

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

Prepared By: The Professional Staff of the Education Pre-K - 12 Appropriations Committee

**BILL:** CS/CS/SB 2538

**INTRODUCER:** Education Pre-K - 12 Appropriations Committee, Education Pre-K - 12 Committee, and Senator Detert

**SUBJECT:** Supplemental Education Services

**DATE:** April 15, 2009      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Carrouth</u>	<u>Matthews</u>	<u>ED</u>	<u>Fav/CS</u>
2.	<u>Armstrong</u>	<u>Hamon</u>	<u>EA</u>	<u>Fav/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

The bill requires the Department of Education (DOE) to annually rate Supplemental Education Services providers (SES) based on student learning gains, student attendance and completion, and parent, school district and principal surveys.

The bill also requires the DOE to approve acceptable methods for measuring students learning gains for use by SES providers and school districts. State approval of an SES provider would be contingent, in part, on the provider's use of DOE-approved acceptable methods for measuring student learning gains.

The bill authorizes school districts to use their federal Title I funds in order to meet these requirements.<sup>1</sup>

<sup>1</sup> The purpose of Title I of the Elementary and Secondary Education Act (20 U.S.C. 6301 et. seq.) is to improve the academic achievement of disadvantaged children. Title I funds are used to provide additional academic support and learning opportunities to help low-achieving children master challenging curricula and meet state standards in core academic subjects. See <http://www.ed.gov/programs/titleiparta/index.html>, U.S. Department of Education, Student Achievement and School Accountability Programs.

This bill substantially amends section 1008.331 of the Florida Statutes.

## II. Present Situation:

The federal No Child Left Behind Act (NCLB) prescribes that any public school that fails to make Adequate Yearly Progress (AYP) for two consecutive years must provide to students the following year both school choice with transportation and supplemental educational services from state-approved providers.<sup>2</sup> The term "supplemental educational services" refers to extra academic help, such as tutoring or remedial help provided to students in reading, language arts, and math.<sup>3</sup>

### Department of Education Responsibilities

Federal law requires each state education agency to identify organizations qualified to provide SES services and school districts, in response, must make a list of state-approved SES providers available to parents so that parents may choose a provider that best meets the educational needs of their children. Providers of SES may include nonprofit entities, for-profit entities, local educational agencies, public schools, charter schools, private schools, public or private institutions of higher education, and faith-based organizations.<sup>4</sup>

The DOE is required to develop and apply objective criteria for the review and approval of providers for inclusion on the state list.<sup>5</sup> All approved providers must, in turn, evaluate, monitor, and track student progress on a continuous and regular basis and must supply information regarding increased student achievement progress to parents and appropriate school district staff.<sup>6</sup>

The DOE establishes a range for the hourly rate within which an SES provider can be compensated for services and the rate is approved as part of the provider's application. Rates may vary by provider based on considerations such as the cost of employing staff, the delivery model of tutoring sessions, instructional materials, leasing of facilities, and assessment instruments. The 2008-09 school year per student cap was set at an hourly rate of \$80 per student and the approved range for the 2009-10 school year is \$5 - \$70, per student, per hour.<sup>7</sup>

<sup>2</sup> <http://www.fldoe.org/faq/default.asp?ALL=Y&Dept=307&ID=831>, Florida Department of Education, Bureau of Student Assistance.

<sup>3</sup> <http://www.ed.gov/nclb/choice/help/ses/description.html>

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

<sup>5</sup> *Federal Education Department General Administrative Regulations* (EDGAR) require the DOE to monitor SES activities to assure compliance with applicable Federal requirements and that performance goals are being achieved. *See* 34 CFR 80.40(a)

<sup>6</sup> All state-approved providers agree to provide auditable documentation of services provided to each student including, but not limited to, enrollment, attendance, and assessments. A select number of providers are requested to submit verification work papers as well as participate in a DOE onsite monitoring visit. *See*

[http://www.fldoe.org/NCLB/nclbmonitoring\\_forproviders.asp](http://www.fldoe.org/NCLB/nclbmonitoring_forproviders.asp)

<sup>7</sup> A home-bound student who is provided SES services would demand a higher hourly rate than that for a student in a group setting.

**SES Provider Responsibilities**

As part of the application process, providers must identify the specific assessment to be administered, if district student data are not available, for developing the student learning plan and must describe the procedures and timelines to be used to evaluate, monitor, and report each student's progress toward meeting the goals as stated on the student learning plan.<sup>8</sup> Providers must describe how diagnostic assessment data will be used to identify the student's knowledge and skills gaps and set measurable goals for the student learning plan.

**School District Responsibilities**

The school district must provide student data regarding individual students assigned to a provider. The data includes FCAT scores for students in third through twelfth grade; however, most students participating in SES are in kindergarten through grade 3. Providers are required to use assessment and diagnostic instruments to identify students' skill deficiencies in order to develop a Parent District Provider Agreement (PDPA) to specifically address a student's individual academic needs.

**Insufficient Accountability and Evaluation of Provider Effectiveness**

The U.S. Government Accountability Office (GAO) has conducted two separate reviews of the SES program and reports, among other findings, that many states struggle with procedures to evaluate whether providers are actually successful at improving student achievement. A few states have completed evaluations; however, none provides a conclusive assessment of SES providers' effect on student academic achievement.<sup>9</sup>

The 2008 Legislature amended s. 1008.331, F.S., to require the DOE to evaluate and assign a letter grade to each state-approved SES provider, based on a combination of learning gains and student proficiency levels as measured by DOE-approved assessments for students in kindergarten through grade 3.<sup>10</sup>

According to the DOE, the requirement has not been implemented based on the following:<sup>11</sup>

- Approximately 70 percent of all students served in SES are K-3; however, the Florida Comprehensive Assessment Test (FCAT) scores are available only for students in grades 3-10. Additionally, the norm-referenced provisions of the FCAT were repealed in the 2008 Legislative session.
- SES providers spend a limited amount of time with students, either before or after school, on weekends, or during the summer. Therefore, assigning a grade based solely on learning gains and student proficiency levels raised concerns of proper attribution of performance.

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<sup>8</sup> SES provider application, [http://www.fldoe.org/board/meetings/2008\\_02\\_19/Item%202%20Form%20SES%20100.pdf](http://www.fldoe.org/board/meetings/2008_02_19/Item%202%20Form%20SES%20100.pdf)

<sup>9</sup> <http://www.gao.gov/products/GAO-07-738T>, U.S. Government Accountability Office, No Child Left Behind Education Actions May Help Improve Implementation and Evaluation of Supplemental Educations Services, Report GAO-07-738T, April 18, 2007.

<sup>10</sup> ch. 2008-171, L.O.F.

<sup>11</sup> Department of Education, Analysis of SB 1414 (2008)

**SES Funding**

School districts are required to set aside 20 percent of their annual Title I allocations to be used for school choice and supplemental academic services. Districts typically spend 5 percent of this 20 percent set-aside for choice, with the remainder allocated to SES.

The following data represents the state's SES funding allocations by fiscal year.

<b>FY</b>	<b>Statewide Allocation</b>
2004-05	\$107,941,746
2005-06	\$114,624,499
2006-07	\$121,722,378
2007-08	\$115,095,362
2008-09	\$122,976,031
2009-10	\$136,000,000 <sup>12</sup>

**III. Effect of Proposed Changes:**

The bill would require the DOE to assign a service designation of excellent, satisfactory, or unsatisfactory to state-approved SES providers, as opposed to a letter grade as currently provided in law. A service designation would not be assigned if the student population served by the SES provider does not meet the minimum sample size necessary to meet accepted professional practice standards for statistical reliability, or to prevent of the unlawful release of personally identifiable student information. A provider's service designation would be based primarily on student learning gains, but also on student attendance and completion rates and the results of principal, parent, and school district satisfaction surveys.

The bill requires the State Board of Education (SBE) to establish through rule the criteria for assigning the service designations. By July 1 of each year, the DOE must report the service designations to the SES providers, school districts, parents, and the public.

The bill requires the DOE to approve by September 1, 2009 acceptable methods of measuring student learning gains by the SES providers and local school districts that serve as SES providers. Approval of providers would be contingent upon their use of one of the approved methods.

Additionally, the bill requires SES providers to submit, by May 1 of each year, the following information regarding students served to the DOE:

- Student learning gains as demonstrated by mastery of applicable benchmarks or access points set forth in the Sunshine State Standards;<sup>13</sup>
- Student attendance and completion data;
- Parent satisfaction survey results;

<sup>12</sup> Estimated allocation. The data does not include any federal stimulus funds.

<sup>13</sup> The Sunshine State Standards establish the core content of the curricula to be taught in Florida and specify the core content knowledge and skills that kindergarten through grade 12 public school students are expected to acquire. *See* s. 1003.41(1), F.S.

- School district satisfaction survey results; and
- Principal satisfaction survey results, provided that the SES services took place on the school site.

Under the bill, school districts would be authorized to use Title I, Part A funds, as provided in the Elementary and Secondary Education Act, to meet any requirements outlined in the bill.<sup>14</sup> It is unclear if districts would be authorized to access the Title I funds specifically set aside for SES or Title I funds in general.

**Other Potential Implications:**

Objective student performance data of students receiving SES services would provide the state with a better means of screening and approving SES providers and identifying and replicating effective student instruction.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Private providers may incur costs associated with the transfer of student learning gains data and satisfaction survey results to the Department of Education.

C. Government Sector Impact:

Schools and districts that function as SES providers may incur some additional cost associated with the transfer of student learning gains data and satisfaction survey results to the DOE.

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<sup>14</sup> Currently, school districts are prohibited from using SES funds for oversight and district administration.

The Department of Education may incur additional costs associated with the review, evaluation, and selection of cost effective and efficient diagnostic and assessment tools to be used by providers.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Education Pre-K-12 Appropriations on April 15, 2009:**

The committee substitute:

Changes the terms used to describe methods for measuring student learning gains to pre- and post-methods of assessment to conform to the appropriate assessment terminology.

**CS by Education Pre-K-12 on March 26, 2009:**

The committee substitute:

- Requires the Department of Education to select effective and efficient assessment tools for use by providers; and
- Assigns responsibility for the reporting of student learning gains and satisfaction survey results to the providers, as opposed to the school districts.

- B. **Amendments:**

None.