

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

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

B. EFFECT OF PROPOSED CHANGES:

Sunshine State Standards:

Present Situation:

Academic content standards describe what a state hopes or expects its students to learn.¹ They “identify what public school students should know and be able to do [sic]. These standards delineate the academic achievement of students for which the state will hold its public schools accountable.”²

In 1996, the State Board of Education adopted Florida’s academic content standards, known as the “*Sunshine State Standards*.”³ The 1996 standards included seven subject areas: language arts, mathematics, science, social studies, foreign languages, the arts, and health and physical education.⁴ The 1996 standards were divided into four separate grade clusters: prekindergarten through grade 2, grades 3-5, grades 6-8, and grades 9-12.⁵

National Evaluations of the Sunshine State Standards:

Fordham Reports. From 2003 through 2006, the Thomas B. Fordham Institute and Foundation conducted a series of nationwide evaluations of state academic content standards in U.S. history (2003),⁶ English (2005),⁷ mathematics (2005),⁸ science (2005),⁹ and world history (2006).¹⁰ Florida was evaluated based on its 1996 standards. A 2006 report summarized Fordham’s findings across

¹ Thomas B. Fordham Foundation, *The Fordham Report 2006: How Well are States Educating Our Neediest Children?* 17 (2006), available at <http://www.fordhamfoundation.org/doc/TFR06FULLREPORT.PDF> (last visited Mar. 19, 2008).

² Section 1000.21(7), F.S.

³ Bureau of Instruction and Innovation, Florida Department of Education, *Sunshine State Standards*, at <http://www.fldoe.org/bii/curriculum/sss> (last visited Mar. 19, 2008).

⁴ *Id.*; § 1003.41, F.S.

⁵ *Id.*; rule 6A-1.09401(1), F.A.C.

⁶ Sheldon M. Stern, et al., *Effective State Standards for U.S. History: A 2003 Report Card* (Thomas B. Fordham Institute, Sept. 2003), available at http://www.edexcellence.net/doc/History_Standards2003.pdf (last visited Mar. 19, 2008).

⁷ Sandra Stotsky, *The State of State English Standards 2005* (Thomas B. Fordham Foundation, Jan. 2005), available at [http://www.edexcellence.net/doc/FullReport\[01-03-05\].pdf](http://www.edexcellence.net/doc/FullReport[01-03-05].pdf) (last visited Mar. 19, 2008).

⁸ David Klein, et al., *The State of State Math Standards 2005* (Thomas B. Fordham Foundation, Jan. 2005), available at <http://www.edexcellence.net/doc/mathstandards05FINAL.pdf> (last visited Mar. 19, 2008).

⁹ Paul R. Gross, et al., *The State of State Science Standards 2005* (Thomas B. Fordham Institute, Dec. 2005), available at <http://www.edexcellence.net/doc/Science%20Standards.FinalFinal.pdf> (last visited Mar. 19, 2008).

¹⁰ Walter Russell Mead, et al., *The State of State World History Standards 2006* (Thomas B. Fordham Institute, June 2006), available at <http://www.edexcellence.net/doc/State%20of%20State%20World%20History%20Standards%202006.pdf> (last visited Mar. 19, 2008).

each of these subject areas.¹¹ Fordham assigned Florida’s standards an overall letter grade of “D minus”.¹²

Subject	Grade
U.S. History	D
English	C
Mathematics	F
Science	F
World History	F
FLORIDA OVERALL GRADE	D-

U.S. History Standards. Fordham’s review of U.S. history standards was based on three criteria: comprehensive historical content, sequential development, and balance.¹³ Do the standards teach U.S. history comprehensively—including the most important political, social, cultural, and economic events and references to major historical figures? Do the standards teach history in a coherent and structured sequence that begins with a solid introduction in the early grades and is cumulatively reinforced through the high school years? Are the standards evenhanded and place historical events in context, avoiding moralistic judgments or politically correct posturing, distortions, or omissions?¹⁴

Fordham determined that Florida’s 1996 social studies standards did not include a “specific breakdown of exactly what U.S. history materials will be included and in what sequence.... [The standards are] extremely vague about identifying specific periods, issues, and personalities covered in particular grades, making it difficult to assess the comprehensiveness, sequential development, and coherence of this U.S. history curriculum.”¹⁵ Fordham assigned a letter grade of “D” to the state’s U.S. history standards and recommended that the state add a “grade-by-grade listing or a grade-range listing of the specific core content that should be taught at each grade level.”¹⁶

English Standards. Fordham’s evaluation of English standards was based on 28 criteria, which were organized into eight categories: (A) purposes and expectations, (B) organization, (C) disciplinary coverage, (D) quality, and (E) negative criteria.¹⁷ These criteria included, for example:

- **A-5:** The standards acknowledge the existence of a corpus of literary works called American literature, however diverse its origins and the social groups it portrays.
- **B-1:** The standards are presented grade by grade or in spans of no more than two grade levels.
- **C-3:** The standards clearly address the reading, interpretation, and critical evaluation of literature. They include knowledge of diverse literary elements and genres, use of different kinds of literary responses, and use of a variety of interpretive and critical lenses. They also specify those key authors, works, and literary traditions in American literature and in the literary and civic heritage of English-speaking people that all students should study because of their literary quality and cultural significance.

¹¹ Chester E. Finn, Jr., et al., *2006 The State of State Standards* (Thomas B. Fordham Foundation, Aug. 2006), available at <http://www.edexcellence.net/doc/State%20of%20State%20Standards2006FINAL.pdf> (last visited Mar. 19, 2008).

¹² *Id.* at 59-60.

¹³ Stern, *supra* note 6, at 11-12.

¹⁴ *Id.*

¹⁵ *Id.* at 34.

¹⁶ *Id.* at 33-34.

¹⁷ Stotsky, *supra* note 7, at 92-113.

- D-3: The standards are of increasing intellectual difficulty at each higher educational level and cover all important aspects of learning in the area they address.
- D-4: The standards index or illustrate growth through the grades for reading by referring to specific reading levels or to titles of specific literary and academic works as examples of a reading level.

Thus, like its U.S. history criteria, Fordham’s criteria for English standards reflect its recommendation that state standards include a comprehensive listing of specific core content (*i.e.*, literature) that is sequentially developed grade by grade. Fordham determined that Florida’s 1996 language arts standards did not “point to any culturally or historically significant authors, literary works, literary periods, or literary traditions.”¹⁸ Fordham assigned a grade letter of “C” to the state’s language arts standards and recommended that Florida “work out some content-rich and specific standards pointing to culturally and historically significant authors, works, literary periods, and literary traditions, drawn from classical, British, and American literature—broadly conceived—that outline the essential content of the English curriculum from grade 7 to grade 12.”¹⁹ Fordham also recommended that the standards include “some selective lists of authors and/or titles to accompany each grade level from which teachers might draw for their core classroom curriculum.”²⁰

Mathematics Standards. Fordham’s review of mathematics standards was based on four criteria: clarity, content, reason, and negative qualities. In terms of clarity, Fordham’s criteria ask whether a state’s standards are understandable and free of needless jargon, whether they are clear and definite about what is being asked of students and teachers, and whether the standards can be tested in the school environment.²¹ In the area of content (or “subject coverage”), Fordham’s criteria ask whether the topics offered and the performance demanded at each level are sufficient and appropriate. “[I]s the state asking K-12 students to learn the correct skills, in the best order and at the proper speed?”²² The criteria also ask whether the standards explicitly include that mathematics facts are to be taught with information on their standing within the overall structure of mathematical reasoning, thereby allowing students to understand the logical interconnections within mathematics.²³ Finally, Fordham’s criteria reduce a state’s grade for negative qualities, including, for example, “false doctrines” (standards, according to Fordham, that contain curricular or pedagogical errors).²⁴

Fordham determined that Florida’s 1996 mathematics standards include “[o]ccasional strong coverage of some topics [but] glaring deficiencies in the whole, an overemphasis on calculators, and technology, and a few inexplicable hang-ups that seem disconnected from the main body of mathematical study.”²⁵ Fordham specifically notes that the standards’ “unrelenting insistence on use of calculators and computers in the early grades is potentially damaging.... as the heavy use of

¹⁸ *Id.* at 37.

¹⁹ *Id.* at 37-38.

²⁰ *Id.*

²¹ Klein, *supra* note 8, at 31.

²² *Id.* at 32.

²³ *Id.* at 32-34.

²⁴ *Id.* at 34-36.

²⁵ *Id.* at 52.

calculators in the early grades undermines number sense and arithmetic.”²⁶ Fordham assigned a grade letter of “F” to the state’s mathematics standards.²⁷

Science Standards. Fordham’s evaluation of state science standards was based on 21 criteria, which were organized into five categories: (A) expectations, purpose, and audience; (B) organization; (C) science content and approach; (D) quality; and (E) seriousness.²⁸ These criteria included, for example:

- **B1:** The standards are organized grade by grade or by clusters of no more than four grades.
- **C1:** The standards provide explicitly for substantial laboratory and (as appropriate) field experience.
- **C6:** The primary curriculum content is an adequately representative set of basic principles, explicit or contained within science themes.
- **C7:** These principles are first introduced via facts and simple examples; they emerge as themes and theories in higher grades.
- **D3:** The standards, taken as a whole, define a core scientific literacy for all students in all public schools of the state. At the same time, they are sufficiently challenging to ensure that students who achieve proficiency by the final year will be ready for college work.
- **E1:** The standards do not offer or encourage—as though they were science—psuedo-scientific or discredited proposals.²⁹

Fordham determined that Florida’s 1996 science standards were “reasonably well organized but sorely lacking in content”; included errors in fact and presentation; and were vague and ambiguous.³⁰ Fordham assigned a grade letter of “F” to the state’s science standards.³¹

World History Standards. Fordham’s review of world history standards was based on 14 criteria, which were organized into two categories: content and instructional focus. The content category evaluated the extent to which a state’s standards are specific, rigorous, and focused in 11 subject areas: geography; ancient Mediterranean; the non-western world; Mexico and the western hemisphere; the Anglo-American context; modern contexts; history of religion; science and technology; culture, arts, and philosophy; democratic values; and “balance.”³² The last of these criteria, *balance*, evaluated whether a state’s standards presented a balanced view between Western and non-Western civilizations.³³ The instructional focus category included three criteria: selectivity and coherence; teachability; and sequencing.³⁴ Has the content been well selected, it being apparent that the standard writers have compiled a coherent body of the most essential content, which is presented in a clear, logical, and manageable way? Are the standards easy to read and follow for educators, such that a textbook author, teacher, test maker, curriculum director, or parent can actually find useful guidance from the standards? Are the standards cumulative and sequential, so that each grade builds in a rational, coherent way on what was done in previous grades?

²⁶ *Id.* at 53.

²⁷ *Id.* at 52.

²⁸ Gross, *supra* note 9, at 11-15.

²⁹ *Id.* at 14-15.

³⁰ *Id.* at 34.

³¹ *Id.*

³² Mead, *supra* note 10, at 19-25.

³³ *Id.* at 19 & 21.

³⁴ *Id.* at 25 & 27.

Fordham determined that Florida's 1996 social studies standards include "a number of important cultures, events, and themes, but nothing is addressed with any depth or sincerity."³⁵ Fordham found that the state's standards do not "attempt to supply any grade specificity in the high school years" and that its "approach is so superficial that [the state's standards are], for all intents and purposes, worthless."³⁶ Fordham assigned a grade letter of "F" to Florida's social studies standards and recommended that the state "supply some actual content to the standards" and "specify at the high school level what material should be learned in which grades."³⁷

Koret Task Force. In 2006, the Hoover Institution's Koret Task Force on K-12 Education conducted a review of Florida's public education system.³⁸ The task force concluded that the *Sunshine State Standards* were vague about what students are expected to learn in each grade,³⁹ especially the general background knowledge needed for reading proficiency;⁴⁰ were not sufficiently detailed to guide curriculum development or testing;⁴¹ and were the "weakest link" in the state's education reform efforts.⁴²

The task force recommended that Florida revise and strengthen its standards and that the standards should provide greater grade-by-grade content specificity,⁴³ should focus on the essential knowledge—not just the skills—required for stronger academic performance,⁴⁴ and should describe the sequential development of knowledge and skills grade by grade.⁴⁵

Review and Revision of the Sunshine State Standards:

On January 8, 2002, President George W. Bush signed into law the federal *No Child Left Behind (NCLB) Act of 2001*.⁴⁶ The act, among other provisions, required that each state demonstrate that it has adopted "challenging academic content standards"⁴⁷ in, at least, "mathematics, reading or language arts, and (beginning in the 2005-2006 school year) science."⁴⁸ The standards must:

- "Specify what children are expected to know and be able to do [sic]";
- "Contain coherent and rigorous content"; and
- "Encourage the teaching of advanced skills."⁴⁹

³⁵ *Id.* at 42.

³⁶ *Id.*

³⁷ *Id.*

³⁸ Hoover Institution, Koret Task Force on K-12 Education, *Reforming Education in Florida: A Study Prepared by the Koret Task Force on K-12 Education* (2006).

³⁹ Hoover, *supra* note 38, *Executive Summary, Thirty Major Recommendations*, at xx.

⁴⁰ Hoover, *supra* note 38, E. D. Hirsch, Jr., chapter 5, *Essential Reading*, at 85, 91-92, and 93-94.

⁴¹ Hoover, *supra* note 38, chapter 1, *Full Statement of Recommendations*, at 13.

⁴² Hoover, *supra* note 38, Diane Ravitch, chapter 7, *High School Reform Begins in First Grade*, at 128.

⁴³ Hoover, *supra* note 39; Hoover, *supra* note 41, at 7.

⁴⁴ Hoover, *supra* note 42, at 120 and 132.

⁴⁵ Hoover, *supra* note 41, at 14.

⁴⁶ Pub. L. 107-110 (2002).

⁴⁷ Section 1111(b)(1)(A), Pub. L. 107-110 (2002) (codified at 20 U.S.C. § 6311(b)(1)(A)).

⁴⁸ Section 1111(b)(1)(C), Pub. L. 107-110 (2002) (codified at 20 U.S.C. § 6311(b)(1)(C)).

⁴⁹ Section 1111(b)(1)(D), Pub. L. 107-110 (2002) (codified at 20 U.S.C. § 6311(b)(1)(D)).

In 2005, DOE initiated a review of the *Sunshine State Standards*, and, by June 2005, began to revise the standards for language arts. On January 17, 2006, the State Board of Education adopted a 6-year review and revision schedule for each subject area of the *Sunshine State Standards*. Under the schedule, all of the standards were planned for revision by 2011:

	Subject Area	Start	Complete
Initial Review and Revision Schedule	Language Arts, Reading (as part of Language Arts), and English for Speakers of Other Languages (ESOL)	June 2005	June 2006
	Mathematics	June 2006	Feb. 2007
	Science	June 2007	Feb. 2008
	Social Studies	June 2007	Feb. 2009
	Electives: Computer, Business, Technical, Industrial, Health, Foreign Languages, Physical Education, Family and Consumer Sciences, Humanities	June 2009	Feb. 2010
	Visual and Performing Arts	June 2010	Feb. 2011

SOURCE: Florida Department of Education (2006).⁵⁰

The review and revision schedule outlined two 6-year cycles for 2011-2016 and 2017-2022:

	Subject Area	Review and Revision
Six-Year Cycle	Reading and Language Arts, ESOL	2011
	Mathematics	2012
	Science	2013
	Social Studies	2014
	Electives: Computer, Business, Technical, Industrial, Health, Foreign Languages, Physical Education, Family and Consumer Sciences, Humanities	2015
	Visual and Performing Arts	2016
Next Six-Year Cycle	Same as above	2017-2022

SOURCE: Florida Department of Education (2006).⁵¹

On January 25, 2007, the State Board of Education adopted revised reading and language arts standards.⁵² Instead of organizing the standards into four grade clusters, the 2007 standards include individual grade-level standards for kindergarten and grades 1, 2, 3, 4, 5, 6, 7, and 8. The standards for high school are grouped into two grade clusters: grades 9-10 and grades 11-12. At each grade level or grade cluster, the 2007 standards are divided into six content strands. Among the changes made from the 1996 standards, the 2007 standards include a stronger emphasis on technology and information literacy. The standards do not, however, as recommended by Fordham, identify any culturally or historically significant authors, literary works, literary periods, or literary

⁵⁰ Florida Department of Education, *Sunshine State Standards, Proposed Six-Year Cycle: Standards Revision, Instructional Materials Adoption, and Assessment Alignment 1-4* (June 2006).

⁵¹ *Id.* at 4-5.

⁵² Florida Department of Education, *2006 Sunshine State Standards, K-12 Reading and Language Arts* (Jan. 25, 2007), available at http://etc.usf.edu/flstandards/la/la_sss.pdf (last visited Mar. 19, 2008).

traditions. The Koret Task Force observed that Florida’s standards were “vague about what students are expected to know in each grade.”⁵³ The task force recommended that the standards be “given greater grade-by-grade content specificity for all subjects including language arts to ensure that students are taught a well-defined, coherent body of content at each grade level.”⁵⁴ Although the 2007 standards are organized by individual grades levels for students in grades K-8, a closer inspection of the standards reveals that standards for one grade level are substantially similar (and in many instances identical) to the standards of other grade levels, thereby obscuring the distinctions of what is taught at one grade level compared to another. The standards also appear to describe language arts skills rather than identify the specific content that a student is expected to learn.

Reading and Language Arts Content Strands (Grades K-12)

1996	2007
Reading	Reading Process
Literature	Literary Analysis
Writing	Writing Process
Language	Writing Applications
Listening, Viewing, and Speaking	Communication
	Information and Media Literacy

On September 18, 2007, the State Board of Education adopted revised mathematics standards.⁵⁵ Like the revised reading and language arts standards, the revised mathematics standards include individual grade-level standards for kindergarten through grade 8. The standards for high school are grouped into a single grade cluster covering grades 9-12 but are subdivided into eight “bodies of knowledge”:

Mathematics Standards (Grades 9-12)

1996 Strands	2007 Bodies of Knowledge
Number Sense, Concepts, and Operations	Algebra
Measurement	Calculus
Geometry and Spatial Sense	Discrete Mathematics
Algebraic Thinking	Financial Literacy
Data Analysis and Probability	Geometry
	Probability
	Statistics
	Trigonometry

On February 19, 2008, the State Board of Education adopted revised science standards.⁵⁶ Like the revised reading and language arts standards and the revised mathematics standards, the revised science standards include individual grade-level standards for kindergarten through grade 8. Also like the revised mathematics standards, the revised science standards for high school are grouped into a single grade cluster covering grades 9-12 and are subdivided into bodies of knowledge. Unlike the high school mathematics standards, which are subdivided into eight bodies of

⁵³ Hoover, *supra* note 38, at 5.

⁵⁴ *Id.* (emphasis added).

⁵⁵ Florida Department of Education, *Mathematics Sunshine State Standards* (Sept. 18, 2007), available at http://www.fldoestem.org/uploads/1/docs/2007_FL_Mathematics_Standards_9_13_07.pdf (last visited Mar. 19, 2008).

⁵⁶ Florida Department of Education, *Science Florida Sunshine State Standards* (Feb. 19, 2008), available at <http://www.fldoestem.org/Uploads/1/docs/FLDOE/Science%20Standards%20-%20combined.pdf> (last visited Mar. 19, 2008).

knowledge, the revised science standards for high school are subdivided into four bodies of knowledge:

Science Standards (Grades 9-12) 2007 Bodies of Knowledge
Nature of Science Earth and Space Science Physical Science Life Science

The revised science standards, as recommended by Fordham, include an increased emphasis on evolutionary biology. The standards specify that evolution is to be taught as the “scientific theory of evolution.” DOE is currently reviewing and revising the *Sunshine State Standards* for social studies.

Proposed Changes:

The bill directs the State Board of Education, by December 31, 2011, to review and replace the *Sunshine State Standards* with enhanced curricular standards, which must:

- Establish the core content of the curricula to be taught in Florida K-12 public schools;
- Describe the core content knowledge and skills that students are expected to acquire;
- Provide distinct grade-level expectations for what a student is expected to have learned by grade level, as follows:

Language Arts	Grade-by-grade expectations for each individual K-12 grade level
Science, Mathematics, and Social Studies	Grade-by-grade expectations for each individual K-8 grade level (standards for grades 9-12 may be organized by grade clusters of more than one grade level)
Visual and Performing Arts, Physical Education, Health, and Foreign Languages	Grade-by-grade expectations for each individual K-5 grade level (standards for grades 6-12 may be organized by grade clusters of more than one grade level)

- Identify the core curricular content that students are expected to learn for reading comprehension;
- Provide for rigorous and relevant standards;
- Provide for the logical, sequential progression of core curricular content that incrementally increases a student’s knowledge and skills over time; and
- Use a uniform structure and format consistent for each subject for organizing the standards;
- Identify the standards using the same alphanumeric coding system for each subject and grade level; and
- Align to expectations for success in postsecondary education and high-skill, high-wage employment.

The bill requires the language arts standards to include reading, grammar, literature, and writing and specify a list of authors, literary works, and literary traditions that students are expected to read. Science standards must include the nature of science, earth and space science, physical science, and life science. Mathematics standards must include algebra, geometry, probability, statistics, calculus, discrete mathematics, financial literacy, and trigonometry. The bill requires the social studies standards to include geography, history, government, civics, economics, U.S. patriotism, and national sovereignty.

The bill also requires the enhanced curricular standards to integrate the following skills:

- Critical thinking and problem solving;
- Communication, reading, and writing;
- Mathematics;
- Collaboration;
- Contextual and applied learning;
- Technology literacy;
- Information and media literacy; and
- Civic engagement.

The bill requires the State Board of Education, by December 31, 2008, to establish an expedited schedule for replacing the *Sunshine State Standards* with enhanced curricular standards. The bill specifically requires the state board to review and replace the 2007 reading and language arts standards with enhanced curricular standards. The bill also requires the state board to adopt rules establishing a schedule for the review and revision of the enhanced curricular standards.

The bill establishes the following process for the adoption or revision of the enhanced curricular standards:

- The Commissioner of Education develops proposed standards in consultation with renowned curricular and content experts in language arts, science, mathematics, social studies, visual and performing arts, physical education, health, and foreign languages (the commissioner may also consult with experts in other subjects). The commissioner must consider standards regarded by the experts as exceptionally rigorous which are implemented by other states and nations.
- The commissioner submits the proposed standards for review and comment by Florida educators, school administrators, community college and state university representatives, and leaders in business and industry.
- The commissioner submits the proposed standards, as revised based on any comments received, to the renowned curricular and content experts for a written evaluation.
- The commissioner finalizes the proposed standards and submits the standards and the experts' written evaluations to the Governor and Legislature at least 21 days before the state board's consideration of the standards.
- The commissioner submits the proposed standards to the State Board of Education and the state board determines whether to adopt the standards.

The bill authorizes the State Board of Education to adopt rules to implement the adoption and revision of the enhanced curricular *Sunshine State Standards*.

The bill also makes several conforming changes to the review and adoption of the enhanced curricular *Sunshine State Standards*, including:

- Revises the definition of "Sunshine State Standards" that applies throughout the Florida K-20 Education Code;
- Revises the powers and duties of the State Board of Education concerning the adoption and review of public K-12 curricular standards;
- Revises the general powers of district school boards which require the boards to provide students with a complete education program, including instruction in the subjects in the *Sunshine State Standards*; and
- Requires a district school board's career and technical education standards and policies to integrate and reinforce the Sunshine State Standards.

Florida Comprehensive Assessment Test:

Present Situation:

In 1971, the Legislature established Florida's statewide assessment program,⁵⁷ and the first statewide assessment was administered in reading in 1971-1972.⁵⁸ Between 1971 and 1995, the state administered various statewide assessments, including several versions of the State Student Assessment Test (SSAT). In 1995, the former Florida Commission on Education Reform and Accountability recommended procedures for the assessment of student learning in the state which would raise educational expectations for students and help them compete for jobs in a global marketplace.⁵⁹ In June 1995, the State Board of Education adopted the commission's recommendations and directed the development of new statewide assessments. In addition, the state board directed that educational content standards be developed and adopted, which became known as the *Sunshine State Standards*.

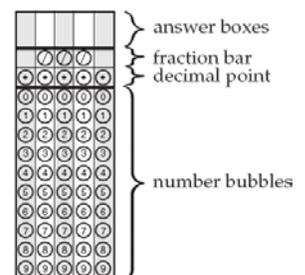
From 1995 to 1998, the Florida Comprehensive Assessment Test (FCAT) was developed and field tested. The FCAT is a series of criterion-referenced tests (CRTs) designed to measure a student's proficiency in the content specified in the *Sunshine State Standards*. In January 1998, the FCAT was administered for the first time to students in grades 4, 5, 8, and 10 in reading and mathematics.

Under current law, FCAT assessments are administered in reading, writing, science, and mathematics.⁶⁰ Students in grades 3-10 are annually required to take FCAT assessments in reading and mathematics.⁶¹ Assessment in writing and science are required at least once for students at the elementary, middle, and high school levels. To implement these requirements, DOE administers the FCAT, as follows:

- FCAT Reading and FCAT Mathematics for students in grades 3-10;
- FCAT Writing+ for students in grades 4, 8, and 10; and
- FCAT Science for students in grades 5, 8, and 11.⁶²

FCAT test items appear in various formats. These include:

- Multiple choice. Test items that present students with several options from which to choose. Multiple-choice items are included in testing for each FCAT subject and grade level.
- Gridded response. Test items that require students to solve a problem for which the answer is numerical. Answers must be written and bubbled into a number grid. Gridded-response items are included in FCAT Mathematics (grades 5-10) and FCAT Science (grades 8 and 11). See figure at right.



⁵⁷ Chapter 71-197, L.O.F. (1971).

⁵⁸ Florida Department of Education, *History of Statewide Assessment Program, A Chronology of Events: 1968-1978*, at <http://www.fldoe.org/asp/hsap/hsap6878.asp> (last visited Mar. 19, 2008).

⁵⁹ Florida Department of Education, *History of Statewide Assessment Program, A Chronology of Events: 1990-2000*, at <http://www.fldoe.org/asp/hsap/hsap9000.asp> (last visited Mar. 19, 2008).

⁶⁰ Section 1008.22(3)(c), F.S.

⁶¹ *Id.*

⁶² Florida Department of Education, *About the FCAT*, at <http://fcat.fldoe.org/aboutfcat/english/about.html> (last visited Apr. 11, 2007).

- Performance tasks. Test items that require students to provide either a short or extended written response. Short-response items may, for example, ask students to describe a character in a story, write a mathematical equation, or explain a scientific concept. Examples of extended-response items include comparing two characters, constructing a graph, or describing the steps in an experiment. Performance tasks are included in FCAT Reading (grades 4, 8, and 10), FCAT Mathematics (grades 5, 8, and 10), and FCAT Science (grades 5, 8, and 11).
- Writing prompt or prompted essay. Test items in which the student is given a topic on which to write an essay. Writing-prompt items are included in the essay portion of FCAT Writing+ (grades 4, 8, and 10).

Current law requires the FCAT to “measure and report student proficiency levels of all students assessed in reading, writing, mathematics, and science.”⁶³ The State Board of Education has adopted a rule establishing five achievement levels for FCAT.⁶⁴ Level 5 represents the greatest achievement, while Level 1 signifies the lowest achievement.⁶⁵ The rules identify ranges of scale scores, by grade level, for each achievement level. For example, a student scoring in Level 1 on FCAT Reading earned a scale score that falls within a range from 100 to 258, while a student scoring at Level 5 earned a scale score within a range from 394 to 500. The upper and lower scale scores of each achievement-level range are known as “cut-point scores.” DOE periodically establishes standards-setting committees to recommend cut-point scores for the five achievement levels through a process, known as “bookmarking,” for reviewing grade-level expectations for student performance on FCAT test items. Committee members include teachers from the targeted grade levels and subject areas, school and district curriculum specialists, school and district administrators, university faculty from the discipline areas, and business and community leaders.

Students who score at Levels 3, 4, or 5 are performing at or above grade-level expectations. Students who score at Level 1 or 2 are performing below expectations and need additional instruction in the content assessed at that grade level.

Current law requires the Commissioner of Education to document procedures used to ensure that versions of the FCAT taken by students retaking the grade 10 FCAT are “equally challenging and difficult as the tests taken by students in grade 10 which contain performance tasks.”⁶⁶ As previously discussed, FCAT includes multiple-choice items, gridded-response items, performance task (short and extended response), and writing prompt (essay). However, test items on assessments for students retaking the grade 10 FCAT Reading and FCAT Mathematics are exclusively multiple choice.

Proposed Changes:

The bill requires FCAT assessments to be aligned to the core curricular content in the *Sunshine State Standards*. As the *Sunshine State Standards* are reviewed and replaced with enhanced curricular standards, the Commissioner of Education must revise the FCAT in accordance with the changes made to the standards.

⁶³ Section 1008.22(3)(c)1, F.S.

⁶⁴ Rule 6A-1.09422(5), F.A.C.

⁶⁵ *Id.*

⁶⁶ Section 1008.22(3)(c), F.S.

If the changes made to an FCAT assessment are significant, the state board may need to revise the proficiency levels or, in the case of the grade 10 FCAT, passing scores required for a standard high school diploma. As previously discussed, the FCAT's proficiency (i.e., achievement) levels are periodically established by standards-setting committees that recommend cut-point scores for the FCAT's five achievement levels. Once the committees recommend cut-point scores, the State Board of Education must adopt rules establishing the official cut-point scores. According to DOE, to set cut-point scores, it is necessary for the revised assessment to be administered in order to obtain data about student performance on the assessment. The bill authorizes the Commissioner of Education, until the state board adopts the cut-point scores for the revised assessment, to adjust student scores on the revised assessment for statistical equivalence to student scores on the former assessment.

Current law requires a student to meet the testing requirements for high school graduation which are in effect when the student enters grade 9.⁶⁷ According to DOE, under this provision, some students are currently required to take the high school competency test (HSCT), which the Legislature replaced with the grade 10 FCAT in 2001.⁶⁸ DOE explains that:

This current provision limits the Department of Education's authority to phase out exit exams when new testing programs are created. For example, the High School Competency Test (HSCT) continues to be administered despite the Department's intent to phase this exam out in 2003. The last group of students for whom the HSCT was the graduation requirement (scheduled graduation date – spring 2002) have had a total of 22 opportunities to pass. Approximately 300 students participate in each administration; a total of 605 students participated in 2006. Of the 605 students, 110 students participated in both administrations. In 2006, the cost to administer the HSCT per student was approximately \$373.86, compared to \$12.84 per student for the FCAT.

The bill allows the Commissioner of Education to discontinue the administration of a former assessment (e.g., HSCT), for which passage is required for a standard high school diploma, once the assessment (e.g., FCAT) is revised and the students who took the former assessment at its final regular administration have graduated. The State Board of Education must adopt rules identifying scores on the revised assessment which are statistically equivalent to scores on the former assessment to be used for a student whose graduation requirements are tied to the former assessment but who seeks a standard high school diploma after the student's graduating class has graduated and the former assessment has been replaced by the revised assessment.

Current law requires the Commissioner of Education, if possible, to identify scores on widely used high school achievement tests (e.g., PSAT, SAT and ACT) which are "concordant" (i.e., equivalent) to scores on the FCAT.⁶⁹ If identified, concordant scores may be substituted for passing scores required for a standard high school diploma, college placement, or scholarship awards (e.g., Florida Bright Futures Scholarship Program). If the commissioner identifies a concordant score, the commissioner must adopt the score and specify which requirement is satisfied by achieving the concordant score.⁷⁰ Once a concordant score is identified, if the FCAT or "one of the identified

⁶⁷ Section 1008.22(8), F.S.

⁶⁸ Sections 368 & 1058, ch. 2002-387, L.O.F. (2002).

⁶⁹ Section 1008.22(9)(a), F.S.

⁷⁰ *Id.*

tests” is changed, new concordant scores must be identified.⁷¹ The bill clarifies that new concordant scores must only be identified for the high school achievement tests for which a concordant score is determined.

The bill directs the commissioner to provide an ongoing review of the FCAT by an independent test-measurement expert who provides analysis and evaluation of the test and testing practices.

Current law requires the commissioner to obtain input from state educators, assistive technology experts, and the public for the design and implementation of the statewide assessment program.⁷² The bill adds assessment experts to the list of professionals from whom the commissioner must obtain input on the statewide assessment program.

The bill eliminates a requirement that the Commissioner of Education document procedures used to ensure that FCAT test versions for students retaking the grade 10 FCAT Reading or FCAT Mathematics are equally challenging and difficult as the regular grade 10 FCAT.

FCAT Testing and Reporting Schedules:

Present Situation:

Current law requires the Commissioner of Education to establish a schedule for administration of the FCAT which provides for the latest possible administration of the test and the earliest possible provision of the results to the school districts, which is feasible within “available technology and specific appropriation.”⁷³ The commissioner has established the following testing schedules for the 2007-2008 and 2008-2009 school years:

	2007-2008 Schedule	2008-2009 Schedule
FCAT Writing+ (grades 4, 8, and 10)	Feb. 12-15, 2008	Feb. 10-13, 2009
FCAT Reading FCAT Mathematics Norm-Referenced Tests (NRTs) of Reading and Mathematics (grades 3-10)	Mar. 11-24, 2008	Mar. 10-23, 2009
FCAT Science (grades 5, 8, and 11)		
<i>Retake Tests</i> (grades 11-adult): FCAT Reading (Retake) FCAT Mathematics (Retake)	Sept. 24-28 or Oct. 1-5, 2007 March 11-24, 2008	Oct. 6-10 or Oct. 13-17, 2008 Mar. 10-23, 2009
<i>Retake Tests</i> (students scheduled to graduate in May or June): FCAT Reading (Retake) FCAT Mathematics (Retake)	June 16-20 or June 23-27, 2008	June 15-19 or June 22-26, 2009

⁷¹ *Id.*

⁷² Section 1008.22(3)(c)1., F.S.

⁷³ Section 1008.22(6)(c), F.S.

For the 2007-2008 administration of FCAT, DOE estimates that test results will be reported to school districts according to the following schedule:⁷⁴

	2007-2008 Testing Schedule	Anticipated Reporting Schedule
FCAT Writing+ (grades 4, 8, and 10)	Feb. 12-15, 2008	No earlier than the week of <u>May 5</u>
<i>Retake Tests</i> (grades 11-adult): FCAT Reading (Retake) FCAT Mathematics (Retake)	Sept. 24-28 or Oct. 1-5, 2007 March 11-24, 2008	No earlier than the week of <u>May 12</u>
FCAT Reading FCAT Mathematics (grade 3 only)	Mar. 11-24, 2008	No earlier than the week of <u>May 19</u>
Norm-Referenced Tests (NRTs) of Reading and Mathematics (grades 3-10)	Mar. 11-24, 2008	No earlier than the week of <u>May 26</u>
FCAT Reading FCAT Mathematics (grades 4-10)	Mar. 11-24, 2008	No earlier than the week of <u>June 2</u>

Proposed Changes:

The bill requires the Commissioner of Education, by August 1 of each year, to notify the school districts in writing and publish on the department's website (currently <http://www.fldoe.org>) an FCAT testing and reporting schedule for the school year following the upcoming school year. For example, on August 1, 2008, the bill requires the commissioner to publish the FCAT testing and reporting schedule for the 2009-2010 school year.

The bill requires that the FCAT testing and reporting schedules, beginning with the 2010-2011 school year, prohibit the administration of FCAT Writing+ earlier than the week of March 1 and prohibit the administration of other FCAT assessments (i.e., reading, mathematics, science, and social studies) before April 15. The bill requires that student test results be reported by the week of the first Monday in June. The bill also specifies that public schools must participate in the statewide assessment program in accordance with the testing and reporting schedules.

FCAT Norm-Referenced Tests:

Present Situation:

In addition to criterion-referenced tests (CRTs) aligned to the *Sunshine State Standards*, the FCAT also includes norm-referenced tests (NRTs).⁷⁵ An NRT compares the performance of Florida students to a sample of students (known as a "norm group") who took the test during its development. DOE has selected the *Stanford Achievement Test Series, Tenth Edition* ("Stanford 10" or "SAT 10") published by Harcourt Assessment as the NRT for the FCAT.⁷⁶ The Stanford 10 includes both reading and mathematics segments and is administered with the FCAT's CRTs in grades 3-10. The Stanford 10's norm group, against which Florida students' performance is

⁷⁴ Florida Department of Education, Memorandum from Frances Haithcock to Florida School District Superintendents 2 (Jan. 24, 2008) (the memorandum explains that the reporting of FCAT results for the 2007-2008 school year is later than normal).

⁷⁵ Section 1008.22(3)(c)2., F.S.

⁷⁶ Florida Department of Education & Harcourt Assessment, *The New FCAT NRT: Stanford Achievement Test Series, Tenth Edition* (2005), available at <http://fcats.fldoe.org/pdf/fcat-nrt-sat10.pdf> (last visited Mar. 19, 2008).

compared, took the tests in spring and fall 2002.⁷⁷ Unlike the FCAT's CRTs aligned to the *Sunshine State Standards*, which include gridded-response items, performance tasks, and writing prompts, the Stanford 10 is composed exclusively of multiple-choice items.⁷⁸ According to DOE, the FCAT's NRTs are used for the following:

- **Grade 3 Promotion.** Current law requires that a student in grade 3, to be promoted to grade 4, must score at Level 2 or higher on the grade 3 FCAT Reading (CRT) or qualify for a “good cause” exemption.⁷⁹ Among the authorized exemptions, a student scoring below Level 2 may be promoted if the student demonstrates an acceptable level of performance on an alternative standardized reading assessment approved by the State Board of Education.⁸⁰ School districts routinely use the reading comprehension segment of FCAT's grade 3 NRTs as a basis for determining whether good cause exists to promote a student who scores below Level 2 on the grade 3 FCAT Reading (CRT).
- **Corporate Tax Credit Scholarships.** Current law establishes the Corporate Income Tax Credit Scholarship Program, which provides businesses with corporate income tax credits for funding scholarships for low-income students to attend private schools.⁸¹ For a private school to be eligible to receive scholarship funds for an eligible student, the school must provide for the student to annually take one of the nationally norm-referenced tests identified by DOE.⁸² DOE must identify and select nationally norm-referenced tests that are comparable to the FCAT's NRTs, and must allow private schools to administer the FCAT's NRTs.⁸³ DOE may approve a school's use of an additional assessment if the assessment meets industry standards of quality and comparability.⁸⁴ According to DOE, in 2007-2008, 15 students in four private schools were tested using the FCAT's NRTs.⁸⁵
- **Supplemental Educational Services.** Under the federal *No Child Left Behind (NCLB) Act of 2001*, if, after one school year, a school indentified for school improvement fails to make adequate yearly progress (AYP), the school district must use a portion of its Title I funds to provide “supplemental educational services” (SES) for students attending the school who are from low-income families (typically those eligible for free or reduced-price meals under the National School Lunch Program).⁸⁶ SES include tutoring, after-school services, summer school, and other supplemental academic enrichment services, offered by DOE-approved public or private service providers. The NCLB act requires DOE to “develop, implement, and publicly report on standards and techniques for monitoring the quality and effectiveness of the services offered by [SES] providers...; and for withdrawing approval from providers that fail, for 2

⁷⁷ *Id.*

⁷⁸ Florida Department of Education, *FCAT Handbook - A Resource for Educators 5* (2005), available at <http://fcats.fldoe.org/handbk/complete.pdf> (last visited Mar. 19, 2008).

⁷⁹ Section 1008.25(5)(b), F.S.

⁸⁰ Section 1008.25(6)(b)3., F.S.

⁸¹ Section 220.187, F.S.

⁸² Section 220.187(8)(c)2., F.S.

⁸³ Section 220.187(9)(i), F.S.

⁸⁴ *Id.*

⁸⁵ Florida Department of Education, *2008 Agency Bill Analysis of Act Relating to Public School Curricular Standards (House Standards bill)* 3 (Feb. 18, 2008).

⁸⁶ Section 1116(e), Pub. L. 107-110 (2002) (codified at 20 U.S.C. § 6316(e)).

consecutive years, to contribute to increasing the academic proficiency of students served.”⁸⁷ According to DOE, increased academic proficiency of students in grades 4-12 will be determined by documented increases in student test scores on the FCAT’s NRTs in reading and mathematics.⁸⁸ Increased academic proficiency of students in grades 2-3 will be calculated using increased student test scores on other norm-referenced tests approved by DOE.⁸⁹

- English language learners. Current law requires each district school board to identify limited English proficient (LEP) students⁹⁰ through assessment and provide requirements for identified LEP students to exit the district’s program for English for Speakers of Other Languages (ESOL).⁹¹ The State Board of Education is required to adopt rules for implementing these requirements.⁹² Existing rules adopted by the state board authorize school districts to use the reading and writing subparts of a norm-referenced test to identify LEP students who lack English proficiency.⁹³ For an LEP student to exit an ESOL program, existing state board rules require the student to demonstrate English proficiency by “reassessing the student utilizing the same or comparable assessments ... used to determine the student’s eligibility assessment.”⁹⁴ Under proposed revisions to these rules, the state board proposes to authorize school districts to use the criterion-referenced Comprehensive English Language Learning Assessment (CELLA) for identifying LEP students and assessing their English proficiency for exiting an ESOL program.⁹⁵

In a series of reports published in 1987 and 1989, John Jacob Cannell, M.D., a resident psychiatrist at the University of Mexico, questioned the use of norm-referenced tests (NRTs) by public school educators.^{96,97} In the reports, dubbed the “Lake Wobegon”⁹⁸ reports, Dr. Cannell found that 70 percent of the U.S. elementary students, 90 percent of U.S. school districts, and all 50 states were testing above the publisher’s “national norm” on commercial norm-referenced achievement tests, compared to the expected 50 percent.⁹⁹ To explain his findings, Dr. Cannell investigated the causes of this “Lake Wobegon” effect and further found that:

⁸⁷ Section 1116(e)(4)(D), Pub. L. 107-110 (2002) (codified at 20 U.S.C. § 6316(e)(4)(D)).

⁸⁸ Florida Department of Education, *2008 Agency Bill Analysis of HB 65*, 2-3 (Oct. 15, 2007).

⁸⁹ *Id.*

⁹⁰ Following a recent national trend, limited English proficient (LEP) students are frequently referred to as “English language learners (ELLs).”

⁹¹ Section 1003.56(3)(b) & (c), F.S.

⁹² Section 1003.56(5), F.S.

⁹³ Rule 6A-6.0902(2)(a)2., F.A.C.

⁹⁴ Rule 6A-6.0903(1)(a), F.A.C.

⁹⁵ Florida Department of State, *Florida Administrative Weekly*, Vol. 34, No. 4, at 456-461 (Jan. 25, 2008), available at <https://www.flrules.org/Faw/FAWDocuments/FAWVOLUMEFOLDERS2008/3404/3404doc.pdf> (last visited Mar. 19, 2008).

⁹⁶ John Jacob Cannell, *Nationally Normed Elementary Achievement Testing in America’s Public Schools: How All 50 States Are Above the National Average* (Friends for Education, 2d ed. 1987).

⁹⁷ John Jacob Cannell, *How Public Educators Cheat on Standardized Achievement Tests: The “Lake Wobegon” Report*, ERIC, ED314454 (Friends for Education, 1989), available at http://www.eric.ed.gov/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/1f/c1/6d.pdf (last visited Mar. 19, 2008).

⁹⁸ The reference to “Lake Wobegon” refers to the fictional setting of Garrison Keillor’s *A Prairie Home Companion* radio program broadcast on National Public Radio. In the program, Keillor describes Lake Wobegon as a place where “all the women are strong, all the men are good looking, and all the children are above average.” See American Public Media, *A Prairie Home Companion with Garrison Keillor*, at <http://prairiehome.publicradio.org/> (last visited Mar. 19, 2008).

⁹⁹ Cannell, *supra* note 97, at 4.

- NRTs compare the performance of examinees to a sample of students (known as a “norm group”) who take the test during its development.¹⁰⁰ Norm groups are not given prior notice of the test items or provided with test preparatory instruction before the test.¹⁰¹ Dr. Cannell contrasts “Lake Wobegon” NRTs with what he calls “legitimate standardized tests.” These include the College Board’s SAT (formerly Scholastic Aptitude Test) and Preliminary SAT/National Merit Scholarship Qualifying Test (PSAT/NMSQT), the National Assessment of Educational Progress (NAEP), and the ACT (formerly American College Testing Program).¹⁰² According to Dr. Cannell, these “legitimate” tests compare the test scores of currently tested students with all other currently tested students by computing a yearly national average.¹⁰³
- “National norms” are generally not representative of the national student population because commercial test publishers do not have access to that population. An NRT’s norm group is typically drawn from a publisher’s customers or prospective customers (schools or school districts purchasing the test).
- Test items generally do not change during the life of an NRT’s administration.¹⁰⁴ Teachers administering NRTs are accordingly given notice of the types of test items and can adjust curricula for students taking the test in future years.¹⁰⁵ The longer an NRT is administered, the number of students receiving preparation for the test increases, thereby causing increased student scores compared to the norm group who did not receive preparation.¹⁰⁶
- States and school districts selecting NRTs often select tests that are closely aligned to the curricula taught in the state’s or district’s schools. Students attending schools with curricula closely aligned to an NRT’s test items typically outperform the norm group who was not selected based on the curricula being taught to the norm group.¹⁰⁷

One of the tests that Dr. Cannell refers to as “legitimate” is the National Assessment of Educational Progress (NAEP). Commonly referred to as the “Nation’s Report Card,” NAEP is the only nationally representative and continuing assessment of student achievement in the United States.¹⁰⁸ Since 1969, NAEP assessments have been conducted periodically in reading, mathematics, science, writing, and other subjects. The U.S. Congress requires the National Center for Education Statistics (NCES) to administer the NAEP testing program. The NCLB act requires states and school districts to permit students to participate in the biennial NAEP in grades 4 and 8 for assessment in reading and mathematics.¹⁰⁹

¹⁰⁰ *Id.* at 7.

¹⁰¹ *Id.* at 7 & 25.

¹⁰² See <http://www.collegeboard.com> (last visited Mar. 19, 2008); <http://nces.ed.gov/nationsreportcard> (last visited Mar. 19, 2008); <http://www.act.org> (last visited Mar. 19, 2008).

¹⁰³ Cannell, *supra* note 97, at 7.

¹⁰⁴ *Id.* at 19 & 23; John Jacob Cannell, “‘Lake Wobegone,’ Twenty Years Later,” *Third Education Group Review*, Vol. 2, No. 1, at 2 (2006).

¹⁰⁵ Cannell, *supra* note 97, at 25.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ National Assessment Governing Board, *About NAEP*, at <http://www.nagb.org> (last visited Mar. 19, 2008).

¹⁰⁹ Sections 1111(c)(2) & 1112(b)(1)(F), Pub. L. 107-110 (2002) (codified at 20 U.S.C. §§ 6311(c)(2) & 6312(b)(1)(F)).

Proposed Changes:

The bill limits the Commissioner of Education's authority to administer norm-referenced tests (NRTs) as part of the FCAT to grades 3, 7, and 9 and, in effect, eliminates administration of FCAT's NRTs in grades 4, 5, 6, 8, and 10.

School districts may continue to use the FCAT's grade 3 NRTs as a basis for determining whether good cause exists to promote a student who scores below Level 2 on the grade 3 FCAT Reading (CRT). The bill effectively requires DOE to select another assessment (e.g., FCAT's CRTs) for determining whether supplemental educational services providers increase the academic proficiency of their students served. Except in grades 3, 7, and 9, the bill effectively causes the FCAT's NRTs to be unavailable for private schools to administer in order to satisfy the NRT-testing requirements of the Corporate Income Tax Credit Scholarship Program. However, DOE may approve a private school's use of an additional assessment if the assessment meets industry standards of quality and comparability.¹¹⁰ The bill also requires school districts, in effect, to select CELLA (if DOE's proposed rules are adopted) or an NRT, other than the FCAT's NRTs, for identifying LEP students or assessing their English proficiency for exiting an ESOL program.

Social Studies and End-of-Course Assessments:

Present Situation

Under current law, school districts are required to provide students with a complete education in language arts, mathematics, science, social studies, health, physical education, foreign languages, and the arts.¹¹¹ School districts are also required to adopt student progression plans that require a student to meet specified levels of performance in reading, writing, science, and mathematics in order to progress from one grade level to another.¹¹² Current law requires that students falling below district-specified levels of performance in these subjects (or scoring below Level 3 on FCAT Reading or FCAT Mathematics) must be provided with remedial instruction and may be retained from progressing to the next grade level until remediated.¹¹³

Current law directs the Commissioner of Education to study the cost and student achievement impact of secondary end-of-course assessments, including web-based and performance formats, and report to the Legislature before implementation.¹¹⁴

Proposed Changes:

The bill requires the Commissioner of Education, by the 2012-2013 school year, to add social studies to the subjects tested by the FCAT. The bill requires social studies to be tested at least once at the middle school level and directs the commissioner to establish end-of-course assessments of social studies at the high school level. The bill permits the commissioner to establish end-of-course assessments of other subjects in addition to any comprehensive assessment required by law for the FCAT (i.e., reading, mathematics, science, and writing). End-of-course assessments must be rigorous, standardized, administered statewide, and aligned to the

¹¹⁰ Section 220.187(9)(i), F.S.

¹¹¹ Section 1001.41(3), F.S. (emphasis added).

¹¹² Section 1008.25(2), F.S.

¹¹³ Section 1008.25(4), F.S.

¹¹⁴ Section 1008.22(3)(g), F.S.

Sunshine State Standards. The bill also requires that end-of-course assessments be administered within the last 2 weeks of the course.

The bill requires that school districts set minimum student proficiency levels for social studies, once a statewide comprehensive or end-of-course assessment of social studies is administered. If a student does not meet the district's minimum proficiency levels in social studies, the bill requires the student to receive remedial instruction and additional diagnostic evaluation. If, after evaluation, a student's deficiencies in social studies are not remediated, the bill authorizes the school district to retain the student from advancing to the next grade level and requires the student to receive intensive remedial instruction. The bill requires a school district to continue to provide remedial instruction until the student graduates, is not subject to compulsory attendance, or meets the minimum FCAT achievement level established by the Commissioner of Education for social studies. In addition, the bill requires each school district to annually notify parents of their students' progress toward meeting state and district proficiency expectations in social studies.

State-Adopted Instructional Materials:

Present Situation:

Current law directs the Commissioner of Education to select and adopt instructional materials for each grade and subject field in the curriculum of public elementary, middle, and high schools.¹¹⁵ The commissioner, according to a 6-year rotating schedule of subjects, annually selects and adopts instructional materials, which are added to the state-adopted list for use in public schools. Before the commissioner adopts instructional materials for a subject, DOE publishes content specifications for the subject. The specifications detail the courses for which materials are sought and standards the materials must meet.

Each year, the commissioner provides each school district with an annual allocation of state funds for instructional materials.¹¹⁶ Current law requires a school district to use at least 50 percent of the annual allocation to purchase instructional materials on the state-adopted list selected by the commissioner.¹¹⁷ In addition, a school district may use all of that part of the allocation designated for kindergarten, and 75 percent of that part of the allocation designated for grade 1, to purchase instructional materials not on the commissioner's state-adopted list.¹¹⁸

The funds allowed to be used for instructional materials not on the state-adopted list (up to 50 percent of the annual allocation) must be used for instructional materials or other items having intellectual content that assists in the instruction of a subject or course.¹¹⁹ These materials may include electronic media and computer courseware or software; however, the funds may not be used to purchase electronic or computer hardware even if the hardware is bundled with software or other electronic media.¹²⁰

¹¹⁵ Section 1006.34, F.S.

¹¹⁶ Section 1006.40(1), F.S.

¹¹⁷ Section 1006.40(3)(a) and (b), F.S.

¹¹⁸ Section 1006.40(3)(c), F.S.

¹¹⁹ Section 1006.40(4), F.S.

¹²⁰ *Id.*

Proposed Changes:

The bill requires that instructional materials selected by the Commissioner of Education to be included on the list of state-adopted instructional materials must clearly demonstrate alignment to the *Sunshine State Standards*. The bill also requires that all instructional materials purchased by school districts using the annual instructional materials allocation must be aligned to the *Sunshine State Standards*. The bill allows a school district to use up to 10 percent of its annual allocation for instructional materials not on the state-adopted list (approximately \$12.4 million for fiscal year 2007-2008)¹²¹ to purchase technology devices with digital content or online content. The publisher or manufacturer must demonstrate that the digital or online content is aligned to the *Sunshine State Standards*.

FCAT Preparation Activities:

Present Situation:

One newspaper of general circulation in the state referred to the practice of school districts suspending a regular program of curricula in order for students to prepare for the FCAT as “FCAT frenzy.”¹²² These FCAT-preparation activities typically include the administration of practice tests, the teaching of test-taking strategies, and the use of FCAT practice workbooks for review of curricular content anticipated to appear in FCAT test items.

The Department of Education (DOE) publishes FCAT sample test and answer key books. According to DOE, the sample test books are produced to “prepare students to take the tests ... [by] familiar[izing them] with FCAT by providing helpful hints and offering practice answering questions in different formats.”¹²³ The sample answer keys are designed to be used by teachers to explain to students the answers and solutions to the questions in the sample test books and to identify which *Sunshine State Standards* benchmark is being tested by the questions. Commercial publishers also produce study guides, sample tests, flash cards, and other test-preparation materials for the FCAT.¹²⁴

Proposed Changes:

The bill requires district school boards to prohibit each public school, beginning with the 2008-2009 school year, from suspending a regular program of curricula in order to administer practice tests or

¹²¹ Including budget reductions enacted during 2007 Special Session “C” and the 2008 Regular Session, the Legislature provided approximately \$248 million for instructional materials for fiscal year 2007-2008. Specific Appropriation 89, ch. 2007-72, L.O.F. (2007); Specific Appropriations 36 & 36A, ch. 2007-326, L.O.F. (2007); Specific Appropriation 31, ch. 2008-1, L.O.F. (2008). School districts were accordingly authorized to expend approximately \$124 million on instructional materials not on the state-adopted list (50 percent of the appropriation). See § 1006.40(3)(a) and (b), F.S. The bill authorizes school districts to expend up to 10 percent of these funds to purchase technology devices with digital content or online content.

¹²² See Nirvi Shah, “FCAT frenzy: Is it subsiding?,” *Miami Herald* (Feb. 12, 2008).

¹²³ Florida Department of Education, *FCAT Sample Test Books and Answer Keys (2007-08)*, at <http://fcats.fldoe.org/fcatitem.asp> (last visited Mar. 19, 2008).

¹²⁴ See, e.g., *FCAT Secrets Study Guide: FCAT Exam Practice & Review for the Florida’s Comprehensive Assessment Test* (Morrison Media, 2007); Research & Education Association, *The Best Test Preparation for the FCAT: Florida Comprehensive Assessment Test, Grade 10* (Jun. 2007); Mel Friedman, *Florida FCAT Reading & Writing, Grade 8: Best Test Prep* (Research & Education Association, Jan. 2006); Enrique Ortiz & Thomas R. Davenport, *CliffsTestPrep FCAT Grade 10 Reading and Math: 10 Practice Tests* (Cliffs Notes, Nov. 2005); Hollandays Publishing, *Florida FCAT Reading & Writing Flashcards* (July 2005); *Targeting the FCAT, Reading and Mathematics, Grade 3* (Steck Vaughn, Oct. 2004); Claudine A. Townley, *Barron’s How to Prepare for the FCAT: Grade 10 Florida Comprehensive Assessment Test in Reading and Writing* (Barron’s Educational Series, Sept. 2004).

engage in other test-preparation activities for a statewide assessment, except as required in rules adopted by the State Board of Education which determine that practice testing or the test-preparation activities are necessary for the valid and reliable administration of the statewide assessment.

The bill requires the Commissioner of Education's procedures for selecting instructional materials for the state-approved list to prohibit, by July 1, 2008, any reference to "Florida Comprehensive Assessment Test" or "FCAT." The bill prohibits a school district from using legislative appropriations (including the instructional materials allocation) for:

- FCAT practice tests, sample test items, or practice workbooks;
- Materials dedicated to test-taking exercises or strategies designed exclusively for FCAT preparation; or
- Materials that include any reference to "Florida Comprehensive Assessment Test" or "FCAT."

The bill requires DOE to notify publishers and manufacturers of these restrictions in the content specifications for each adoption of instructional materials. If the Auditor General finds that a school district purchased materials in violation of these restrictions, DOE is required to withhold funds from the next instructional materials allocation equal to the amount of the unlawful purchases. The bill also directs the district school board to discipline staff responsible for the unlawful purchases.

The bill prohibits any contractor selected by DOE to develop the FCAT, or the contractor's corporate affiliates or subsidiaries, if any, from developing or publishing FCAT practice tests, sample test items, practice workbooks, or FCAT test-taking exercises or strategies, except as authorized in writing by the commissioner or in the contract.

Reading Comprehension:

Present Situation:

Professor E. D. Hirsh, Jr., in explaining how students learn to read, writes that the "possession of relevant prior knowledge is the single most potent contributor to the comprehension of a text."¹²⁵ The Koret Task Force agrees with Professor Hirsh, stating that "[w]ithout rich content, students will not develop the knowledge and vocabulary needed to comprehend sophisticated text."¹²⁶ Professor Hirsh concludes that:

If we want to make sure that students have the background knowledge they need to be good readers, we must give them a good general education—that is, an education in literature, science, history, and the liberal arts. That is the only kind of education that can build good readers. Period. Wasting hours on hours of precious school time on trivial, disconnected stories and on futile how-to exercises deprives students of hours that could be spent on learning literature, science, history, and the arts.¹²⁷

¹²⁵ E. D. Hirsh, Jr., "What Do They Know of Reading Who Only Reading Know? Brining Liberal Arts into the Wasteland of the 'Literacy Block,'" in *Beyond the Basics: Achieving a Liberal Education for All Children* 19 (Thomas B. Fordham Institute, Chester E. Finn, Jr. & Diane Ravitch, eds., July 2007), available at http://vcww.edexcellence.net/doc/Beyond_The_Basics_Final.pdf (last visited Mar. 19, 2008).

¹²⁶ Hoover, *supra* note 38, at 26.

¹²⁷ Hirsh, *supra* note 125, at 19-20.

Proposed Changes:

As previously discussed, the bill directs the State Board of Education to review and replace the *Sunshine State Standards* with enhanced curricular standards, which must identify the core curricular content that students are expected to learn for reading comprehension. The bill also requires that instructional materials used to teach reading, which are purchased using funds from each school district's annual instructional materials allocation, to the maximum extent practicable, must incorporate content from other core subjects (e.g., science, mathematics, and social studies).

School Grades and School Improvement Ratings:

Present Situation:

Current law specifies that each school having students tested and included in the school grading system shall receive a school grade, except that an alternative school may choose to receive a school improvement rating instead of a school grade.¹²⁸ In an existing rule adopted by the State Board of Education, a school grade is not assigned to a public school unless the school has at least 30 eligible students with valid FCAT Reading scores for the current and previous years and 30 eligible students with valid FCAT Mathematics scores for the current and previous years.¹²⁹

In November 2007, DOE published a proposed rule establishing procedures for assigning school improvement ratings to alternative schools.¹³⁰ The proposed rule specifies that a school improvement rating is calculated for an alternative school choosing to receive a rating, if the school has a minimum of 10 eligible students with valid FCAT Reading scores for the current and 2 previous years and a minimum of 10 eligible students with valid FCAT Mathematics scores for the current and 2 previous years.¹³¹ In response to the proposed rule, the Joint Administrative Procedures Committee (JAPC) submitted a letter to DOE inquiring about DOE's authority to adopt the 10-student limit on school improvement ratings. The letter, which also discusses JAPC's concerns about DOE's authority for its existing rule establishing the 30-student limit on school grades, reads as follows:

I asked, "What is the State Board of Education's authority to restrict implementation of section 1008.341, Florida Statutes, to alternative schools with at least ten students who have a three-year FCAT history?"

[DOE] responded that "some minimum-group-size parameters are needed for comparing student populations' performance over time because of the magnified effects of individual results in smaller groups." In essence, once the number of students becomes so small that the performance of one student can greatly affect the school's performance rating, it is difficult to prepare a statistically relevant report on the school's performance....

With respect to the argument that the 10-student limit is necessary to maintain statistical relevance and accuracy,.... as currently written, section 1008.341 does not

¹²⁸ Sections 1008.34(3) & 1008.341(2), F.S.

¹²⁹ Rule 6A-1.09981(4), F.A.C.

¹³⁰ Proposed rule 6A-1.099822, F.A.C.; Florida Department of State, *Florida Administrative Weekly*, Vol. 33, at 45, at 5279-81 (Nov. 9, 2007), available at <https://www.flrules.org/Faw/FAWDocuments/FAWVOLUMEFOLDERS2007/3345/3345doc.pdf> (last visited Mar. 19, 2008).

¹³¹ *Id.* at 6A-1.099822(5)(a)1., F.A.C.

contain any directions to the department or the Commissioner to limit school improvement ratings to schools with a certain number of students.... Section 1008.341(2) provides, in part, "Alternative schools that provide dropout prevention and academic intervention services pursuant to s. 1003.53 shall receive a school improvement rating pursuant to this section."¹³² I cannot find any exceptions for small schools or any responsibility assigned to the Commissioner or Department of Education to make sure that no school receive a rating if the rating will not be statistically reliable. Furthermore, reliance on similar language in Rule 6A-1.09981 is problematic.

Section 1008.34(3) provides, in part, "Each school that has students who are tested and included in the school grading system, except an alternative school that receives a school improvement rating pursuant to s. 1008.341, shall receive a school grade."¹³³ Thus, the restriction in Rule 6A-1.09981(4) to schools with at least 30 students ... similarly appears to conflict with the statutory requirement that each school receive a school grade. In fact, it is my understanding that more than 12% of traditional public schools and 30% of the state's charter schools were not graded last year because of the 30-student rule.¹³⁴

In addition to preserving the statistical reliability of school grades and school improvement ratings, DOE expresses a concern that the reporting of student assessment data for small numbers of students may allow the personal identification of an individual student's test scores, which must be shielded from public disclosure under the federal *Family Educational Rights and Privacy Act (FERPA)*¹³⁵ and state requirements for confidentiality of student records and reports.¹³⁶

Proposed Changes:

The bill specifies that a school does not receive a school grade (and an alternative school does not receive a school improvement rating) if the number of students for whom the required assessment data is available is less than the minimum sample necessary for statistical reliability and prevention of the unlawful release of personally identifiable student data. The bill requires DOE to base its decision to exclude a school from receiving a school grade or school improvement rating on accepted professional practice. The BILL, in effect, addresses JAPC's concerns by authorizing DOE to continue its 30-student minimum for school grades in existing rule and establish a 10-student minimum for school improvement ratings proposed in its pending rule proposal.

In addition, current law requires that student performance data of students assigned to an alternative school is used in calculations for the school grade of the alternative school, if the alternative school chooses to receive a school grade.¹³⁷ If the alternative school chooses to receive a school improvement rating instead of a school grade, current law requires the student performance data of students assigned to the alternative school to be used in calculations for the

¹³² Emphasis in original.

¹³³ Emphasis in original.

¹³⁴ Joint Administrative Procedures Committee, Letter from Brian T. Moore to Lynn Abbott (Feb. 1, 2008).

¹³⁵ 20 U.S.C. § 1232g.

¹³⁶ Section 1002.22, F.S.

¹³⁷ Section 1008.34(3)(a)3., F.A.C.

school grades of the students' "home schools."¹³⁸ Under current law, a student's home school is the school the student was attending when assigned to an alternative school.¹³⁹ According to DOE, some students are assigned to an alternative school while attending middle school but continue enrollment in the alternative school through high school grade levels. To avoid using an alternative school student's high school performance data in calculations of the school grade for the student's former middle school, DOE has proposed rule provisions that, in such a situation, prevent the student's performance data from being credited to the home school:

- (a) Limitations on Students Credited Back. Student performance data will only be credited back to the home school if:
1. The student was referred to the alternative school by the home school; and
 2. The student's grade level at the alternative school is within the same grade configuration as the student's home school.¹⁴⁰

The bill revises the definition of "home school" to require that, if an alternative school chooses to receive a school improvement rating instead of a school grade, the alternative school student's performance data is used in the calculation of the school grade of the school to which the student would be assigned if the student was not assigned to the alternative school. Thus, if a student was assigned to an alternative school in middle school and remained assigned to the alternative school in grades 9-12, the student's performance data would be used to calculate the school grade of the high school to which the student would be assigned if he or she returned to a regular school. In addition, the bill requires the principal of the alternative school to annually discuss the student's appropriate school assignment with the principal of the student's home school.

Effective Date:

The bill provides an effective date of July 1, 2008.

C. SECTION DIRECTORY:

Section 1. Amends section 1003.41, F.S., requiring the State Board of Education review and replace the *Sunshine State Standards* with enhanced curricular standards.

Section 2. Amends section 1000.21, F.S., revising the systemwide definition of "Sunshine State Standards" as used in the Florida K-20 Education Code to conform to requirements for the enhanced curricular standards.

Section 3. Amends section 1001.03, F.S., revising the specific powers and duties of the State Board of Education for the review and revision of the *Sunshine State Standards*.

Section 4. Amends section 1001.41, F.S., requiring school district policies for providing students with a complete education in the core curricular content in the *Sunshine State Standards* and conforming to requirements for the enhanced curricular standards.

Section 5. Amends section 1001.42, F.S., prohibiting the purchase of FCAT-preparation materials or materials including references to the FCAT using legislative appropriations and requiring DOE to

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ Proposed rule 6A-1.099822(7)(a), F.A.C.; Florida Department of State, *Florida Administrative Weekly*, Vol. 34, No. 9, at 1193 (Feb. 29, 2008), available at <https://www.flrules.org/Faw/FAWDocuments/FAWVOLUMEFOLDERS2008/3409/3409doc.pdf> (last visited Mar. 19, 2008).

withhold instructional materials funds if the Auditor General determines that a school district violates the purchasing restrictions.

Section 6. Amends section 1003.428, F.S., conforming high school graduation requirements for enhanced curricular standards (applies to students entering high school in the 2007-2008 school year).

Section 7. Amends section 1003.429, F.S., revising the accelerated high school graduation options to conform a cross-reference to changes made to section 1008.22, F.S.

Section 8. Amends section 1003.43, F.S., conforming high school graduation requirements for the enhanced curricular standards.

Section 9. Amends section 1003.433, F.S., conforming a cross-reference to changes made in section 1008.22, F.S.

Section 10. Amends section 1006.28, F.S., conforming school district duties concerning instructional materials for the enhanced curricular standards.

Section 11. Amends section 1006.31, F.S., conforming the duties of the state instructional material committee for the enhanced curricular standards.

Section 12. Amends section 1006.34, F.S., prohibiting instructional materials from including references to the FCAT and requiring the instructional materials to align to the *Sunshine State Standards*.

Section 13. Amends section 1006.38, F.S., conforming responsibilities of instructional materials publishers and manufacturers to the enhanced curricular standards.

Section 14. Amends section 1006.40, F.S., establishing additional requirements for the expenditure of funds from the instructional materials allocation.

Section 15. Amends section 1008.22, F.S., revising requirements of the statewide assessment program, including the addition of social studies to the FCAT; requiring high school end-of-course assessments of social studies; authorizing end-of-course assessment of other subjects; limiting the FCAT's norm-referenced tests to grades 3, 7, and 9; establishing restrictions for test publishers that develop the FCAT; revising requirements for FCAT testing and reporting schedules; prohibiting the suspension of a regular curricula for practice testing and test-preparation activities; and authorizing the discontinuation of former assessments.

Section 16. Amends section 1008.25, F.S., adding proficiency in social studies to the requirements that a school district is required to base student progression and requiring remedial instruction, or retention and intensive instruction, and additional diagnostic assessments, for students who score below the school district's minimum performance levels for social studies.

Section 17. Amends section 1008.34, F.S., specifying that a school does not receive a school grade if the number of students tested is less than the minimum sample size necessary for statistical reliability and the prevention of releasing confidential student data; revising the definition of "home school" for purposes of using an alternative school student's performance data in school grade calculations for the student's home school; and requiring collaboration between alternative school and home school principals concerning an alternative school student's school assignment.

Section 18. Amends section 1008.341, F.S., specifying that an alternative school does not receive a school improvement rating if the number of students for whom student performance data is available is

less than the minimum sample size necessary for statistical reliability and the prevention of releasing confidential student data.

Section 19. Amends section 1008.345, F.S., conforming education accountability provisions to the enhanced curricular standards.

Section 20. Provides an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Commissioner of Education currently administers the FCAT norm-referenced tests (NRTs) at eight grade levels (grades 3, 4, 5, 6, 7, 8, 9, and 10). In October 2007, the Department of Education (DOE) executed a \$42,594,020 contract with a commercial test publisher for the administration of the NRTs through November 30, 2012. The bill proposes a 62.5 percent reduction in the number of grade levels being tested under the NRTs. DOE estimates an annual savings resulting from reducing the NRT program of approximately \$5.5 million.¹⁴¹

The bill authorizes DOE to discontinue the use of former assessments, the passage of which were required for a standard high school diploma. As previously discussed, this provision allows DOE to discontinue administration of the high school competency test (HSCT) and would require students currently eligible to sit for the HSCT to take the FCAT. According to DOE, approximately 605 students took the HSCT in 2006 at a cost of \$373.86 per student compared to a cost of \$12.84 per student for the FCAT.¹⁴² Based on these figures, allowing DOE to discontinue administration of the HSCT would generate a cost savings of approximately \$218,000 per year.

The start-up activities for developing an FCAT social studies assessment in one grade level (middle school) are estimated at approximately \$1,000,000.¹⁴³ The bill also requires end-of-course assessments of social studies at the high school level. The fiscal impact of end-of-course assessments is currently unavailable.

The ongoing review of the FCAT by an independent test-measurement expert would require DOE to issue a contract of approximately \$350,000 to \$500,000 per year.¹⁴⁴

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

¹⁴¹ Florida Department of Education, *supra* note 85, at 4.

¹⁴² *Id.*

¹⁴³ The Department of Education estimates that the start-up activities for development of FCAT social studies assessments in three grade levels (once at the elementary, middle, and high school levels) are estimated at approximately \$3,000,000. *See* Florida Department of Education, *supra* note 85, at 4.

¹⁴⁴ Florida Department of Education, *supra* note 85, at 4.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill would impact the current contract with a commercial test publisher that develops the FCAT's norm-referenced tests (NRTs).

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require a county or municipality to spend funds or take an action requiring expenditures; reduce the authority that counties and municipalities had as of February 1, 1989, to raise revenues in the aggregate; or reduce the percentage of a state tax shared in the aggregate with counties and municipalities as of February 1, 1989.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes the State Board of Education to adopt rules for the:

- Review and adoption of the enhanced curricular *Sunshine State Standards*;
- Determination of the extent to which practice testing and test-preparation activities are necessary for the valid and reliable administration of a statewide assessment; and
- Adoption of passing scores for revised assessments which are statistically equivalent to passing scores on discontinued assessments required for a standard high school diploma.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

None.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES