

February 20, 2014

MEMORANDUM

TO: District School Superintendents
FROM: Joy Frank
RE: Legislative Update – Week of February 17, 2014

General Information

The House and Senate held their last set of interim committee meetings this week. The regular legislative session begins on March 4, 2014. Transitional Accountability Legislation will be considered in the first or second week in both the House and Senate Education related committees.

Many thanks to those of you who responded so quickly to the email related to the technology grants.

Biometric Device Survey

HB 195 by Raburn and SB 188 by Hukill relates to Education Data Privacy. These bills, among other provisions, prohibit any educational agency or institution from collecting, obtaining, or retaining biometric information of a student, a student’s parent, or a student’s sibling. The bill defines biometric information as information collected from the electronic measurement or evaluation of any physical or behavioral characteristics that may be personally identifiable, including characteristics of fingerprints, hands, eyes, and the voice. The bill would, therefore, not allow agencies or institutions to use fingerprint scans, hand scans, retina or iris scans, face geometry scans, or voice prints.

We know that at least one school district is using a palm scanner for food service. It has successfully reduced fraud and increased the efficiency of delivering school meals. We have been asked to survey districts to see if other districts are using such devices and/or were planning to use them. Please respond to the survey when you receive it from Renae Wallace. The questions are as follows:

Legislation that would prohibit the use of instruments that measure biometric such as a palm or retina scan is being considered. Does your district use such an instrument?

If the answer is “yes”, please identify the instrument, the purpose for which it is used, the benefits of use, the cost, security safeguards and any other information that would be helpful.

If you did not receive this from Renae Wallace, please let her know at rwallace@fadss.org

Charter School Legislation

The House Choice & Innovation Education Subcommittee considered charter school legislation that school districts basically oppose. Many of you had written letters to the committee members outlining specific concerns about the proposed legislation. In addition, Superintendent Bob Runcie, Broward County Public Schools and others testified as to the problems in the bill. Several members referred to letters they had

received and expressed our concerns. I think it was worthwhile and very helpful to have had written those letters. Please keep it up!

HB 67 by Rep. Gaetz relating to high school daily start times has been withdrawn.

House Bills Considered in Committee

CIS1 by Choice & Innovation Subcommittee re to Charter Schools. The bill proposes major changes to the charter school statute. Based upon testimony of district representatives, including Superintendent Runcie from Broward County Public Schools, the members expressed concerns about many of the provisions of the bill. These issues may be addressed in future committees. The bill was voted out favorably to be introduced as a committee bill.

The bill requires sponsors and charter schools to use a standard contract. In essence, many of the contract provisions are incorporated into the application section. The result is that the two processes appear to merge. A person wanting to open a charter school must submit an application on the model application form prepared by DOE which includes, among existing provisions, a description of the school's mission, students to be served, ages/grades; and a description of the focus of the curriculum, including identification/acquisition of technologies. Reading must be a primary focus of the curriculum and the application must include a specified curriculum plan. The Legislature encourages blended learning courses. The application must also identify methods used to identify the educational strengths and needs of students and how well educational goals and performance standards are met. In secondary schools, a method for determining that students have satisfied graduation requirements must be in the application. The application must include admissions/dismissal procedures; the ways that racial/ethnic balance reflective of the community will be achieved; the annual financial plan for each year for up to 5 years; the financial and administrative management of the school; a description of procedures that identify various risks and approaches to reduce losses, plans for safety and security of students/staff, etc.; teacher qualifications; school governance; implementation timetable; alternative arrangements, if a conversion charter, for current students not attending the charter school and current teachers in the school. A sponsor may require an applicant to provide additional information as an addendum to the application.

Current law requires the sponsor to allow the applicant to make technical or nonsubstantive corrections. The bill would expand this to include the ability to address any deficiencies.

The sponsor has 30 days after approval of the application to provide a standard charter contract developed by DOE to the charter school, which shall consist of the approved application and any addenda and the elements required by statute. The sponsor and applicant have 40 days thereafter to negotiate the remaining terms of the contract. Any provision of a charter contract inconsistent with or prohibited by the requirements of the statute is void and unenforceable. Once the sponsor or district has approved the standard charter contract, the sponsor and applicant have the right to negotiate additional terms, as necessary. The charter school may open and operate during the pendency of any negotiation, mediation, or administrative proceeding.

The bill specifies that the governing board of the charter school and the sponsor/district are required to use to standard charter contract developed by DOE, which incorporates the approved application and any addenda. Matters included in the approved application and any addenda are deemed settled for purposes

of negotiating the charter. However, the parties may agree to address such matters after approval of the charter.

The bill then deletes much of the language relating to the charter contract because it is contained in the application.

Later in the bill, language relating to a model application form, etc. is added. The model application form, standard charter contract, standard application evaluation instrument, and standard charter renewal contract must clearly identify the specific statutes and rules from which charter schools are statutorily exempted from compliance. The department shall develop a model application form, standard charter contract, standard application evaluation instrument, and standard charter renewal contract that is uniquely tailored to virtual charter schools and replication of high-performing charter schools.

The bill expands the entities eligible for a 15-year charter to include private, not-for-profit entities.

The bill clarifies that a charter is automatically terminated if it earns a second consecutive grade of "F," after all school grade appeals are final.

A sponsor/district may not require a charter school to limit enrollment or capacity to those students enrolled before the start of the school year as a condition of approval or renewal of a charter.

If a school board-owned facility that had previously been used for a K-12 educational purposes is no longer used as a school, it must be made available for a charter school's use on the same basis as it is made available to other public schools in the districts. The charter school is responsible for the costs required to bring the facility into compliance with the current Florida Building Code and for costs required to maintain such compliance. The charter school may not sell or dispose of the facility without permission of the district. The charter school may not earn capital outlay funds; however, the district must include the charter school's COFTE student count in the district's capital outlay calculations. The charter school may choose to maintain and repair the facility at the same standard and level as any other district-operated school of similar age and condition. Maintenance and repair do not include the construction of any new building, structure, or substantial addition, extension, or upgrade to an existing facility.

The bill authorizes an out-of-state entity that successfully operates a system of high-quality charter schools elsewhere in the United States to apply to the state board for high-performing charter school system status. If awarded the status, the entity would then be authorized to replicate its charter schools in Florida in the same manner as other high-performing charter school systems. The bill provides that charter schools established by such an entity are automatically deemed "high-performing" for the first three years of operation, thereby conferring upon such charter schools all of the benefits available to high-performing charter schools. After three years, such a school must meet the eligibility requirements for "high-performing" status to maintain the designation.

HB 195 by Raburn re to Education Data Privacy. The bill codifies the commissioner's legislative recommendations regarding student data privacy and security to clarify and strengthen several aspects of state law. By specifying that students and parents must be notified annually about their rights regarding education records, the bill aligns state law with FERPA's annual notice requirement. Provisions specifying that attorney's fees and court costs may be awarded to a student or parent who receives "injunctive relief" more clearly indicate what constitutes a vindication of rights meriting such an award.

The bill prohibits any educational agency or institution from collecting, obtaining, or retaining information on the political affiliation, voting history, religious affiliation, or biometric information of a student, a student's parent, or a student's sibling. The bill defines biometric information as information collected from the electronic measurement or evaluation of any physical or behavioral characteristics that may be personally identifiable, including characteristics of fingerprints, hands, eyes, and the voice. The bill would, therefore, not allow agencies or institutions to use fingerprint scans, hand scans, retina or iris scans, face geometry scans, or voice prints. These provisions provide specific protection from the collection of sensitive information that has little, if any, bearing on a student's education. In addition, the bill requires DOE to create a statewide process for assigning students identification numbers that are not SSNs, thereby phasing out the use of SSNs for that purpose.

The bill also prohibits disclosure of confidential and exempt education records to any person, public body, body politic, or political subdivision unless disclosure is authorized by FERPA or in response to a subpoena or court order. Disclosure to federal government agencies is also prohibited, unless authorized by FERPA, required by federal law, or in response to a subpoena or court order. These provisions provide clear guidance as to whom and when information may be disclosed.

Under FERPA, directory information is one of several exceptions to the "prior consent" requirement for disclosing education records or personally identifiable information. The bill provides additional protections regarding the disclosure of directory information by requiring the governing board of an educational agency or institution, when designating student information as directory information, to do so at a regularly scheduled public meeting. The governing board must consider whether designating the information as directory information will put students at risk of being targeted by marketing campaigns, the media, or criminals.

The bill requires a school district to request a student's SSN upon initial enrollment in a Florida public school. It also requires DOE to create a statewide process for assigning student identification numbers that are not SSNs. Once the process is implemented, school districts will be prohibited from using SSNs in their management information systems. These changes decrease the likelihood of duplicative requests for student SSNs, thereby increasing the security and confidentiality of student SSNs.

The bill passed the House Education Appropriations Subcommittee favorably.

HB 313 by Diaz re to Single-Gender Public School Program. Single-gender classrooms and schools are permitted under Florida law. The bill requires district school boards establishing single-gender schools to meet specific criteria.

The bill passed the House Education Appropriations Subcommittee favorably.

HB 433 by Spano re to Educator Certification. The bill restates the methods by which a candidate for educator certification may demonstrate mastery of subject area knowledge, including passage of a Florida-developed subject area examination or a standardized examination specified by rule. The bill also allows a candidate to demonstrate mastery of general knowledge by achieving passing scores, as identified by the SBE in rule, on a national or international examination that tests comparable content and relevant standards in verbal, analytical writing, and quantitative reasoning skills. In addition, the bill specifies certain requirements regarding demonstration of mastery of professional preparation and education competence.

The bill repeals a provision requiring a longitudinal study comparing the performance of teachers who earned certificates through certain specified “routes.” The study has been completed.

The bill allows candidates to renew a subject area specialization by passage of a Florida-developed subject area examination or a standardized examination specified by rule. The SBE must adopt rules that would expand training for renewal of professional certificates in areas which require training in the instruction of students with disabilities, allowing such candidates to “bank” excess credits for use in subsequent certificate renewals. The bill also requires the SBE to adopt rules specifying certain requirements for reinstatement of a professional certificate.

The bill establishes requirements for instructional personnel who supervise or direct teacher preparation students during field experience courses or internships in another state through a Florida online or distance program. Such instructional personnel must have received “clinical educator” training or its equivalent in the state in which the field experience takes place, hold a valid professional certificate issued by that state, and have at least three years of teaching experience in prekindergarten through grade 12.

The bill passed the House K-12 Education Subcommittee favorably as a committee substitute.

HB 23 by Rogers re to Canned or Perishable Food Distributed Free of Charge. Current law protects donors who give food to a charitable organization from civil and criminal liability related to injury caused by such donated food. The term “donor” is defined in law. The bill adds a specific reference to public schools to the definition of “donor.”

The bill passed the House K-12 Education Subcommittee favorably.

HB 277 by Spano re to Joint Use of Public School Facilities. This bill is a priority of the American Heart Association and was substantially amended in the House Education Committee to address some of the concerns of school districts. The bill creates s. 768.072, F.S., relating to the limitation on public school premises liability. A district school board would not be liable for civil damages for personal injury, property damage, or death that occurred on public school property that the district school board had opened to the public through joint-use agreements or public access policies unless gross negligence or intentional misconduct on the part of the district school board was a proximate cause of the injury, damage, or death. The bill further provides that a school board may, at its discretion, enter into a joint use agreement with a local government or a private organization or develop public access policies to enable public access to indoor or outdoor recreation and sports facilities on public school property. A joint use agreement or public access policy should specify the facilities to be used, dates and times of use, and terms and conditions governing use of such facilities and may include provisions regarding liability 2 insurance coverage and indemnification of the school district. This new section does not affect liability for injury, damage, or death that occurs during school hours or during a school-sponsored activity. Finally, the new section does not waive sovereign immunity beyond the limited waiver established in statute.

The bill passed the House Education Committee favorably.

EDC1 by Education Committee re to Early Learning. This bill is a priority of Rep. O’Toole and increases early learning provider health and safety requirements and personnel quality.

The committee proposal passed the House Education Committee favorably.

Senate Bills Considered in Committee

SB 188 by Hukill re to Education Data Privacy. This bill is basically identical to HB 195 above.

The bill passed out of the Senate Criminal Justice Committee and is now in the Senate Judiciary Committee.

SB 589 by Harrell re to Children & Youth Cabinet. The Florida Children and Youth Cabinet (Cabinet) consists of the Governor and 14 members. These members include the Secretary of Children and Family Services, the Secretary of Juvenile Justice, the director of the Agency for Persons with Disabilities, the director of the Office of Early Learning, the State Surgeon General, the Secretary of Health Care Administration, the Commissioner of Education, the director of the Statewide Guardian Ad Litem Office, the director of the Office of Child Abuse Prevention, and five members appointed by the Governor who represent children and youth advocacy organizations.

The bill creates an additional Cabinet position to be held by a superintendent of schools who is appointed by the Governor.

The bill passed the House Choice & Innovation Education Subcommittee favorably as a committee substitute.

SB 140 by Bradley re to Driver Licenses. The bill exempts for military servicemembers and their families related to driver licensing. Current law exempts nonresident active duty military servicemembers stationed in the state from the requirement to obtain a driver license for the sole purpose of enrolling his or her child in a Florida public school. CS/CS/SB 140 expands this exemption to include the spouse and dependent child of a servicemember. The bill clarifies that the servicemember, spouse or dependent child is not required to obtain or display a Florida driver license because he or she has enrolled his or her child in public school or accepted employment or engaged in any trade, profession, or occupation in this state.

The bill has passed favorably through several committee and is now in Senate Appropriations.

SB 790 by Legg re to Education Technology. The bill elevates funding and policy aspects of technology-enhanced classroom teaching and learning by creating a dedicated source of funding for school districts' technology purchases and activities, and authorizes course substitution options for students to help equip Florida's students with skills to succeed in a competitive economy.

Specifically, the bill creates the Florida digital classrooms allocation within the Florida Education Finance Program to fund and support the use of technology enhancements in Florida's classrooms. The Legislature shall annually provide in the General Appropriations Act a Florida Education Finance Program (FEFP) allocation for implementation of the digital classrooms plan to be calculated in an amount up to 1 percent of the base student allocation multiplied by the total K-12 full-time equivalent student enrollment included in the FEFP calculations for the legislative appropriation or as provided in the General Appropriations Act. Each school district shall be provided a minimum of \$100,000, with the remaining balance of the allocation to be distributed based on each district's proportion of the total K-12 full-time equivalent student enrollment. Distribution of funds for the Florida digital classrooms allocation shall begin following submittal of each district's digital classrooms plan, which must include formal verification of the superintendent's approval of the digital classrooms plan of each charter school in the district, and

approval of the plan by the department. Prior to the distribution of the Florida digital classrooms allocation funds, each district school superintendent shall certify to the Commissioner of Education that the district school board has approved a comprehensive district digital classrooms plan that supports the fidelity of implementation of the Florida digital classrooms allocation. District allocations shall be recalculated during the fiscal year consistent with the periodic recalculation of the FEFP. School districts shall provide a proportionate share of the digital classrooms allocation to each charter school in the district, as required for categorical programs in s. 1002.33(17)(b). A school district may use a competitive process to distribute funds for the Florida digital classrooms allocation to the schools within the school district.

The bill requires the SBE to develop a Florida digital classrooms plan that establishes minimum protocols, parameters, and requirements for the state and districts to meet statutory requirements and timelines for instruction, learning, assessments, and accountability. DOE may consult with qualified experts to develop the Florida digital classrooms plan. The bill also requires school districts to develop district digital classroom plans that tie purchases and activities related to digital learning and technology infrastructure, professional development, digital tools, and online assessments to measurable student performance outcomes. Each district school board must seek input from district staff to develop the district digital classrooms plan and include in that plan, the plan for meeting requirements of federal technology initiatives and grant programs if the district participates in such initiatives and grant programs.

An independent evaluation and validation of the reported outcomes and the districts' technology inventory and infrastructure needs must accompany the school districts' digital classrooms plan.

The bill requires the Auditor General to verify compliance of the use of Florida digital classrooms allocation funds by the school districts in accordance with the DOE-approved district digital classrooms plan. The Commissioner of Education must work with education practitioners of this state to support implementation of district digital classrooms plans and annually report to the Legislature and the Governor a summary of each school district's use of funds, student performance outcomes, and progress toward meeting statutory requirements and timelines.

Additionally, the bill authorizes public schools to establish digital classrooms to provide students opportunities to improve digital literacy and competency, and creates pathways for high school students to substitute computer programming language courses of sufficient rigor, as approved by the commissioner, for some courses, to meet high school graduation requirements. For example, high school computer programming courses of sufficient rigor, as identified by the commissioner, such that one credit in computer programming language and the earning of related industry certifications constitute the equivalent of one credit of mathematics requirement, with the exception of Algebra I, or science requirement, with the exception of Biology I, for high school graduation. High school computer technology courses in 3D rapid prototype printing of sufficient rigor, as identified by the commissioner, such that one or more credits in such courses and related industry certifications earned may satisfy up to two credits of mathematics required for high school graduation. Courses in computer programming language, such that one credit, at the discretion of the local district school board, may satisfy one credit in physical education which is required for high school graduation.

The bill passed the Senate Education Committee favorably as a committee substitute.

SB 646 by Montford re to OGSR/Education and Applicant Records. SB 646, simply reenacts current law, with no changes, in effect preserving the current public records exemption for a student's education

records and an applicant's records at a public postsecondary educational institution. The exemption is scheduled to repeal on October 2, 2014, unless saved from repeal through reenactment by the Legislature.

The bill passed the Senate Education Committee favorably.

SB 648 by Montford re to Education Records/FERPA. SB 648 simply reenacts current law, with no changes, in effect preserving the current public records exemption for education records of K-12 students. The exemption is scheduled to repeal on October 2, 2014, unless saved from repeal through reenactment by the Legislature.

The bill passed the Senate Education Committee favorably.

SB 656 by Montford re to Active Investigations of Allegations/Testing. SB 656 simply reenacts current law, with no changes, in effect preserving the current public records exemption for the identity of a school or postsecondary educational institution, personally identifying information of personnel, and specific allegations of misconduct until an investigation conducted by the Department of Education is concluded or inactive. The exemption is scheduled to repeal on October 2, 2014, unless saved from repeal through reenactment by the Legislature.

The bill passed the Senate Education Committee favorably.

SB 7046 by Community Affairs re to the Florida Retirement System. The bill establishes a cash balance retirement plan for Florida Retirement System (FRS) employees featuring individual employee accounts that are guaranteed a minimum retirement benefit. Cash balance plans offer some of the features of both the pension plan and the investment plan. The State Board of Administration (SBA) is responsible for administering the new plan. Cash balance accounts would be funded by employee and employer contributions based on a percentage of monthly compensation, a guaranteed 2 percent interest on the account balance, and 75 percent of any investment returns over 2 percent.

Employees hired after July 1, 2015, may choose the cash balance plan or existing investment plan, and could revise that decision by making a second election. Only special risk employees would be able to choose the pension plan. Employees under the cash balance plan are vested after completing five years of service. Existing employees may choose to move between the pension plan or investment plan to the cash balance plan. Upon retirement, employees may choose to receive the total of the cash balance account as a lump-sum distribution, direct rollover retirement account distribution, periodic distribution or combination.

Details of the bill are as follows:

Section 1 directs the Division of Law Revision and Information to designate portions of ch. 121, F.S., as parts III and IV of the chapter, and to create a new part III of ch. 121, F.S., to be entitled the "Florida Retirement System Cash Balance Plan."

Section 2 creates s. 121.601, F.S., to provide definitions applicable to the new FRS cash balance plan. The key definitions include "active member," "annuity savings account," "approved provider," "eligible employee," "retirement annuity account," and "vested."

An “active member” is a member actively employed by a participating employer. “Annuity savings account” means the account containing the member contributions. An “approved provider” is a private sector company selected and approved by the SBA to offer annuity products. “Retirement annuity account” means the account containing the employer contributions. A member is deemed to be “vested” upon completing 5 years of creditable service in the FRS.

Section 3 creates s. 121.602, F.S., which establishes the cash balance plan within the FRS, to be administered by the SBA as a qualified governmental plan under s. 401(a) of the Internal Revenue Code. The cash balance plan references certain provisions of the investment plan, especially with respect to administration of accounts, while being a completely distinct plan. It is designed as follows:

Participation by Special Risk Class

Employees initially hired on or after July 1, 2015, and eligible to participate in the Special Risk Class, may choose to participate in either the pension plan, the investment plan or the cash balance plan. A special risk employee has eight months to make the election, and participation in their elected plan is retroactive to the first day of employment. If the employee fails to make an election after the eighth month, the employee will be placed in the investment plan. After the eight month time period for making an election, an employee has one additional opportunity to elect participation in another plan, including the pension plan.

Participation, Generally

Employees initially hired on or after July 1, 2015, and not eligible to participate in the Special Risk Class, must choose either the investment plan or the cash balance plan. An employee has eight months to make their initial election, and participation in their elected plan is retroactive to the first day of employment. If any employee fails to make an active election to participate in a plan by the end of the eighth month following the employee’s month of hire, the member will be enrolled in the investment plan. After the eight month time period for making an election, an employee has one additional opportunity to elect participation in either the investment or cash balance plan.

Single Election Option

All active members of the pension plan or investment plan are granted one career-time election to transfer to the cash balance plan. If this election is used, the transfer is final and irrevocable. If the member transfers to the cash balance plan, the member may either retain his service credits or accumulations in the prior plan or transfer the amounts to the cash balance plan. Any transfer to the cash balance plan is treated as an employer credit within the cash balance plan.

Contributions

The member and employer will make monthly contributions to the active member’s cash balance accounts based on a percentage of the member’s gross monthly compensation. No voluntary contributions may be made into the cash balance plan. The SBA has a duty to ensure that plan assets are held in trust and allocated properly. The DMS is responsible for monitoring contribution levels for the cash balance plan.

Section 121.721, F.S., is created (by section 17 of the bill) which sets the contributions paid by employers and members for the cash balance plan. All active members will pay 3 percent of their gross monthly compensation to the plan. The employer contributions for retirement benefits will vary based on the class in which the member participates. The accounts will be credited with a guaranteed 2 percent annual effective rate. If the cash balance plan portfolio earns more than 2 percent return during the prior year,

the members will be credited 75 percent of the rate over 2 percent. The guaranteed interest is credited monthly and the additional interest is credited annually. Members are not eligible for any interest credits if the member has taken a full distribution or annuitized the account balance prior to the posting of the interest credits.

Accounts

Member contributions and the associated interest are credited to the annuity savings account. The employer contributions and associated interest are credited to the retirement annuity account.

Vesting

The member is immediately vested in all member contributions and associated interest paid into the annuity savings account. The member becomes vested in the employer contributions, employer credits and associated interest paid into the retirement annuity account upon completion of 5 years of creditable service in the FRS. If the member transfers any credit from the investment plan or the pension plan, the member must meet the applicable vesting requirements of those plans prior to vesting in those amounts transferred to the cash balance plan. If a non-vested member is reemployed within 15 years of termination and has not withdrawn the employee contributions, then the prior earned employer contributions will be restored.

Benefit Payments

Benefits may not be paid from cash balance plan accounts, unless the member has terminated employment or is deceased. To receive benefits, a member must submit a written application. The benefits are payable as a lump-sum distribution, an eligible rollover distribution, an annuity or a combination of the three methods. The benefit payment method selected by the member is final and irrevocable once the benefit payment is cashed, transferred or deposited. No benefits are payable from the cash balance plan for hardships, loans, unforeseeable emergencies or any other purpose other than retirement. The SBA may cash out a de minimis account (\$5,000 or less) of a member who has terminated employment for a minimum of six calendar months. An employee may not receive a distribution if a qualified domestic relations order is filed against the member's cash balance account.

Disability Payments

If a member of the cash balance plan becomes totally and permanently disabled, the member may elect to receive the vested balance of the member's cash balance accounts or may transfer such balances to the pension fund to be eligible to receive a disability benefit from the pension fund. Employers participating in the FRS will be assessed an amount to pay for the disability benefits.

Death Benefits

If a member of the cash balance plan dies prior to retirement, a beneficiary may receive benefits as if the member retired on the date of death. The benefits may be payable as a lump-sum distribution, an eligible rollover distribution, an annuity, or a combination of the three. If a member of the cash balance plan is killed in the line of duty, the surviving spouse may transfer the benefits to the pension fund and receive a monthly lifetime benefit equal to one half of the member's monthly salary at the time of the member's death.

Designation of Beneficiaries

Members of the cash balance plan may designate beneficiaries similar to the way members of the investment plan designate beneficiaries.

Purchase of Creditable Military Service

Members of the cash balance plan may purchase certain military service and up to two years of other service based on authorized leaves of absence granted by employers participating in the FRS, pursuant to s. 121.111(1), F.S. No other service may be purchased.

Retiree Health Insurance Subsidy

Members of the cash balance plan are eligible to accrue benefits under the retiree health insurance subsidy program administered pursuant to s. 112.363, F.S.

Social Security Coverage

Members of the cash balance plan will be provided social security coverage similar to other members of the FRS.

Cash Balance Plan Education

The SBA is required to provide an education component for the members of the cash balance plan similar to the education component offered to the members of the investment plan.

Member Information Requirements

The SBA is required to provide quarterly benefit statements to the members of the cash balance plan.

Federal Requirements

The cash balance plan must be administered in compliance with federal requirements, to maintain its status as a qualified governmental plan. The SBA is granted rulemaking authority necessary to maintain such compliance. Credits payable under the cash balance plan may not exceed the maximum amount permitted under s. 401(a) of the Internal Revenue Code.

Cash Balance Plan Administration

The cash balance plan will be administered by the SBA similar to how the investment plan is administered.

Fiduciary Standards and Responsibilities

Investment of the cash balance plan assets will be made for the sole interest of the members and beneficiaries of the plan and to defray the expenses of administering the plan.

Annual Actuarial Study

An actuarial valuation of the cash balance plan must be completed annually by the SBA.

Recommendations by Investment Advisory Council

The Investment Advisory Council is charged with making recommendations to the SBA regarding investment policy, strategy and procedures for the cash balance plan.

Investment Policy Statement

The SBA will invest the funds in the cash balance plan. These investments must comply with the investment policy statement approved by the Trustees of the SBA.

Section 4 amends s. 112.363, F.S., to establish that a member of the cash balance plan may begin receiving the retiree health insurance subsidy upon retirement.

Sections 5 and 6 amend s. 121.011-012, F.S., to update references to part IV of ch. 121, F.S.

Section 7 amends s. 121.021, F.S., to add “cash balance program” to the definition of FRS.

Section 8 amends s. 121.051, F.S., to establish the retirement plan options available to employees eligible to participate in the Community College Optional Retirement Program (CCORP). Employees hired on or after July 1, 2015, may choose to participate in the CCORP, the investment plan or the cash balance plan. Existing members of CCORP are not permitted to transfer to the pension plan after July 1, 2015.

Section 9 amends s. 121.052, F.S., to eliminate the option for members eligible for the Elected Officers Class to choose to participate in the Senior Management Service Class.

Section 10 amends s. 121.055, F.S., to eliminate the option for members eligible for the Elected Officers Class to choose to participate in the Senior Management Service Class or the Senior Management Service Optional Annuity Program (SMSOAP). The SMSOAP is closed to new members effective July 1, 2015. Members enrolled in the SMSOAP prior to July 1, 2015, may retain membership in the program.

Section 11 amends s. 121.091, F.S., to apply current reemployment restrictions to the retirees of the cash balance plan. After retirement in the cash balance plan, a retiree may not be reemployed with an FRS-participating employer within the first six calendar months of retirement.

Section 12 amends s. 121.151, F.S., to authorize the SBA to invest the assets of the cash balance plan.

Section 13 amends s. 121.35, F.S., to allow employees eligible to participate in the State University System Optional Retirement Program (SUSORP) and initially employed on or after July 1, 2015, the opportunity to choose to participate in the SUSORP, the investment plan or the cash balance plan.

Section 14 amends s. 121.4501, F.S., to allow each member enrolled in the FRS prior to July 1, 2015, one opportunity during the member’s active career to switch from the pension plan to the cash balance plan or from the investment plan to the cash balance plan.

Section 15 amends s. 121.70, F.S., to make clarifying changes so that the cash balance plan is recognized as a component of the FRS.

Section 16 amends s. 121.71, F.S., to continue the blended rate methodology, so that the costs associated with the pension plan, the investment plan and the cash balance plan are included for actuarial valuation purposes.

Section 17 creates s. 121.721, F.S., to set the contributions paid by employers and members for the cash balance plan. All active members will pay 3 percent of their gross monthly compensation to the plan. The employer contributions for retirement benefits will vary based on the class in which the member participates. The accounts will be credited with a guaranteed 2 percent annual effective rate. If the cash balance plan portfolio earns more than 2 percent return during the prior year, the members will be credited 75 percent of the rate over 2 percent. The guaranteed interest is credited monthly and the additional interest is credited annually. Members are not eligible for any interest credits if the member has taken a full distribution or annuitized the account balance prior to the posting of the interest credits.

This section also establishes the methodology for the crediting of interest to the member accounts.

Section 18 amends s. 121.73, F.S., to set the employer contributions required to fund the disability and death benefits provided under the cash balance plan. At this time these rates are based on the similar benefits cost decrements identified in the 2013 FRS Valuation of the pension plan.

Section 19 amends s. 121.74, F.S., to permit the education and administrative assessment paid by employers to be used by the SBA for both the investment plan and the cash balance plans.

Section 21 amends s. 121.78, F.S., to establish the usage of penalties and delinquent fees relating to cash balance plan contributions.

Section 22 amends s. 216.136, F.S., to expand the responsibilities of the FRS Actuarial Assumption Conference to include developing official information relating to the FRS cash balance plan.

Sections 20, 23, and 24 amend s. 121.76, 238.072, and 413.051, F.S., to make technical changes to conform, to correct cross-references, or to make other technical changes.

Section 25 provides a legislative statement that this bill fulfills an important state interest.

Section 26 adjusts the contributions paid by FRS-participating employers to fund the provisions of this act. **Section 27** directs the SBA to seek a determination letter from the IRS regarding the changes to the FRS made by this bill.

Section 28 provides that the bill is effective July 1, 2015.

Constitutional Issues

Article X, s. 14 of the State Constitution requires that benefit improvements under public pension plans in the State of Florida be concurrently funded on a sound actuarial basis. The DMS has commissioned an actuarial study to determine the overall fiscal impacts of the cash balance plan.

Article I, s. 10 of the State Constitution prohibits any bill of attainder, ex post facto law, or law impairing the obligation of contracts from being passed by the Florida Legislature.

The Florida Statutes provide that the rights of members of the FRS are of a contractual nature, entered into between the member and the state, and such rights are legally enforceable as valid contractual rights and may not be abridged in any way. This “preservation of rights” provision was established by the Florida Legislature with an effective date of July 1, 1974.

The Florida Supreme Court has held that the Florida Legislature may only alter the benefits structure of the FRS prospectively. The prospective application would only alter future benefits. Those benefits previously earned or accrued by the member, under the previous benefit structure, remain untouched and the member continues to enjoy that level of benefit for the period of time up until the effective date of the proposed changes. Further, once the participating member reaches retirement status, the benefits under the terms of the FRS in effect at the time of the member’s retirement vest.

The Florida Supreme Court further held that the “preservation of rights” provision was not intended to bind future legislatures from prospectively altering benefits which accrue for future state service. More

recently, the Florida Supreme Court reaffirmed the previous holding, finding that the Legislature can alter the terms of the FRS, so long as the changes to the FRS are prospective.

This bill does not change any benefits that a member earned prior to July 1, 2015.

The bill passed the Senate Community Affairs Committee by a 5/4 vote. The bill has been filed as SB 1114.

SB 7040 by Community Affairs re to FRS Cash Balance Plan Trust Fund. The bill creates the Florida Retirement System Cash Balance Plan Trust Fund (trust fund). As a retirement trust fund of the Florida Retirement System (FRS), the trust fund will hold assets for members of the FRS Cash Balance Plan, and be administered by the State Board of Administration (SBA). The bill establishes a forfeiture account within the trust fund, and directs the SBA to ascertain from the Internal Revenue Service whether forfeited benefits from the plan may be used to pay for expenses of the plan in order to reduce future employer contributions.

As required by the constitution, the trust fund must be enacted by a three-fifths vote of the membership of each house of the Legislature.

The bill passed the Senate Community Affairs Committee favorably and has been filed as SB 1112.

SB 7038 by Community Affairs re to Deferred Compensation. This proposal needs to be monitored as well as proposals modifying the FRS. The bill automatically enrolls state employees in the deferred compensation program. The bill requires each state agency to notify employees of the automatic enrollment and allows employees to opt out. State employees participating in the program will be required to contribute a minimum amount and each state agency must match the employee contribution up to a specified limit.

Finally, the bill allows local governments and other governmental entities with deferred contribution plans to automatically enroll employees, and provide employer contribution-matching.

Details of the bill are as follows:

Section 1 creates s. 112.2151, F.S., to provide that state employees be automatically enrolled in the deferred compensation program, established in s. 112.215, F.S., and allows employees to opt out. State employees hired before October 1, 2014, would be automatically enrolled on January 1, 2015. By October 1, 2014, each state agency, in consultation with the CFO, must notify state employees about the automatic enrollment, including procedures and tax consequences if they choose to opt out of the program.

State employees hired on or after October 1, 2014, would be automatically enrolled 90 days after the date of hire, but may opt out within 90 days of employment by making the appropriate filing with the program administrator.

Contributions for participation in the deferred compensation program are as follows:

- From January 1, 2015, through December 31, 2017, employees contribute at least:
 - \$25, if paid on a monthly basis; or
 - \$12.50, if paid on a biweekly basis.
- On or after January 1, 2018, employees contribute at least:
 - \$50, if paid on a monthly basis; or

- \$25, if paid on a biweekly basis.
- On or after January 1, 2015, state agencies would match employee contributions, not to exceed the lesser of:
 - \$100, if paid on a monthly basis or \$46.15, if paid on a biweekly basis; or
 - Two percent of the employee's salary for the pay period.

In the case of bonuses, state agencies will match the employee contribution up to the lesser of \$500 or 25 percent of the bonus.

The bill allows counties, municipalities, political subdivisions, and county constitutional officers to amend their deferred compensation programs to provide automatic enrollment and employer contribution-matching.

Section 2 provides an effective date of July 1, 2014.

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