services at the appropriate funding level consistent~~
 228 ~~with the provisions of s. 1011.62(1)(c).~~

229 ~~(e) For purposes of calculating the opportunity~~
 230 ~~scholarship, a student will be eligible for the amount of the~~
 231 ~~appropriate basic cost factor if:~~

232 ~~1. The student currently participates in a Group I program~~
 233 ~~funded at the basic cost factor and is not subsequently~~
 234 ~~identified as having a disability; or~~

235 ~~2. The student currently participates in a Group II~~
 236 ~~program and the parent has chosen a private school that does not~~
 237 ~~provide the additional services funded by the Group II program.~~

238 ~~(f) Following annual notification on July 1 of the number~~
 239 ~~of participants, the Department of Education shall transfer from~~
 240 ~~each school district's appropriated funds the calculated amount~~
 241 ~~from the Florida Education Finance Program and authorized~~
 242 ~~categorical accounts to a separate account for the Opportunity~~
 243 ~~Scholarship Program for quarterly disbursement to the parents of~~
 244 ~~participating students.~~

245 ~~(g) Upon proper documentation reviewed and approved by the~~
 246 ~~Department of Education, the Chief Financial Officer shall make~~
 247 ~~opportunity scholarship payments in four equal amounts no later~~
 248 ~~than September 1, November 1, February 1, and April 1 of each~~
 249 ~~academic year in which the opportunity scholarship is in force.~~
 250 ~~The initial payment shall be made after Department of Education~~
 251 ~~verification of admission acceptance, and subsequent payments~~
 252 ~~shall be made upon verification of continued enrollment and~~

HB 1331

2011

253 ~~attendance at the private school. Payment must be by individual~~
 254 ~~warrant made payable to the student's parent and mailed by the~~
 255 ~~Department of Education to the private school of the parent's~~
 256 ~~choice, and the parent shall restrictively endorse the warrant~~
 257 ~~to the private school.~~

258 ~~(7) LIABILITY. No liability shall arise on the part of the~~
 259 ~~state based on any grant or use of an opportunity scholarship.~~

260 ~~(4)(8) RULES.—The State Board of Education may adopt rules~~
 261 ~~pursuant to ss. 120.536(1) and 120.54 to implement the~~
 262 ~~provisions of this section. Rules shall include penalties for~~
 263 ~~noncompliance with subsections (3) and (5). However, the~~
 264 ~~inclusion of eligible private schools within options available~~
 265 ~~to Florida public school students does not expand the regulatory~~
 266 ~~authority of the state, its officers, or any school district to~~
 267 ~~impose any additional regulation of private schools beyond those~~
 268 ~~reasonably necessary to enforce requirements expressly set forth~~
 269 ~~in this section.~~

270 Section 2. Subsection (20) of section 1001.42, Florida
 271 Statutes, is amended to read:

272 1001.42 Powers and duties of district school board.—The
 273 district school board, acting as a board, shall exercise all
 274 powers and perform all duties listed below:

275 (20) OPPORTUNITY SCHOLARSHIPS.—Adopt policies allowing
 276 students attending schools that have been designated with a
 277 grade of "D" for 2 school years in a 4-year period or "F₇" for 1
 278 school year in a 2-year period pursuant to s. 1008.34 and that
 279 are in one of the two lowest-performing categories pursuant to
 280 s. 1008.33 ~~failing to make adequate progress, for 2 school years~~

HB 1331

2011

281 ~~in a 4-year period~~ to attend a higher-performing ~~higher~~
 282 ~~performing~~ school in the district or any other ~~an adjoining~~
 283 district in the state ~~or be granted a state opportunity~~
 284 ~~scholarship to a private school,~~ in conformance with s. 1002.38
 285 and State Board of Education rule.

286 Section 3. Paragraph (b) of subsection (6) of section
 287 1002.20, Florida Statutes, is amended to read:

288 1002.20 K-12 student and parent rights.—Parents of public
 289 school students must receive accurate and timely information
 290 regarding their child's academic progress and must be informed
 291 of ways they can help their child to succeed in school. K-12
 292 students and their parents are afforded numerous statutory
 293 rights including, but not limited to, the following:

294 (6) EDUCATIONAL CHOICE.—

295 (b) Private school choices.—Parents of public school
 296 students may seek private school choice options under certain
 297 programs.

298 ~~1. Under the Opportunity Scholarship Program, the parent~~
 299 ~~of a student in a failing public school may request and receive~~
 300 ~~an opportunity scholarship for the student to attend a private~~
 301 ~~school in accordance with the provisions of s. 1002.38.~~

302 1.2. Under the McKay Scholarships for Students with
 303 Disabilities Program, the parent of a public school student with
 304 a disability ~~who is dissatisfied with the student's progress~~ may
 305 request and receive a McKay Scholarship for the student to
 306 attend a private school in accordance with the provisions of s.
 307 1002.39.

308 2.3. Under the Florida Tax Credit Scholarship Program, the

HB 1331

2011

309 | parent of a student who qualifies for free or reduced-price
310 | school lunch may seek a scholarship from an eligible nonprofit
311 | scholarship-funding organization in accordance with the
312 | provisions of s. 1002.395.

313 | Section 4. This act shall take effect July 1, 2011.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1331 (2011)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE 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 Committee/Subcommittee hearing bill: PreK-12 Appropriations
2 Subcommittee

3 Representative(s) Bileca offered the following:

4
5 **Amendment**

6 Remove lines 55-57 and insert:
7 to s. 1008.34 as performance grade category "D" or "F," ~~failing~~
8 ~~to make adequate progress,~~ and that is in one of

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1331 (2011)

Amendment No. 2

COMMITTEE/SUBCOMMITTEE 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 Committee/Subcommittee hearing bill: PreK-12 Appropriations
2 Subcommittee

3 Representative(s) Bileca offered the following:

4
5 **Amendment**

6 Remove line 48 and insert:

7 (2) OPPORTUNITY SCHOLARSHIP ELIGIBILITY. - For purposes of
8 this section, eligibility requirements relating to a school's
9 grade, pursuant to s. 1008.34, shall be determined only by that
10 portion of the school grade which is based on statewide
11 assessments administered pursuant to s. 1008.22.

