

February 22, 2013

MEMORANDUM

TO: District School Superintendents
FROM: Joy Frank
RE: Legislative Update – Week of February 18th

This was the last week of committee meeting before the regular legislative session which begins on Tuesday, March 5th.

The House K-12 Education Subcommittee continued a discussion of high school graduation requirements. Presentations were made by Superintendent Alberto Carvalho, Miami-Dade; Superintendent MaryEllen Elia, Hillsborough, and Superintendent Nikolai Vitti, Duval. They were excellent. Legislation is expected on this issue in the coming weeks.

In addition, Superintendent Barbara Jenkins represented Orange County Public Schools and FADSS before the State Board of Education on Monday. Again, her presentation was excellent.

Below is a summary of legislation considered before committees this week.

Senate Education Committee

SB 86 by Senator Flores relates to Distribution of Materials Harmful to Minors. The bill makes it a third degree felony for an adult to knowingly distribute to a minor, or to post on school property, any of the materials described in s. 847.012(3), F.S. This includes material harmful to minors in any format: pictures, photographs, drawings, sculptures, motion picture films, videocassettes, similar visual representations or images, books, pamphlets, magazines, printed matter however reproduced, or sound recordings. The bill creates an exception for instructional materials used in the instruction of a course by personnel defined in s. 1012.01. Sale of material harmful to minors to a minor at any location is already prohibited by s. 847.012(3), F.S.

The bill defines school property as the grounds or facility of any public or private kindergarten, elementary school, middle school, junior high school, or secondary school.

As a third degree felony, this new offense would be punishable by up to five years in prison and a \$5,000 fine.

The bill passed the committee favorably as a committee substitute.

SB 134 by Senator Ring relates to Meetings of District School Boards. This bill requires that district school boards hold at least one regular meeting each quarter within a school year, convened during the evening hours. The bill also requires district school boards to create written criteria to decide when to hold a quarterly meeting during the evening hours.

The bill passed the committee favorably as a committee substitute.

The committee also set the stage for major legislation that will provide career pathway options leading to a college and career-ready diploma. Presentations were made from several businesses and others expressing the need for career-ready high school graduates. Legislation has just been released relating to this issue – SB 1076 by Senator Legg. A summary is attached.

House Choice & Innovation Education Subcommittee

PCB CIS 02 – Education Accountability. The bill increases school accountability by:

- Defining a colocated school as one that: has its own Master School Identification (MSID) number; provides the education for each of its enrolled students; and operates at the same facility as another school with its own MSID number and providing education for its enrolled students.
- Clarifying that if one school operating in a facility of colocated schools does not receive a school grade or school improvement rating (SIR), the student performance data of all schools will be aggregated and assigned to all schools at the facility.
- Requiring that all traditional schools that meet or exceed the minimum sample size of 10 shall receive a school grade.
- Requiring the DOE to include retakes when calculating the school improvement rating and to issue a school improvement rating when the school tests over 80% of its students, rather than 90%.
- Designating ESE Center schools as alternative schools for accountability purposes.
- Requiring the DOE to define, in rule, ESE Center Schools in accordance with s. 1003.57(1)(d), F.S.
- Clarifying that achievement scores and learning gains of students attending ESE Centers will not be included in the students' home school, if the student had not been enrolled in or attended a public school in the district within the last three years, other than the ESE Center School.
- Clarifying that achievement scores and learning gains for hospital- or homebound students will only be assigned to their home school if the student was enrolled in the home school during the October and February FTE counts.

The bill also requires the Commissioner of Education to improve and streamline access to data maintained in the K-20 data warehouse by creating and fully implementing, by June 30, 2014, the following:

- A web-based interface for public access to aggregated data from the K-20 data warehouse
- A self-service, restricted access "Research Engine" capable of providing access to specific student education records by authorized representatives under the federal Family Educational Rights and Privacy Act (FERPA).

The bill outlines specific guidelines regarding the Research Engine including; functionality; execution of a written agreement that must be adopted in State Board of Education rule; implementation of a pricing structure; and maintenance of an updated list of organizations and representatives authorized to access the data. The bill identifies authorized representatives and prescribes specific duties of the Articulation Coordinating Committee (ACC), the Higher Education Coordinating Council (HECC), public and private postsecondary institutions, and the Commissioner of Education, in an effort to streamline the data reporting process and data accessibility.

The proposal passed the subcommittee and will be filed as a bill.

PCB C13 – Digital Learning. The bill includes several provisions that increase access to digital and blended learning options by:

- Creating a district innovation school pilot program that encourages schools to engage in a whole school transformation using blended learning models in exchange for flexibility and exemption from certain statutes; providing a definition of district innovation school; providing guiding principles; and outlining exemptions from statute.
- Allowing districts and providers to offer part-time virtual instruction for K-12 students in all courses, rather than only those courses that are measured through statewide assessments or end-of-course-exams.
- Providing an opportunity for virtual providers without sufficient prior, successful experience in offering online courses to receive conditional approval from the Department of Education to offer only courses measured through statewide assessments or end-of-course exams. The conditional approval is for one school year only, and the achievement results from that year will be used to determine eligibility to offer a full virtual instructional program.
- Removing blended learning courses taught in a charter school or a traditional public school and district innovation school pilot program from the definition of core-curricula courses.
- Allowing students enrolled in one school district to enroll in an online course offered by any other district in the state, without limitations.
- Prohibiting a school district from requiring a public school student to take a virtual course outside the school day or on the school grounds.
- Clarifying, for home school students, that eligibility be verified upon enrollment, for purposes of funding through the FEFP.

The bill increases accountability for digital learning options in the following way:

- Requiring providers to maintain a minimum level of services to parents and students, instead of requiring them to locate an administrative office in the state.
- Requiring the Department of Education to develop an online catalog of available digital learning courses provided pursuant to 1002.37, 1002.45, and 1003.498, F.S., that provides specific information for each course, including completion and passage rates and a method for student and teacher users to provide evaluative feedback.
- Requiring FLVS to provide information in their required report about operations occurring outside the state as Florida Virtual School Global, as well as operations within the state.
- Requires the Department of Education to provide identifiers in the existing course codes

Three amendments were adopted in committee. The first two clarified that courses offered by a district innovation pilot school program are not considered “core-curricular” courses for class size requirements. The third amendment removed language related to performance based funding. This issue will be addressed in another bill.

The proposal passed the committee and will be filed as a bill.

HB 189 by Rep. Moraitis relates to maximum class size. The bill revises the method for calculating the penalty for failure to comply with the class size requirements by performing the calculation at the school average instead of at the classroom level. The department would continue to determine the number of students assigned to any individual class that exceeds the class size maximum. However, for purposes of

the penalty, the number of students that exceed each grade group will be calculated at the school average. In doing so, the amount of funds available to a district for class size compliance will be increased, because of the reduced penalty amount.

The bill passed the committee favorably as a committee substitute.

House Rulemaking Oversight and Repeal Subcommittee

The committee heard HB 7001 which is the repealer bill that had been developed and favorably considered by the House PreK-12 Education Subcommittee. Additional repeals were added to the bill through the amendatory process as follows:

- s. 1001.26(3) – repeals rulemaking enforcement authority of the SBE relating to the public broadcasting system.
- s. 1002.32(10) – repeals rulemaking authority of the SBE relating to developmental research (lab) schools.
- s. 1003.433(5) – repeals rulemaking authority of the SBE relating to learning opportunities for out-of-state and out-of-country transfer students and students needing additional instruction to meet high school graduation requirements.
- Additional rulemaking authority relating to postsecondary institutions, etc. in several sections was also repealed.

The bill passed the committee favorably as a committee substitute.

Senate Appropriations Committee

SB 50 by Senator Negron relates to public meetings. The bill creates s. 286.0114, F.S., providing that members of the public must be given a reasonable opportunity to be heard on a proposition before a board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision. The opportunity to be heard does not have to occur at the same meeting at which the board or commission takes official action on the proposition if such opportunity:

- Occurs at a meeting that meets the same notice requirements as the meeting at which the board or commission takes official action on the item;
- Occurs at a meeting that is during the decision-making process; and
- Is within reasonable proximity in time before the meeting at which the board or commission takes the official action.

The bill specifies that the section does not prohibit a board or commission from maintaining orderly conduct or proper decorum in a public meeting.

The opportunity to be heard does not apply to:

- An official act that must be taken to deal with an emergency situation affecting the public health, welfare, or safety, when compliance with the requirements would cause an unreasonable delay in the ability of the board or commission to act;
- An official act involving no more than a ministerial act;
- A meeting that is exempt from open meetings requirements; or

- Meetings in which the board or commission is acting in a quasi-judicial capacity. The bill specifies that this exclusion does not affect the right of a person to be heard as otherwise provided by law.

The bill authorizes a board or commission to adopt reasonable rules or polices governing the opportunity to be heard. Such rules or policies must be limited to those that:

- Provide guidelines regarding the time an individual has to address the board or commission;
- Prescribe procedures for allowing representatives of groups or factions on a proposition to address the board or commission, rather than all members of such groups or factions, at meetings in which a large number of individuals wish to be heard;
- Prescribe procedures or forms for an individual to use in order to inform the board or commission of a desire to be heard, to indicate his or her support, opposition, or neutrality on a proposition, and to indicate his or her designation of a representative to speak for him or her or his or her group on a proposition if he or she so chooses; or
- Designate a specified period of time for public comment.

The bill provides that a board or commission is deemed to be acting in compliance with the new section if the board or commission adopts rules or policies in compliance with the section and follows such rules or policies when providing an opportunity to be heard.

The bill authorizes a circuit court to issue injunctions for the purpose of enforcing the new section upon the filing of an application for such injunction by any citizen of Florida.

Whenever an action is filed against a board or commission to enforce the provisions of this section, the bill requires the court to assess reasonable attorney fees against the appropriate state agency or local government board or commission if the court determines that the defendant to such action acted in violation of the section. The bill also authorizes the court to assess reasonable attorney fees against the individual filing such an action if the court finds that the action was filed in bad faith or was frivolous. These attorney fee provisions do not apply to a state attorney, to his or her duly authorized assistants, or to an officer charged with enforcing the provisions of the act. The bill also requires a court to assess reasonable appellate attorney fees if a board or commission appeals any court order which has found such board or commission to have violated the section and the order is affirmed.

The bill specifies that any action taken by a board or commission that is found to be in violation of the section is not void as a result of such violation.

The bill's effective date is October 1, 2013

The bill has been heard by several committees and was most recently heard and passed favorably by the Senate Appropriations Committee as a committee substitute.

Senate Rules Committee

SB 2 by Senate Ethics and Elections. The President of the Senate and the Speaker of the House have agreed to pursue ethics, elections and campaign finance reform during the 2013 regular session of the Florida Legislature. The Senate has initiated the ethics reform effort, and the bill; CS/SB 0002 has passed through the committee process and has been placed on the Senate Special Order Calendar on March 5, 2013.

The bill addresses financial disclosure, gifts and honoraria, gifts from certain political committees, blind trusts, state public officer voting conflicts, complaints against candidates, complaints and investigative proceedings, ethics training, legislative revolving door policies, dual public employment, and an executive branch expenditure ban. A few of these sections have a more direct impact on superintendents and school boards than others, but when the final bill is passed and becomes law, it would be important for school board members and superintendents to become familiar with all parts of the law in its final form.

Financial Disclosure: The bill requires that the Commission on Ethics scan all CE Form 6 filers and make them available in an online searchable database beginning with the 2012 filing year. It further requires the Commission to prepare a recommendation for an online filing system for the House Speaker and the Senate President by December 1, 2015. The bill proposes specifications for that system.

The bill creates new tools by which the Commission can collect unpaid financial disclosure fines and extends the statute of limitations for fine collection from four to twenty years. Collection tools can include wage garnishment from individuals who are public employees. It allows liens to be placed against the real or personal property of the person who violated the law.

The law allows filers to use CPA's to file the disclosure forms and provides a safe harbor for filers from violations that occur as a result of an error by the CPA filing the forms. It also makes provision for dispensation of violations with a de minimis impact. There are also provisions that address candidates qualifying financial disclosure requirements.

There is a requirement for finance directors of counties, municipalities, or other political subdivisions to file a statement of financial interests (CE Form 1) pursuant to s.112.3145, F.S. If this remains in the bill it would impact school district finance directors.

Gifts and Honoraria: The bill clarifies the definition of a "procurement employee" in ss.112.3148 and 112.3149, F.S. It states that only employees who have the authority to make more than \$10,000 in purchases during the fiscal year are procurement employees. The bill establishes that "procurement employees" be prohibited from soliciting any gift or honoraria from a "vendor." A "vendor" is any business entity that is doing business directly with an agency, such as renting, leasing, or selling any realty, goods, or services.

Gifts from Certain Political Committees: The bill creates s.112.31485, F.S., prohibiting a reporting individual or a procurement employee, or a member of his or her immediate family from soliciting or knowingly accepting, directly or indirectly, any gift from a political committee or committee of continuous existence. The bill also prohibits a political committee or a committee of continuous existence from giving directly or indirectly, any gift to a reporting individual or procurement employee, or his or her immediate family.

Blind Trusts: The bill creates s.112.31425, F.S., permitting public officers to create a blind trust and place their assets into the trust. The bill creates specific language about how the trust would operate and how the individuals creating the trust can access their assets.

State Public Officer Voting Conflicts: The bill defines the terms "principal" and "special private gain or loss" and prohibits a state public officer from voting on a measure that he or she knows will inure to his or special private gain or loss. A public officer is defined as any person appointed or elected to hold

office in any agency, including any person serving on an advisory body. The bill includes provisions for state public officers to file disclosures of potential conflicts of interest. Legislators may satisfy the disclosure requirements by filing a disclosure form created pursuant to the rules of the chambers of which they are members.

Complaints Against Candidates: The bill provides that a complaint against a candidate or the intent to file a complaint against a candidate may not be disclosed for a period of five days before a special, primary, or general election. The bill extends the period to thirty days before a primary, special or general election unless the complaint is based upon personal information or information other than hearsay.

Complaints and Investigative Proceedings: The bill authorizes the Commission to initiate investigations based upon a referral from the Governor, the Florida Department of Law Enforcement, a state attorney, or a U.S. Attorney. In order to investigate a referral a vote of six members of the Commission is required. The bill requires that the records and proceedings of the investigation remains confidential until the Commission determines it will not investigate the referral; the Commission determines whether probable cause exists, to believe a violation occurred or the subject of the investigation waives confidentiality. If the Commission determines that the alleged violation was a de minimis violation due to an inadvertent error it is required to dismiss the compliant.

Ethics Training: The bill creates s 112.3142, F.S., requiring all constitutional officers (including superintendents and school board members, to annually receive a minimum of four hours of training that addresses the Sunshine Amendment, the Code of Ethics for Public Officers and Employees, public records laws, and open meetings laws.

Legislative Revolving Door Policies: The bill amends s. 112.313(9), F.S. It significantly tightens prohibitions against former members lobbying the Legislature and the Executive Branch and working for firms that engage in such lobbying.

Dual Public Employment: The bill creates s. 112.3125, F.S., which prohibits an elected public officer, or for the period of his or her candidacy, any person who has qualified as a candidate for elected public office, from accepting employment with the state or any of its political subdivisions if the officer knows, or should know, that the position is being offered for the purpose of gaining influence or other advantage based on the officer's public office or candidacy. The bill also provides the following minimum requirements that must be met during the selection process for a public officer to be able to accept employment with another public agency.

1. The position was already in existence or was created by the employer without the knowledge or participation of the public officer's interest in such a position.
2. The position must be publically advertised.
3. The public officer was subject to the same application and hiring process as other candidates for the position.
4. The public officer met or exceeded the qualifications for the position.

If the public officer had public employment prior to qualifying for office, he or she may not accept promotion, advancement, additional compensation, or any other thing of value that he or she knows or with the exercise of reasonable care should know, was given as a result of the officer's election or

position as an officer, or that is otherwise inconsistent with the promotion, advancement, additional compensation, or things of value to other similarly situated employees.

Executive Branch Expenditure Ban:” The bill amends s. 112.3215, F.S., so that its provisions parallel the provisions of statute that prohibits lobbyists from making gifts to members of the Legislature. The bill provides for penalties for lobbyists violating the provision and provides that the principal of the lobbyist may be subject to fines due to violations of the law.

House Proposal – Florida Retirement System

HB 7011 – relating to the Florida Retirement System

A major priority of the Speaker of the Florida House, Will Weatherford, is to reform the Florida Retirement System by eliminating the “defined benefit” or “pension plan” for new employees hired after a date certain. The change he seeks is prospective, going forward into the future, for employees not yet hired by school districts, and state and local governments.

There is established case law that makes the relationship between current employees and retirees (in the Florida Retirement System), and the State of Florida (through the FRS) contractual. As a contractual relationship, participation in the plan and certain basic benefits of the plan cannot be altered by unilateral action of the state for those current participants. The Legislature does have the authority to make some changes in the plan prospectively, as it did with the change in the calculation of the Cost of Living Adjustment (COLA). However, the Legislature does not have the authority to alter what was already earned by retirees and employees prior to the change in the law. The issue related to requiring the plan to be contributory rather than non-contributory was resolved in favor of the Legislature’s authority to alter the aspect of determining who has responsibility for paying for the cost of the plan.

HB 7011 is an incomplete product at this time. There will be amendments to the bill and several issues must be addressed. The House Government Operations Subcommittee, which filed the initial bill, has requested several actuarial studies concerning the FRS pension plan, and data from those studies are not currently available. When that information becomes available, the shape of the bill may be impacted.

Although the bill is currently 59 pages all of the changes do one thing. The changes close the Pension Plan (a.k.a. the Defined Benefit Plan) to employees hired on or after January 1, 2014. There are several specialized programs within the Florida Retirement System in addition to the FRS pension plan for regular, senior management, elected officials, and special risk class employees. All avenues to the pension plan are closed to new FRS hires on January 1, 2014.

Any employee hired into any FRS job on or after January 1, 2014 will be enrolled into what is now known as the Investment Plan. The following issues are still to be addressed and will be included in future amendments or iterations of the bill.

- The proposed bill will eliminate disability retirement benefits as currently available in the FRS pension plan.

- The proposed bill has no provision for offering death or disability benefits for employees injured or killed in the line of duty, other than paying to survivors the funds in the employee's investment account.

Background for the current bill does not identify what additional costs beyond the current employee and employer contribution rates will be generated if the FRS pension plan is or is not closed.

The Subcommittee Chair, Representative Jason Brodeur, has stated that the Subcommittee staff is working on options to address the issues associated with providing benefits to employees and their families if an employee is killed or disabled due to an injury sustained in the line of duty. This is a particularly sensitive and important issue for police officers, fire fighters, prison guards and other "first responders" who place themselves at risk in the line of duty.

The studies to provide cost data to allow comparisons between keeping the Pension Plan open and closing it on a date certain are underway. One set of data did not include the impact of the employees' three percent FRS assessment. The data were left out of the original study, and will be ready by March 1. The studies related to the impact of switching new hires from the investment plan to the pension plan if they are disabled, and providing in-the-line-of-duty benefits are due on March 8 and March 29.

Therefore, the bill may not move toward a more finished product until the end of March or early April, about half way through the regular session.

I hope this information is helpful. If you have any questions, please call me at 850.577.5784.