

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS\SB 1756

SPONSOR: Education Committee and Senators Cowin and McKay

SUBJECT: Education Accountability

DATE: March 24, 1999 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harkey</u>	<u>O'Farrell</u>	<u>ED</u>	<u>Favorable\CS</u>
2.	_____	_____	<u>FP</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

## I. Summary:

The committee substitute addresses educational accountability and provides for the following:

- Shortened time frame for the State Board of Education to intervene in districts that have low performing schools.
- Opportunity Scholarships for students in failing schools to attend an eligible private school, sectarian or nonsectarian, of their choosing.
- Opportunity for parents of students in failing schools to choose a higher performing public school within the district or in an adjoining district.
- Enhanced management information systems to collect student and school performance data.
- Student assessment program that measures annual learning gains of each student and provides data for school accountability and recognition.
- Annual assessments of student academic performance in grades 3 through 10.
- School Performance Grade Categories identifying a school's level of performance and progress.
- School Improvement Ratings identify whether each school's performance has improved, remained the same, or declined.
- School Performance Grade Category and Improvement Rating Reports.
- Increased budgetary authority for schools designated as making excellent progress.
- Elimination of the Florida Commission on Education Reform and Accountability.
- Deregulation of schools designated as making excellent progress.
- Earlier intervention by the school boards for schools in danger of not meeting state standards for adequate progress.
- School recognition awards to be based on student learning gains and other criteria.
- Supplemental Academic Instruction Categorical Fund for students in kindergarten through 12th grade.
- A new method of calculating graduation rate and dropout rate.
- A new statistical assessment tool for measuring pupil progress and teacher effectiveness.

The estimated cost for expanding the statewide student assessment program is \$18.6 million. The cost for enhancements to the management information system is indeterminate. Funding for the Supplemental Academic Instruction Categorical is subject to legislative appropriation. The Governor's budget recommends \$313 million for this categorical for 1999-2000. The Opportunity Scholarship Program is fiscally neutral, as the appropriated education dollars follow the participant.

This bill substantially amends ss. 20.15, 228.041, 228.056, 229.0535, 229.512, 229.555, 229.565, 229.57, 229.58, 229.591, 229.592, 229.595, 230.23, 231.29, 231.2905, 232.245, 228.053, 228.054, 233.17, 236.013, 236.685, 239.101, 239.229, and 240.529; creates, ss. 229.0537 and 236.08104; and repeals ss. 229.593 and 229.594, and Florida Statutes.

The bill also reenacts ss. 24.121, 120.81, 228.053, 228.0565, 228.301, 229.551, 230.03, 230.2316, 231.085, 231.24, 231.36, 231.600, 232.2454, 232.246, 232.248, 232.2481, 233.09, 233.165, 233.25, 236.08106, 239.229, and 240.118, F.S. to incorporate cross references.

## II. Present Situation:

### **Authority To Enforce School Improvement**

The State Board of Education has the authority to intervene in the operation of a school district when one or more schools in the district have failed to make adequate progress for 3 consecutive school years. The state board is authorized to recommend several actions to school boards to ensure that students in low performing districts are well served. One of those recommendations is to allow parents of students in the low performing school to send their child to another district school of their choice.

There are only four schools in Florida that are currently identified as critically low performing based on both 1996-97 and 1997-98 school performance data and state board-adopted criteria: They are as follows: Spencer Bibb Elementary School in Escambia County, A.A. Dixon Elementary School in Escambia County, Shanks High School in Gadsden County, and Orlo Vista Elementary School in Orange County.

### **School Choice: Public Dollars for Private Provision of Educational Services**

There are currently programs in place within the State which provide public dollars for payment of educational services provided by private entities:

- Florida Resident Access Grant (FRAG) established in s. 240.605, F.S., provides annual access grants to students to attend an independent nonprofit college or university. Students must meet certain eligibility requirements for FRAG.
- Section 230.23161(8), F.S., authorizes and strongly encourages school districts to contract with a private provider for the provision of educational programs to youths placed with the Department of Juvenile Justice. Recent survey results indicate that private providers account for 37% of the educational services delivered to students in juvenile justice facilities.

Section 228.057, F.S., provides for the public school parental choice program. This program requires each school board to develop a controlled open enrollment program in addition to existing choice programs such as magnet schools, alternative schools, special programs, advanced placement, and dual enrollment. The school district's public school parental choice plan must

include a process that allows parents to declare school preferences, a process that encourages placement of siblings within the same school, a lottery procedure to determine school assignment, availability of transportation, and a process that promotes strong parental involvement.

### **Private Schools**

Section 229.808, F.S., defines a nonpublic (private) school as “an individual, association, copartnership, or corporation or a department, division or section of such an organization, which designates itself as an educational center which includes kindergarten or a higher grade . . . below college level . . .” Private elementary and secondary schools in Florida are not licensed, approved, accredited or regulated by the state, but, they are required to make their existence known to the Department of Education and respond to an annual survey designed to make information about them available to the public. Each person who establishes, purchases or otherwise becomes an owner of a private school must, within 5 days of assuming ownership, file with the Florida Department of Law Enforcement (FDLE), a complete set of fingerprints for a criminal background check. The owner of a private school may require school employees to file a complete set of fingerprints with FDLE.

In the 1997-98 school year there were 1,607 known private schools of which 19 were specific exceptionality schools; 925 were K-8 elementary schools; 112 were 9-12 secondary schools; and 551 were K-12 schools.

Private schools may be accredited by one of several accrediting associations, such as Southern Association of Colleges and Schools (SACS), Florida Catholic Conference (FCC), or Florida Association of Christian Colleges & Schools (FACCS). These accrediting associations have required standards in several areas like the following: admission policies, financial status, salaries and working conditions, record keeping, transportation, length of school year, school size, class size, teacher training and experience, physical plant and equipment, academic programs and media, standardized testing and assessment, health and safety, and discipline.

### **Management Information Systems**

The Commissioner must develop and implement an integrated information system for educational management. The system must be able to support the management decisions to be made in each division of the department and at the school and district levels.

### **Student Assessment Program**

#### Purpose

The primary purpose of the statewide assessment program is to provide information needed for the improvement of public schools. The program must be designed to do the following:

- Identify the educational strengths and needs of the student.
- Assess how well educational goals and performance standards are met at the school, district, and state levels.
- Provide information to aid in the evaluation and development of educational programs and policies.

### Statewide Assessment Program

The student achievement testing program must be administered at designated times at the elementary, middle, and high school levels to measure proficiency in reading, writing, mathematics, and other content areas. The tests are criterion-referenced.

The testing program is designed so that all 11th grade students take the High School Competency Test. A student must earn a passing score or have been exempted from each part of this test in order to qualify for a regular high school diploma.

### District Testing Programs

Each district administers a nationally normed test in grades 4 and 8.

### School Testing Programs

Public schools administering achievement tests must prepare an analysis of the resultant data after each test administration.

### Annual Reports

The Commissioner prepares annual reports which must include the descriptions of the performance of students at both low levels and exemplary levels, as well as the performance of students scoring in the middle 50 percent of the test population.

### School Performance

Pursuant to ss.299.053, 229.0535, and 229.592, F.S., State Board rule 6A-1.09981 adopted in November of 1998, outlines a classification system for schools based on School Performance Levels. There are five School Performance Levels: School Performance Level 1 being the lowest performing designation and School Performance Level 5 being the highest performing designation.

Implementation and bases for the school performance levels are as follows:

- In the fall of 1999, school performance levels will be based on 1997-98 student achievement data including students' HSCT scores, Florida Writes! scores, and norm-referenced assessment scores.
- In the fall of 2000, school performance levels will be based on 1998-99 and 1999-2000 assessment criteria, a combination of students' FCAT scores and other appropriate performance data, including, but not limited to: attendance and dropout rates, school discipline data, and student readiness for college.

### **Assistance and Intervention**

The school board must develop a 3 year plan of increasing individualized assistance and intervention for each school that does not meet or make adequate progress. The board must notify the Florida Commission on Education Reform and Accountability and the State Board of Education by the end of 3 consecutive years in the event any school does not make adequate progress toward meeting state performance goals.

**Oversight of School Improvement and Accountability**

The Florida Commission on Education Reform and Accountability (the Commission) consists of the following 23 members:

- The Commissioner of Education, who serves as co-chair.
- The Lieutenant Governor, who serves as co-chair.
- Four members appointed by the Governor. Three members must be representatives of the business community and the fourth must be a teacher.
- Six members appointed by the President of the Senate. The members must include three members of the Senate, a teacher, a parent of a child enrolled in a Florida public school, and a dean of a Florida college of education.
- Six members appointed by the Speaker of the House of Representatives. The members must include three members of the House, a vocational educator, a parent of a child enrolled in a Florida public school, and a school board member.
- Five members appointed by the Commissioner of Education. The members must include a school superintendent, a school principal, a teacher, an expert in testing and measurement, and a parent of a child in a Florida public school.

The Commission serves as an advisory body to oversee the development, establishment, implementation, and maintenance of the statewide system of school improvement and accountability. The Commission makes annual recommendations for changes and improvements in this system to the Commissioner of Education and to the Legislature. The Commissioner is responsible for implementing and maintaining a system of school improvement and accountability based upon the recommendations of the Commission.

**Deregulated Schools**

The 1998 Legislature authorized a pilot project for Citrus, Leon, Palm Beach, Pinellas, Seminole, and Walton school districts to deregulate up to two high schools, two middle schools and two elementary schools. Deregulated schools are exempted from all statutes of the Florida School Code except those pertaining to civil rights, public records, and student health, safety, and welfare.

Deregulated schools must continue to be nonsectarian in programs, admission policies, and employment practices. They are funded in the same manner as other public schools.

Thirty-one schools have been granted deregulated status. Citrus county has 10 schools, Leon 5, Palm Beach 5, Pinellas 1, Seminole 6, and Walton 4.

**Florida School Recognition Program**

The Florida School Recognition Program was created in 1997 to provide financial awards to schools that sustain high performance. A school district must incorporate a performance incentive program in its employee salary structure to participate in the program. The program must contain the following criteria for the initial identification of eligible schools:

- improvement in the school's student achievement data,
- statewide student achievement data,
- readiness for postsecondary education data,
- dropout rates, and
- attendance rates.

Schools must apply for final recognition and financial awards based on the following criteria:

- school climate, including rates of school violence and crime,
- indicators of innovation in teaching and learning,
- indicators of successful challenging school improvement plans, and
- parent, community, and student involvement in learning.

In the 1998-99 General Appropriations Act, the Legislature appropriated \$5,390,000 for the Florida School Recognition Program (specific appropriation 7A).

### **Pupil Progression**

Each school must develop and implement an academic improvement plan to include provisions for remedial instruction through one or more of the following activities:

- summer school course work,
- extended day services,
- parent tutorial programs,
- contracted academic services,
- exceptional education services, or
- suspension of curriculum other than reading, writing and mathematics.

Any student who exhibits deficiency in reading skills in grades 1 through 3, must be given intensive reading instruction. If the student's reading deficiency is not remedied by the end of grade 2 or grade 3, the student must be retained.

Any student who exhibits deficiency in reading skills at the beginning of grades 2, 3 and 4, must be given intensive reading instruction. The student must continue to be given the intensive reading instruction until the deficiency is remedied. If it is not remedied by the end of grade 5, the student may be retained. There is some confusion caused by the conflict with the two statutory alternatives to be implemented if a student's reading deficiency is not remedied.

### **Retention Versus Social Promotion**

Retention in grade means that a student who performs below an acceptable level stays in a grade for a second year and repeats the work, or studies the same subject matter in a different way. Social promotion means that a student who performs below an acceptable level is promoted to the next grade along with his age-group peers with the expectation that he likely will not perform on grade level. American educators have tended to favor and disfavor the practice of retention in a cyclical fashion for most of this century. In times when retention is favored, it is seen as a way to enforce performance standards. Most educational research shows that retention does not help students in the long run; being over age for grade is highly correlated with dropping out of school.

In 1986-87, 11.4 percent of Florida kindergarten students and 11 percent of first grade students were retained in school. The retention of 41,000 students in grades K-3 cost the state approximately \$123 million for the repeated grades in 1986-87. The Senate Education committee convened a subcommittee on retention to investigate the rate of retention of students in kindergarten and first grade. The subcommittee concluded that the practice of retention should be discouraged and directed the Department of Education to implement policies to do so. The subcommittee did not consider legislation to be necessary and did not propose any.

Minimizing retention was not accompanied by an increase in student achievement. By 1997, concern over low reading and math scores in public school and high enrollment in remedial classes in community colleges led to the enactment of SB 1956. The practice of retention had once again come into favor and was incorporated in the bill as an assurance to the public that standards would be set and adhered to. Thus, the law requires retention for students whose performance is below an acceptable level.

### **Supplemental Academic Instruction**

Students who participate in summer school in grades kindergarten through 8 are funded in the K-8 summer school categorical; Specific appropriation 115 of the 1998-99 GAA provided \$83 million for this purpose. Funds provided in this categorical are for summer instruction and may be expended for basic supplemental instruction during the 180-day term.

In the 1998-99 school year, districts had the flexibility to use funds in the K-8 summer school categorical and the public school technology categorical for purposes of either categorical in the amounts determined by the local school boards to best meet the needs of the students.

Students in grades 9 through 12 basic who receive summer school instruction are funded on a full-time equivalent (FTE) basis in the Florida Education Finance Program.

### **Calculation of Graduation Rate and Dropout Rate**

Section 228.041, F.S., defines the terms “graduation rate” and “dropout rate.” The definition of graduation rate does not allow for any adjustment for students who may transfer into or out of a high school during the years between 9th grade and graduation. Thus, a school can have a high graduation rate of over 100 percent if it has more incoming students than dropouts, and a school that has no dropouts can have a low graduation rate because of students transferring to other schools. The graduation rate also counts a student as a graduate for earning a certificate of completion instead of a graduation credential. The definition of dropout rate does not count students who are classified as truants.

Recent improvements in the data residing in the Statewide Student Data Base make it possible to check student withdrawal codes against enrollment records in other schools or systems. For instance, some students coded as dropouts were found enrolled in other schools or school districts, and some students coded as transfers to adult education were found to be dropouts.

## **III. Effect of Proposed Changes:**

**Section 1.** The bill amends s. 229.0535, F.S., to shorten the time frame for the State Board of Education to intervene in districts which have schools designated as performance grade category “F”. The State board of Education is required to intervene when one or more schools in a district school system has failed to make adequate progress for 2 years in a 4-year period.

**Section 2.** The bill creates s. 229.0537, F.S., the Opportunity Scholarship Program and provides for opportunity scholarship eligibility, school district obligations, private school eligibility, program participation obligation, funding and payment, liability, and rulemaking.

### Opportunity Scholarship Eligibility

A public school student's parent or guardian may request an opportunity scholarship for the child to attend a private school, according to the following provisions:

- the student has spent the prior school year at a public school that has been designated "F," failing to make adequate progress, and that school has had 2 school years of low performance in a 4-year period; or the student has been assigned to such school for the next school year.
- the student is a Florida resident
- the student has obtained acceptance in a private school eligible for the program, and the parent has notified the school district requesting an opportunity scholarship no later than July 1 of the first year in which the student intends to use the scholarship.

The Opportunity Scholarship remains in force until the student leaves the private school for which the scholarship was originally granted, or until the student graduates into high school and the public school to which the student is assigned has a performance grade of "C" or better. If a student leaves the private school for which the scholarship was originally granted and the public school to which he or she would be assigned has a performance grade of "D" or "F" the student will remain eligible for a scholarship. At any time, the student's parent or guardian may choose to return the student to an eligible public school upon reasonable notice to the department.

The bill creates pilot programs in four school districts--Broward, Clay, Santa Rosa, and Sarasota County school districts--for students with disabilities whose academic progress did not meet expected levels for a given year as determined in the student's individual education plan or whose performance on state or local assessments was below grade level. In the school districts where the pilot programs are established, parents of a child with disabilities who find that their child's progress in public school is less than adequate, as measured by local and state assessments, may apply for an opportunity scholarship regardless of the performance grade of the school their child attends. The bill states that the pilot programs are not intended to affect state or school district eligibility to receive federal funds for students with disabilities. Participation will be limited to 5 percent of students with disabilities in the participating school districts in the first year, 10 percent of students with disabilities in the second year, and 20 percent of students with disabilities in the third and subsequent years.

### School District Obligations

For each student enrolled in or assigned to a school designated "F" for 2 school years in a 4-year period, the school district must do the following:

- timely notify the student's parent or guardian of all options, and
- offer the student's parent or guardian an opportunity to enroll the child in the public school within the district designated a performance grade category "C" or higher.

If a parent or guardian of an eligible child chooses to enroll and transport the student to a public school that has available space in an adjacent school district, that adjacent district must accept and report the student for purposes of funding in the Florida Education Finance Program (FEFP).

The school district must provide locations and times for students participating in the Opportunity Scholarship Program to take all required statewide assessments.

Students with disabilities who are eligible to receive services from the school district under federal or state law, who participate in the opportunity scholarship program remain eligible for services as provided by federal or state law.

School districts are responsible for transportation costs of students whose parents or guardians choose to enroll their child in a higher performing public school within the district. The district may use state categorical transportation funds or public school choice incentive funds for this purpose.

#### Private School Eligibility

To be eligible to participate in the Opportunity Scholarship Program, a private school, sectarian or nonsectarian, must do the following:

- Except for the first year of implementation, notify the department and local school district of its intent to participate in the Opportunity Scholarship Program by May 1 of the school year preceding the school year in which it intends to participate. The notice must specify the grade levels and services available for the program.
- Comply with federal antidiscrimination provisions.
- Meet state and local health and safety laws and codes.
- Determine, on a random and religious-neutral basis, which students to accept; however a school may give preference to siblings of students who have already been accepted.
- Be subject to instruction, curriculum, and attendance criteria adopted by a nonpublic school accrediting body and be academically accountable to the parent or guardian as meeting the educational needs of the student.
- Comply with all state statutes relating to private schools.
- Accept the Opportunity Scholarship amount provided by the state as full tuition and fees for each student.
- Agree not to compel any Opportunity Scholarship student to profess a specific ideological belief, to pray, or to worship.
- Not compel or require any student attending the private school on an opportunity scholarship to profess a specific ideological belief, to pray, or to worship.
- Generate an annual report including a detailed accounting of all state funds and an assessment of gains in student achievement.
- Agree to accept the scholarship student for a minimum of one year and be responsible for attendance; however, the school can dismiss a student for violating school rules relating to health, safety, and welfare.

#### Obligation of Program Participation

In order for a student to remain eligible in the Opportunity Scholarship Program, all of the following provisions must be met:

- The student must remain in attendance throughout the school year, unless excused by the school for illness or good cause. However, a student may be removed from a school for good cause, and a student may choose to leave a private school to attend another school or be home schooled.
- The student must comply fully with the school's code of conduct.
- The student's parent or guardian must comply fully with the private school's parental involvement requirements, unless excused by the school for illness or good cause.

- The student's parent or guardian must ensure that the student takes all required statewide assessments. The school district and the private school must cooperate to ensure that the scholarship student takes all statewide assessments. The student may take the required tests at a location and time provided by the school district.

#### Opportunity Scholarship Funding and Payment

The maximum Opportunity Scholarship granted is the amount that would have been provided for the student in the district school to which he was assigned, equivalent to the base student allocation multiplied by the weighted cost factor for the educational program provided for the student multiplied by the district cost differential. In addition, the calculated amount must include the per student share of instructional materials, technology, and other categorical funds as provided for the scholarships in the General Appropriations Act.

The amount of the Opportunity Scholarship that a parent receives will be the calculated amount described above or the amount of the private school's tuition and fees, whichever is less. Eligible fees include textbook fees, lab fees, and other related instructional fees, including transportation.

The school district must report all students attending a private school under this program separately from those students reported for purposes of the FEFP.

The private or public school that provides services to scholarship students with disabilities will receive the weighted funding for the services according to the matrix of services for exceptional student education.

Following annual notification on July 1 of the number of participants from each district, the department must transfer from the school districts' appropriated funds the calculated amount from the FEFP and authorized categorical accounts to a separate account for the Opportunity Scholarship Program.

The Comptroller must make Opportunity Scholarship payments in four equal amounts no later than August 1, November 1, February 1, and April 1 of each school year. Payments must be made to the student's parent or guardian and are subject to verification of admission acceptance or continued enrollment and attendance of the student at the private school. The warrant will be sent directly to the private school and restrictively endorsed by the parent to the private school.

#### Liability

No liability will arise on the part of the state based on any grant or use of an Opportunity Scholarship.

#### Rulemaking

The State Board of Education may adopt rules to implement the Opportunity Scholarship Program. These rules must include penalties for noncompliance of the school district obligations and the program participant obligations.

The regulatory authority of the state, its officers or any school district to impose additional regulation of private schools beyond those reasonably necessary to enforce requirements of the Opportunity Scholarship Program is not expanded.

**Section 3.** The bill amends s. 229.512, F.S., revising provisions relating to the authority of the Commissioner of Education to implement a program of school improvement and education accountability designed to provide all students the opportunity to make adequate learning gains in each year of school. The commissioner must include information about the Opportunity Scholarship Program in annual reports.

**Section 4.** The bill amends s. 229.555, F.S., governing Comprehensive Management Information Systems to require that the integrated information system for educational management be designed to collect, via electronic transfer, all student and school performance data needed to determine which schools and school districts are meeting state performance standards. The system must also be capable of producing data for comprehensive annual reports on school and district performance.

**Section 5.** The bill amends s. 229.565(1), F.S., to require the State Board of Education to approve student performance standards in key academic subject areas and grade levels, and to eliminate the requirement that the Commissioner of Education designate program categories and grade levels for which performance standards are to be approved.

**Section 6.** The bill amends s. 229.57, F.S., relating to the student assessment program, in the following ways:

- Redefines the purposes of the statewide assessment system and changes the design of the statewide assessment program, the district testing program requirements, the school testing program requirements, and the content of annual reports.
- Provides for school performance grade category designations, school improvement ratings, and school performance grade category and improvement rating reports.
- Outlines the requirements for the statewide assessment system including outlining requirements for the times of test administration and the establishment of school calendars to not conflict with the testing and measurement of student learning.
- Provides for certain local assessments by the school districts.
- Provides for the State Board of Education to adopt rules to implement the provisions of the section.
- Requires the DOE to develop a statistical assessment tool for measuring annual pupil progress and for comparing the performance of teachers.
- Adds science as a subject in the statewide assessments beginning in 2003.
- Requires students enrolling in ninth grade in the Fall of 1999 to earn a passing score on the grade 10 assessment test instead of the high school competency test.

### **Annual Pupil Progress Assessment**

The DOE must develop a statistical assessment tool for measuring annual pupil progress during a school year. The system must use measures of student learning to measure the difference in students' prior year achievement and current year achievement. The data from this system will be used to compare teachers' performance. The State Board of Education must approve the methodology before it is used to assess the progress of students.

### **Student Assessment Program**

#### Purposes

The primary purposes of the statewide assessment program are to: 1) provide information needed to improve the public schools by maximizing student learning gains, and 2) inform parents of the educational progress of their public school children.

The student assessment program must be designed to do the following:

- Assess the annual learning gains of each student toward achieving Sunshine State Standards appropriate for the student's grade level.
- Provide data for making decisions regarding school accountability and recognition,
- Identify the educational strengths and needs of students and the readiness of students to be promoted or to graduate with a standard high school diploma.
- Assess how well educational goals are met at the school, district, and state levels.
- Provide information to aid in the evaluation and development of educational programs and policies.
- Provide information on the performance of Florida's students compared with others across the United States.

#### Statewide Assessment Program

The student achievement testing program of the statewide assessment program must be administered annually in grades 3 through 10 to measure student proficiency in reading, writing, mathematics, and other content areas. The tests are to be a combination of norm-referenced and criterion-referenced material.

The high school competency test will be replaced by the statewide assessment test given in grade 10. Students who enroll in ninth grade in the Fall of 1999 must earn a passing score on the grade 10 assessment test instead of the high school competency test.

New requirements are added for the assessment program. School districts must provide instruction to prepare students to demonstrate proficiency in the skills and competencies necessary for successful grade-to-grade progression and high school graduation. The commissioner is required to conduct studies as necessary to verify that the required skills and competencies are part of the instructional program. Beginning in 2003, science will be a subject on the statewide assessments.

The requirement for an optional career planning assessment for students in grades 7 and 10 is deleted from s. 229.57, F.S.; this provision was never implemented.

#### District Testing Programs

All school districts must participate in the state assessment system which requires the annual testing of children in grades 3 through 10 and is designed to measure annual student learning and school performance. The districts must also report assessment results as required by the enhanced management information system.

#### School Testing Programs

Student performance data must be used in developing objectives of the school improvement plan, evaluation of instructional and administrative personnel, assignment of staff, allocation of resources, acquisition of instructional materials and technology, and promotion and assignment of students into educational programs.

### Annual Reports

The Commissioner must prepare annual reports that include the descriptions of the performance of all schools participating in the assessment program, including their major student populations. The reports must also include the median scores of all eligible students who scored at or in the lowest 25th percentile of the state in the prior school year, while protecting the privacy of individual student records.

### School Performance Grade Categories

School Performance Grade Category Designations are created ("school grade"). Beginning with the 1998-99 school year, the annual report must identify schools as being in one of the following grade categories, as defined by State Board rule:

- "A," schools making excellent progress.
- "B," schools making above average progress.
- "C," schools making satisfactory progress.
- "D," schools making less than satisfactory progress.
- "F," schools failing to make adequate progress.

The time frames for the school grades are based on one school year of performance.

Implementation and bases for the school grades are as follows:

- In the **1998-99 and 1999-2000** school years, a school's grade will be determined by students' FCAT scores and other appropriate performance data, including, but not limited to: attendance and dropout rates, school discipline data, and student readiness for college.
- Beginning with the **2000-2001** school year, a school's grade will be based on a combination of students' achievement scores, the learning gains of the students, and other appropriate performance data, including, but not limited to: attendance and dropout rates, school discipline data, cohort graduation rate, and student readiness for college.
- Beginning with the **2001-2002** school year and thereafter, a school's grade will be based on student learning gains as measured by the annual student assessments in grades 3 through 10, and on other appropriate performance data, including, but not limited to: attendance and dropout rates, school discipline data, the availability of adequate and appropriate textbooks and instructional materials for each child, and student readiness for college.

For purposes of implementing the Opportunity Scholarship Program, a school identified as critically low performing based on both 1996-97 and 1997-98 school performance data and state board-adopted criteria, and that receives a school grade of "F" based upon 1998-99 school performance data is considered to have failed to make adequate progress for 2 years in a 4-year period. All other schools that receive a school grade of "F" based on 1998-99 school performance data are considered to have failed to make adequate progress for 1 year.

Student assessment data used in determining a school grade must include: 1) the median scores of all eligible students enrolled in the school, and 2) the median scores of all eligible students enrolled in the school who have scored at or in the lowest 25th percentile in the state in the prior school year.

The state board must adopt appropriate criteria for each school performance grade category. The criteria must give added weight to student achievement in reading. Schools designated as "C," making satisfactory progress, must demonstrate that adequate progress has been made by the

students who scored in the lowest quartile of students in the state as well as by the overall student population.

### **School Improvement Ratings**

Beginning with the 1999-2000 school year, schools will be given an improvement rating. The annual report must identify each school's performance as having improved, remained the same, or declined. The improvement rating is based on a comparison of the current year's and prior year's student and school performance data. Schools that improve at least one grade are eligible for school recognition awards.

### **School Performance Grade Category and Improvement Rating Reports**

School Performance Grade Category and Improvement Rating Reports are created. Each school's designation and rating must be published annually by the Department of Education and the school district in an easy-to-read format. Parents and guardians are entitled to a school report card showing the designation and rating for the school in which their child is enrolled.

### **Statewide Assessments**

Statewide assessments must comply with the following criteria:

- They must be capable of measuring a student's mastery of Sunshine State Standards for that grade level and above.
- They must be capable of measuring the annual progress of each student in mastering the Sunshine State Standards.
- They must include measures in reading and mathematics in every grade level and measures for writing and science in grades 4, 8, and 10. Science assessment will begin in 2003.
- They must include a norm-referenced subtest.

Annual assessments that do not contain performance items shall be administered no earlier than March of each school year. Subtests that contain performance items may be given earlier than March, if they provide valid data on comparisons of student learning from year to year. Assessments must be implemented statewide no later than the spring of the 2000-2001 school year.

The Legislature is authorized to factor in the performance of schools in calculating any performance based funding policy that is provided in the General Appropriations Act.

**Section 7.** The bill amends s. 229.58, F.S., to require the commissioner, rather than the Florida Commission on Education Reform and Accountability, to monitor the make-up of school advisory councils to see that they represent the ethnic, racial, and economic make-up of the community.

**Section 8.** The bill amends s. 229.591, F.S., as follows:

- Adds requirements in the Florida system for school improvement and accountability to provide that parents or guardians are not required to send their children to schools that fail to make adequate progress for 2 years in a 4-year period.
- Revises state education goals to provide that communities and schools collaborate in a statewide comprehensive school readiness program.
- Conforms language on annual learning gains to the requirements of student performance goals.
- Clarifies language to base education programs on student performance data and requires education programs to strive to eliminate achievement gaps by improving the learning of all students.
- Clarifies language to require teachers and staff to demonstrate the performance needed to maximize learning among all students.
- Adds language to the state goal for adult literacy to say that adult Floridians will have the knowledge and skills necessary to prepare their children for success in school.

**Section 9.** The bill amends s. 229.592, F.S., as follows:

- Requires the commissioner rather than the Florida Commission on Education Reform and Accountability to assure that each school has a school improvement plan..
- Deletes references to the Florida Commission on Education Reform and Accountability.
- Clarifies language relating to waivers.
- Deletes requirements of the annual identification of the allocation and uses of Education Enhancement Trust Funds in annual reports by schools and school districts.
- Requires deregulated status under s. 228.0565, F.S., for schools designated as making excellent progress and authorizes deregulated status for schools that have improved at least two performance grade categories.
- Corrects cross references and deletes obsolete language.

**Section 10.** The bill repeals s. 229.593, F.S., which created the Florida Commission on Education Reform and Accountability.

**Section 11.** The bill repeals s. 229.594, F.S., relating to the powers and duties of the Florida Commission on Education Reform and Accountability.

**Section 12.** The bill amends s. 229.595(5), F.S., to require a school to assess each student's preparation to enter the workforce prior to the student's graduation from high school and to inform the student and his parent or guardian of the results of the assessment. The bill removes a reference to the Florida Commission on Education Reform and Accountability.

**Section 13.** Amends s. 230.23, F.S., relating to powers and duties of the school boards, as follows:

- Requires salary schedules to be designed to furnish incentives for improvement in training and for continued efficiency.
- Updates terminology relating to “instructional materials .”
- Revises school board duties regarding the implementation and enforcement of school improvement and accountability to require use of student achievement and other performance data.
- Removes references to the Florida Commission on Education Reform and Accountability.
- Shortens the time frame for the school board to provide intervention and assistance to schools not meeting standards.
- Adds conforming language to require school report cards to be included in required public disclosure.
- Adds conforming language to require school boards to adopt policies to give schools making excellent progress more autonomy and to implement the Opportunity Scholarship Program.

**Section 14.** The bill amends s. 231.29(3)(a), F.S., to revise the assessment procedure for school district instructional, administrative, and supervisory personnel. When the requirement for an annual assessment of students’ learning gains is fully implemented, assessments of personnel must be based primarily on student performance.

**Section 15.** The bill amends s. 231.2905, F.S., the Florida School Recognition Program, to give greater autonomy and financial awards to schools that sustain high performance, rather than giving financial awards to the faculty and staff of the schools as is done now. The bill removes the requirement for school districts to incorporate a performance incentive into employee salary structure in order to participate in the program. Three new criteria are added to the requirements: student learning gains, graduation rates, and cohort graduation rates. The bill deletes the criteria for the basis of final recognition and financial awards, and adds requirements that the program utilize school performance grade category designations.

**Section 16.** The bill amends s. 232.245, F.S., relating to pupil progress and remedial instruction. The bill changes the requirement for remediation of students whose performance is below acceptable levels in reading, writing, and mathematics, to say that a student must receive remediation or be retained in an intensive program that is different from the previous year’s program and that takes into account the student’s learning style. The bill prohibits assignment of a student to a grade level solely based on age and other factors that constitute social promotion. A school district must consider an appropriate alternative placement for a student who has been retained 2 or more years. The list of required activities for remedial instruction is deleted, thus leaving the choice of activities to the school district. The requirement for retention at grades two and three and the authorization for retention at grade five are deleted. Retention is required at the end of grade four if the student’s reading deficiency has not been remedied, and if the student scores below the district’s specified level of performance in reading on the FCAT.

**Section 17.** The bill amends s. 228.053, F.S., to correct cross references relating to waiver requests for developmental research schools.

**Section 18.** The bill amends s. 228.054, F.S., to correct cross references relating to the Joint Developmental Research School Planning, Articulation, and Evaluation Committee.

**Section 19.** The bill amends s. 233.17(3), F.S., to correct cross references relating to the term of adoption of instructional materials.

**Section 20.** The bill amends s. 236.685(6), F.S., to correct cross references relating to educational funding accountability.

**Section 21.** The bill amends s. 20.15(6), F.S., to remove a reference to the Florida Commission on Education Reform and Accountability.

**Section 22.** The bill creates s. 236.08104, F.S., the Supplemental Academic Instruction Categorical Fund to provide supplemental instruction to students in kindergarten through grade 12. The following provisions apply to the distribution and use of the funds:

- They are to be allocated annually to each school district based on the amount provided in the General Appropriations Act.
- They are in addition to the funds appropriated on the basis of full-time equivalent (FTE) student membership in the FEFP.
- They are only to be used to provide supplemental academic instruction to students enrolled in the K-12 program.
- The instruction may be provided to a student in any manner and at any time during or beyond the regular 180-day term. Examples of supplemental instruction methods include lowering class size, providing after-school tutoring, and holding Saturday morning sessions.

Beginning with the 1999-2000 school year, FTE funding in the FEFP for instruction beyond the regular 180-day school year will only be provided for students enrolled in special support level III, IV and V programs for exceptional students, English for Speakers of Other Languages (ESOL), and residential programs operated by the Department of Juvenile Justice.

The Florida State University School is authorized to spend funds from its FEFP or Lottery allocations to pay the cost of remediation in reading, writing, or mathematics for any graduate who requires remediation at a postsecondary institution.

**Section 23.** The bill amends s. 236.013(2)(c), F.S., relating to the FEFP, to eliminate references to half-day kindergarten students, part-time students, postsecondary or adult students or high-school seniors enrolled in adult education, and full time students in part-time programs in certain provisions relating to calculations of the equivalent of a full-time student. The bill revises provisions relating to membership in programs scheduled for more than 180 days.

**Section 24.** The bill amends s. 239.101(7), F.S., to correct cross references relating to career education.

**Section 25.** The bill amends s. 239.229(1), F.S., to correct cross references relating to vocational standards.

**Section 26.** The bill amends s. 240.529(1), F.S., to correct cross references relating to the approval of teacher education programs.

**Sections 27-48.** The bill reenacts ss. 24.121(5)(b), (c), and (d), 120.81(1)(b), 228.053(3) and (8), 228.0565(6)(b), (c), and (d), 228.301(1), 229.551(1) and (3), 230.03(4), 230.2316(4)(b), 231.085, 231.24(3)(a), 231.36(3)(e) and (f), 231.600(1), 232.2454(1), 232.246(5)(a) and (b), 232.248, 232.2481(1), 233.09(4), 233.165(1)(b), 233.25(3)(b), 236.08106(2)(a) and (c), 239.229(3), and 240.118(4), F.S., to incorporate and update amendments to sections or subdivisions of the Florida Statutes included in the bill.

**Section 49.** The bill amends s. 228.041, F.S., to change the definitions of “dropout,” “graduation rate,” and “dropout rate.” The graduation rate is corrected by adding in the students who transferred into the school system between grades 9 and 12. The dropout rate is corrected by counting as a dropout any student who drops out of school, even if the student is technically a truant because of being younger than compulsory school age and by subtracting out the students who transferred out of the student population but were continuing their education. The DOE must follow up on those reported as continuing their education and report their status.

**Section 50.** The bill amends subsection (9) of section 228.056, F.S., to update references to assessment in the charter school law.

**Section 51.** The bill provides for severability. If any provision of the act is found to be invalid, the invalidity will not affect other provisions or applications of the act.

**Section 52:** The effective date of the bill is upon becoming law, except as otherwise specifically provided.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

D. Other Constitutional Issues:

**Relevant Constitutional Provisions**

The First Amendment to the Constitution of the United States

*“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.”*

Article I, Section 3 of the Constitution of the State of Florida

*“There shall be no law respecting the establishment of religion or prohibiting or penalizing the free exercise thereof. Religious freedom shall not justify practices inconsistent with public morals, peace or safety. No revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution.”*

Article IX, Section 1 of the Constitution of the State of Florida

*“The education of children is a fundamental value of the people of the State of Florida. It is, therefore, a paramount duty of the state to make adequate provision for the education of all children residing within its borders. Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education and for the establishment, maintenance, and operation of institutions of higher learning and other public education programs that the needs of the people may require.”*

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There could be a limited financial gain for private schools if the number of failing public schools increased and students from those school used the opportunity scholarship to attend private schools. Under the present method of designating schools as critically low performing, only four schools have that designation.

C. Government Sector Impact:

The Department of Education estimates the following costs for implementation of this bill:

\$18.6 million for assessment activities in the first year.

\$220,000 for 4 professional positions in the assessment section.

\$55,000 for 1 professional positon in the Office of School Choice.

Transportation costs for students on “F” schools to attend another school are undetermined. The cost for assessment of students who attend private schools with Opportunity Scholarships is not determined.

Elimination of 4 positions supporting the Commission on Education Reform and Accountability would result in a savings of \$384,415.

## **VI. Technical Deficiencies:**

None.

## **VII. Related Issues:**

In June of 1998 the Wisconsin Supreme Court upheld the nation’s first private school choice program against legal challenge (*Jackson v. Benson*, *Wisc. S.Ct. #97-0270*). In November of 1998 the United States Supreme Court declined to review the Wisconsin Supreme Court decision. Wisconsin’s private school choice plan had been challenged on a number of constitutional grounds:

### Establishment Clause of the U.S. Constitution:

The Wisconsin Supreme Court held the plan did not violate the Establishment Clause “because it has a secular purpose, it will not have the primary effect of advancing religion, and it will not lead to excessive entanglement between the State and participating sectarian private schools.” The court noted that “eligibility . . . is determined by neutral, secular criteria that neither favor nor disfavor religion, and aid is made available to both religious and secular beneficiaries on a nondiscriminatory basis,” that the plan “places on equal footing options of public and private school choice, and vests power in the hands of parents to choose where to direct the funds allocated for their children’s benefit.” The court found no excessive entanglement because “the program does not involve the State in any way with the (private) schools’ governance, curriculum, or day-to-day affairs. The State’s regulation of participating private schools, while designed to ensure that the program’s educational purposes are fulfilled, does not approach the level of constitutionally impermissible involvement.”

### Wisconsin Uniformity Clause:

Responding to arguments that the legislature was prohibited from spending public education funds for private education purposes, the Wisconsin Supreme Court held that while the uniformity clause “requires the legislature to provide the opportunity for all children in Wisconsin to receive a free uniform basic education,” this “provides not a ceiling but a floor upon which the legislature can build additional opportunities for school children in Wisconsin.”

### Wisconsin Public Purpose Doctrine:

The Wisconsin Supreme Court held that “education constitutes a valid public purpose (and) that private schools may be employed to further that purpose.” The court concluded that “the statutory controls applicable to private schools coupled with parental choice sufficed to ensure that the public purpose was met.”

Federal and State Equal Protection Rights:

Pointing out that all participating private schools must comply with federal antidiscrimination provisions and are required to select students on a random basis, the court held that “on its face, the (plan) is race-neutral . . . it allows a group of students, chosen without regard to race, to attend schools of their choice.”

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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