



To: Florida District School Superintendents  
From: Brian T. Moore, FADSS General Counsel  
Subject: FADSS Legislative Update – Week of February 7, 2022  
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The 2022 Legislative Session passed the half-way mark and completed its fifth week, turning its focus to the 2022-23 budget and several high-priority bills. This is now the time of the session when higher priority bills start to complete the committee process and reach the full House or Senate.

### **Budget Discussions**

As mentioned last week, the Senate and the House both introduced their proposed budgets last week. This week, the *Appropriations* committees in each chamber took up all the appropriation, implementing, and confirming bills that will eventually result in the final budget for the coming year.

In the House, the proposed PreK-12 budget included several key provisions. These include:

- \$150 increase to the Base Student Allocation (BSA)
- \$250 million increase to the Teacher Salary Initiative Allocation (TSIA)
- \$30 million increase to Safe Schools Allocation
- \$200 million Putting Parents First Allocation (PPFA) that would take district administrator salaries from the 12 districts that imposed mask mandates and distribute that \$200 million amongst the 55 districts that did not impose a mask mandate.
- Eliminate the Digital Classroom Allocation (\$8 million)
- Eliminate the Turnaround Supplemental Services Allocation (almost \$10 million)
- No reduction in the local millage rate of 3.606
- Return of the School Recognition Allocation (almost \$129 million)
- No provision of funds for FADSS to provide statutorily-mandated training for superintendents

In discussions of the House budget proposal, there were numerous questions about the PPFA language, including how the 12 districts will function without district administrators. The House proviso language provides, “Districts receiving a Putting Parents First Adjustment Deduct shall

not reduce funding for any direct educational service or resource that impacts the education of kindergarten through grade 12 students enrolled in the school district.” The sponsor of these provisions said this was targeted at central office bureaucrats making more than double what a teacher makes, but he denied that this was a punitive measure.

In the Senate, the proposed PreK-12 budget included these key provisions:

- \$239 increase to the BSA
- \$50 million increase to the TSIA
- \$30 million increase to Safe Schools
- \$40 million increase to the Reading Allocation
- \$20 million increase to Mental Health Allocation
- \$5 million for Jefferson County Schools
- \$750,000 to fund FADSS certification and statutorily required training programs

In addition, the Senate proposal includes a requirement that all school district employees earn at least \$15/hour by October 1, 2022. If this does not happen, any employee would have a cause of action to bring suit after January 1, 2023.

Finally, both proposals include funding for special facility construction to account for the six districts that received previous allocations that were deemed insufficient after the pandemic-induced rise in construction costs. The House proposal was about \$41.5 million, while the Senate proposed \$64.5 million.

Ultimately, final decisions will be made when the budgets go to conference later in the session, but it is important to see where each chamber has started the process.

Both the Senate and House also introduced and discussed bills that would amend current FRS rates for school districts. As mentioned in an early update, [SB 7038](#) proposes a small increase to the FRS rates and reduction in the health insurance subsidy. This week, the Senate also introduced [SB 7046](#), which covers the same topics but sets much higher rates. On the House side, [HB 5007](#) was reported favorably by the Appropriations Committee, and it looks identical to SB 7046. The staff analysis prepared by the House estimates that these bills (SB 7046 and HB 5007) will cost school districts about \$156 million. The staff analysis for SB 7038 estimates a total cost of about \$21.8 million for districts.

#### [SB 2524](#) – Education Conforming Bill / Literacy Micro-Credential

Among other provisions, such as the increase in the number of students with unique abilities eligible for the Family Empowerment Scholarship from 20,000 to 26,500, the Senate’s conforming bill contains a welcome provision that should help districts address early literacy issues. It requires the DOE to develop an early literacy micro-credentialing program focused on students in PreK through 3<sup>rd</sup> grade. Districts can use their own programs, another district’s program, or one developed by the DOE. The credential can take no more than 40 hours to

complete, and it should allow more trained teachers and other educators to address struggling readers as quickly as possible. This idea was discussed prior to the start of session when several superintendents and their reading experts testified before the Senate *Appropriations Subcommittee on Education*.

#### [HB 5101](#) – Education Conforming Bill / Virtual Education

The House’s conforming bill, as originally drafted, focused primarily on virtual instruction, and many of the provisions appear to offer improvements to the current system. However, one area that causes significant concern is the provision to eliminate the Florida Virtual School franchise option for school districts. There is also concern about the proposed elimination of both the digital classroom and hold harmless allocations and the resulting funding compression.

The bill was amended this week in the *Appropriations Committee* to include some additional language that will cause problems for school districts. It would modify the controlled open enrollment law to require schools to make capacity determinations by grade level, not school. Thus, even if a school designed to hold 600 students currently has 650, it would have to accept a new student through open enrollment if he or she was in a specific grade level that was not at “capacity.” There is no language about not being required to obtain a portable classroom, hire new staff, or violate the class-size amendment. The bill also requires that these numbers be updated throughout the year, that a waitlist be maintained, and that a student can transfer in at any time of the year if a space becomes available.

Finally, under the amendments adopted this week, district policies on controlled open enrollment would need to include all sorts of information about transportation options, including “any transportation options available within the community.” Further, the bill would strike district’s abilities to use regular vehicles (no more than 10-person vehicle) to transport students to career education locations and instead allow them to use regular vehicles to transport controlled open enrollment students. Last, the conforming bill would change the \$750 voucher scholarship for transportation to either \$750 or the amount the district pays to transport a child, whichever is greater.

*Additional Concerns:* The Legislature knows that districts are struggling to find and keep bus drivers, that students are missing instructional time due to late or canceled routes, and that some districts could greatly benefit from increased transportation options like the one currently afforded to students in career education programs. Instead of addressing those issues, this bill seeks to exacerbate the problem by increasing transportation requirements for students who choose to attend a school out of their zone while eliminating the ability to transport a student to a career development site.

Also, multiple districts run incredibly successful virtual education programs through the FLVS franchise option. This bill would eliminate that option for the thousands of students currently taking advantage of it and force those students who enjoy the FLVS curriculum to enroll at FLVS

rather than their local district program that is likely to have local teachers who can meet in person, smaller class sizes, and other local benefits.

### **State Board of Education**

The State Board of Education (SBE) met in Tallahassee this week. They received updates from FADSS President and Citrus County Superintendent Sam Himmel, Escambia County Superintendent Tim Smith, and Jefferson County Superintendent Eydie Tricquet.

President Himmel shared with the SBE many of the struggles districts are experiencing compared to last year, including instructor vacancy rates nearly doubling, higher teacher absence rates, lower substitute fill rates, and higher student absence rates. She also elaborated on the extraordinary efforts districts are making to ensure students have a responsible adult in place for them every day, thereby limiting further disruptions to instruction. She pointed out that many people may see restaurants and stores closed certain days or reducing hours due to staffing shortages, but school districts do not have that option.

Jefferson County received good news during the meeting when it was announced that Commissioner Corcoran was releasing them from financial oversight effective immediately, which will go a long way in helping Superintendent Tricquet and her board prepare for the next school year. After five years under a charter school organization, the district will need to rebuild from scratch by July 1, 2022.

Finally, the SBE also considered several rule amendments and adoptions. Most important among these was Rule 6A-1.09422, which was amended to extend the old concordant scores for graduation to include this year's graduating cohort. This amendment should officially take effect within about 30 days. The new, more restrictive concordant scores will now apply to those who started high school in 2019-20, rather than 2018-19 as initially adopted. This was in recognition of the fact that this year's seniors are the ones who had their 10<sup>th</sup> grade FSA canceled and have not had a normal school year since they were in the 9<sup>th</sup> grade. Several superintendents specifically asked the SBE and Department for this change, and Commissioner Corcoran and the Department continued their demonstration of compassion and grace in responding to the needs of our students during this pandemic.

### **High-Impact Legislation**

**[CS/HB 1467 \(Garrison\)](#) / **[CS/SB 1300 \(Gruters\)](#)** - K-12 Education**

These are the bills that address board members and library and classroom books. The House side started with no salary for board members and was later amended to allow up to \$200 per meeting with a \$4800 annual maximum. The Senate version initially addressed school board meetings but was amended to address the same topics as the House bill. The Senate version currently calls for setting school board salaries at the same level as legislators. Both bills still put every book in every school on a public watchlist, which was discussed in previous updates.

Update: The House version was heard and debated on the House floor, having completed the committee process. Before it was heard by the full House, *the bill sponsor filed an amendment to the bill that removed the language that would eliminate school board salaries but replaced it with 8-year term limits beginning this coming November.* This was not a topic of discussion in any of the committees. The amendment was approved by the House, and the newly amended bill was then moved to 3<sup>rd</sup> reading. The following day, it was *approved by the House on 3<sup>rd</sup> reading* by a vote of 78-40 and will be sent to the Senate. The Senate version still has one committee assignment left.

Concerns: Under the bill, each book made available to students through a school library or classroom list must be selected by a school district employee who holds a media specialist certificate. This requirement generates numerous questions and concerns. For example:

- Does this mean that the AP English teacher cannot select books for a reading list without consulting the media specialist first?
- Is a committee of media specialists, teachers, parents, and community members required to approve every book on every list selected by that media specialist, or does this committee just establish a set of standards that the media specialist must follow? Does each book then have to get approved by the School Board after a 30-day review process? If so, how does the district make the book available to the public if it has not been allowed to purchase it yet?
- Can a civics teacher ask a class to read and discuss a recent newspaper article about a current event, or does that article have to go through the review process first too?

This bill creates the potential for a very time-consuming, costly process so that everyone with an opinion – whether or not they live in the district or have a child in the school – can second-guess the knowledge and expertise of media specialists and teachers. In its current form, this bill will stifle a school districts ability to incorporate supplemental books and other written materials into the curriculum.

Finally, it is worth noting that this bill would not apply to charter schools -- only traditional public schools. Again, this is another example of a bill promoted as something to protect all Florida school children and involve parents, but an exception is carved out for those parents and students receiving the same state funding but attending a charter or private school.

#### [CS/SB 974 \(Gruters\)](#) / [CS/SB 985 \(Beltran\)](#) – Sovereign Immunity

These bills would change the sovereign immunity limitations established in statute. Currently, an individual is limited to no more than \$200,000 for a tort claim with a \$300,000 cap for the entire incident.

Update: The House version of the bill would change the individual cap from \$200,000 to \$1 million and remove the per occurrence cap altogether. It has one committee assignment remaining.

In the Senate, after proposing an increase to \$300,000 / \$400,000 last week, **the Senate sponsor filed another amendment this week, which would set the caps at \$1 million and \$3 million. Obviously, this would represent a much more significant increase.** The caps would then increase every 10 years based on the Consumer Price Index, and an insurance policy obtained under this law could not include a provision conditioning payment of any part of a claim on the later enactment of a claims bill in the Legislature. The Senate *Community Affairs Committee* reported the bill favorably with a vote of 6-3, which was not a party-line vote. It now has one more committee stop in the Senate.

Concerns: Obviously, both versions, in their current forms, could greatly increase litigation costs for school districts and may encourage more suits to be filed knowing that there are hardly any limits. Right now, obvious errors that cause significant injury or costs can be resolved quickly by negotiating a payout at the capped amounts. With a much higher cap or no cap at all, litigants may feel more compelled to pursue litigation or drag out claims much longer in the hopes of a greater payout.

All local governments are against these bills. Smaller districts, cities, and counties will surely struggle under these new limits; however, all school districts should be especially concerned about their ability to cover the increased litigation/risk management costs that would likely follow. Quite simply, school boards have their revenue set by the Legislature and cannot raise taxes to cover the increased costs these bills would cause. Thus, these bills will require funds to be diverted from the classroom.

#### [CS/HB 7 \(Avila\)](#) / [SB 148 \(Diaz\)](#) – Individual Freedom

These bills have been covered in depth in the previous updates. In summary, they represent an attempt to prevent CRT and other forms of “wokeness” from appearing in the workplace and schools. While several of the provisions are noncontroversial, the major sticking point is that neither employee training nor district-run, public school instruction can cause an individual to **“feel discomfort, guilt, anguish, or any other form of psychological distress** on account of his or her race, color, sex, or national origin.” While the bill states that instructional personnel may facilitate discussions to address how freedoms of persons have been infringed by sexism, slavery, and other forms of racial oppression, it also adds that these topics and discussions may not be used to indoctrinate or persuade students of a particular point of view inconsistent with the principles stated within the bill.

Update: This week, the House version received its third and final committee hearing and was reported favorably along party lines by the House *Education and Employment Committee*. There were a couple of amendments made that would appear to lessen, at least somewhat, some of the major concerns discussed below. Instead of the “feel discomfort” language quoted above, it was replaced with **“A person should not be instructed that they must feel guilt, anguish, or other forms of psychological distress for actions, in which he or she played no part, committed in the past by other members of the same race or sex.”** This may not prevent

parents from complaining about teachers covering required topics of instruction that evoke strong feelings, but it is certainly less vague than the original language.

The House version will now go to the House floor for debate. The Senate version still has one committee assignment remaining.

Concerns: The primary concern is the vagueness of the language regarding how people feel. Anyone learning about the Holocaust, slavery, segregation, or Japanese internment camps may feel a sense of compassion or discomfort and perhaps even anguish and guilt due to the gravity of the topic. Does a child feeling some guilt for slavery *as an American* know the difference between guilt based on their race as opposed to a sense of guilt about what their country may have done? The bill's sponsor emphasized that this bill is designed to keep teaching objective, but it would seem to suggest that a teacher could not add a comment like "We all understand that slavery was bad, right?" Are teachers just to present facts without offering any perspective as to why those facts are important or why they are being taught?

With this language, it is easy to imagine parents filing complaints against teachers because their student was emotionally impacted by something learned at school, and it may cause teachers to limit their instruction on difficult topics out of fear that a child's discomfort will put their certification at risk or at least result in a time-consuming and costly legal action. The danger here is that this type of legislation puts teachers and school districts on the defensive for teaching the required, State Board of Education-approved standards, including those which may evoke a wide range of reactions among students.

Finally, because this bill seeks to amend section 1003.42, Florida Statutes, to include the language about instruction that provokes difficult feelings in students, it would not apply to charter schools and their instruction of students, as that section is not included in the list of statutes with which charter schools must comply.

#### [CS/HB 1557 \(Harding\)](#) / [SB 1834 \(Baxley\)](#) - Parental Rights in Education

This bill would require district school boards to adopt procedures for notifying a student's parent if there are changes in the student's mental, emotional, or physical health or well-being and the school's ability to provide a safe and supportive learning environment. The school district would also be prohibited from withholding information from a parent regarding the student's mental health or well-being.

There is also language that would prohibit a school district from encouraging classroom discussion about sexual orientation or gender identity in primary grade levels (the two chambers do not seem to agree on what "primary" means, but the Senate sponsor said multiple times that he thinks it applies to PreK-3<sup>rd</sup> grade) or in a manner that is not age appropriate. The bill adds that a parent could bring an action against a school district for violating this and be entitled to reasonable attorney fees and court costs.

Update: The Senate version of the bill received its first hearing this week and was reported favorably along party lines. It still has two committee assignments remaining in the Senate. The House version has one committee assignment remaining.

Concerns: First, these bills appear to be aimed at school attempts to navigate issues with LGBTQ students, which often involves a lot more turmoil at home than at school. There appears to be a perception that school counselors and teachers are conspiring with students to make major decisions affecting the student's life without the knowledge or input of the parents.

The major concern here is the provision allowing parents to file suit when there are so many subjective and vague provisions in the bill. Most of the bill is aimed at district policies and "practices," but that could be interpreted quite broadly. If a 4th grade teacher is asked a question by a student in class about sexual orientation and attempts to answer it, would the lack of a specific document telling teachers not to discuss these issues be considered a "practice" of encouraging classroom discussion? Do districts want to be facing declaratory actions with every disgruntled parent who may now find it easy to hire an attorney when they can recover attorney's fees and costs from the district? The bill may say that the lawsuit can be filed against district practices, but it is easy to imagine many parents taking action based on things happening in individual classrooms. After all, the teacher is a district employee.

Finally, it is not clear whether this bill would apply to charter schools. As noted above, the bill amends section 1001.42, which sets forth the powers and duties of school boards. The charter school statute exempts charter schools from all laws other than those listed in the charter school statute. That list includes laws protecting the health, safety, and welfare of students, which this bill claims to be doing; however, it is questionable whether any provisions within a law entitled "Powers and duties of district school board" would be found to apply to charter schools absent more clarity in the charter school statute.

#### **CS/HB 1193 (Plasencia) / CS/SB 1048 (Diaz) – Student Assessments**

These bills were filed with the goal of eliminating the FSA and switching more to a progress monitoring system beginning with the 2022-23 school year, but neither provides many substantive changes to the current assessment and accountability system. With respect to the FSA, they do not appear to change anything other than calling the end of the year assessments something other than the FSA. Both bills would add progress monitoring assessments at the beginning and middle of each year with a final assessment being administered at the end of the year for which all the current high-stakes accountability laws would still apply. However, 2022-23 would be a baseline year, and no punitive effects from the assessments would apply due to it being year one of the new system.

There is no proposed reduction in the grade levels taking these exams, nor are any changes to the current end of course examinations proposed. The bills also include a section on parents

and their right to know how their children are doing, but it is largely just a duplication of what is already set forth in section 1008.25 for students who are exhibiting a reading deficiency.

Both bills require the Commissioner of Education to conduct a study and report the results to the Legislature by January 31, 2025. The Commissioner would be required to recommend “additional innovative ways to streamline testing.” It would also have to include an analysis of the correlation between the two new progress monitoring assessments to be given in the fall and winter and the high-stakes end-of-year assessments to see if the earlier assessments could be used in place of the end-of-year assessments.

The House version of this bill also includes changes to the turnaround statutes which have been discussed previously at length.

Update: The House version of the bill was not heard this week. As mentioned last week, it was amended to include some updates to the turnaround language. It also included an amendment to mandate a change to the school grading system to make it more difficult to get an A or B grade. If 75% of the schools within a category of schools (elementary, middle, high, or combination) receive an A or B grade in a year, the SBE would be required to adjust the grading scale upward incrementally (to the next highest percentage ending in 5 or 0) until we reach the point where it requires getting at least 90% of the available points to receive an A grade (80-89% for a B, 70-79% for a C, etc.). Thus, if it currently requires 62% of available points to obtain an A and 75% of the schools get an A or B, the SBE will be required to raise the cut score to 65%. The next change would require a bump to 70%. Obviously, this provision creates numerous concerns, including the difficulty many schools will have escaping turnaround status if they ultimately must achieve what currently is a high A (70%) to get even a C. It also seems to come from a viewpoint that if it is possible for 75% or more of our schools to do well, then cut scores must be too easy.

The Senate version of the bill received its third and final committee hearing this week in the *Appropriations Committee* where it was reported favorably after it too was amended. The amendments did not substantively change the bill in its efforts to change from a single FSA at the end of the year to a progress monitoring system throughout the year with the final assessment still coming with all of the high-stakes measures in the current accountability system. The Senate version will now proceed to the Senate floor.

Additional Concerns: Many parents and staff members heard that there would be an end to the FSA and less high-stakes testing, but these bills change the current assessment requirements very little while also adding two new assessment periods at the beginning and middle of the school year. The progress monitoring and earlier feedback to teachers and parents would certainly be helpful in identifying deficiencies and implementing strategies before the end-of-year assessments, but this bill would not appear to do anything to reduce high-stakes testing. There are also some concerns about making all of the tests computer-based, which may strain district resources or prove difficult for many students, particularly the younger ones.

## [CS/HB 865 \(Rizo\)](#) / [CS/SB 758 \(Diaz\)](#) – Charter Schools

This bill would create the Charter School Review Commission and give it the power to review and approve applications for charter schools overseen by district school boards. The members of the commission would be appointed by the Commissioner subject to Senate approval, but there are no requirements that they possess any particular knowledge or expertise other than “charter school experience.” The district school board where the charter school is located would still be the sponsor and supervisor of the charter school.

As originally drafted, the local district would have no input into the application process for those charters that sought approval from the commission, nor any right to appeal the approval of an application the district believes does not meet the statutory requirements. However, the Senate version has been amended to require that the district receive a copy of the application within three days of it being filed and then have 30 days to provide district input on the application. With no current requirements with respect to the expertise of the commission members, this may be the only opportunity for experts in the areas of exceptional student education, curriculum, finance, and other important areas to address any flaws in the application before it is approved. The House version does not include this language, leaving the districts out of the approval process altogether.

The bill also provides that the Legislature should maintain comparable funding levels from existing and future funding sources for charter school students, and it would require a 15-year charter renewal for schools that received an A or B in the final year of their current charter, do not have a deteriorating financial condition, haven’t broken the law, and have participated in the state’s accountability system. If the school has done the last three but got a grade below a B, it would be entitled to a 5-year renewal. This is based on a proposed change in the law that would limit the ability of a school board to nonrenew a charter to one of those three – deteriorating financial condition, failure to participate in the accountability system, or a material violation of law. The bill would strike “other good cause shown” from the law as another basis for nonrenewal.

In addition, these bills would affect local educational impact fees. Currently, the law provides, in part, “To the extent that charter school facilities are specifically created to mitigate the educational impact created by the development of new residential dwelling units, pursuant to subparagraph (2)(c)4., **some of or all** of the educational impact fees required to be paid in connection with the new residential dwelling units **may** be designated instead for the construction of the charter school facilities that will mitigate the student station impact.” These bills would amend that language to say that **all** of the impact fees **must** be designated for the construction of charter school facilities.

Finally, the current Senate version of the bill would have OPPAGA conduct a study on the distribution of capital funds to charter schools and then recommend an “equitable” allocation of capital funds to all schools. This report would be due by January 1, 2023.

Update: The House version was previously amended to allow charters to benefit from any interlocal agreements that address district schools (the example provided was a charter school in Hillsborough that is outside the urban cluster or zone and unable to expand its septic system or connect to wastewater). This week, the House *PreK-12 Appropriations Subcommittee* reported the bill favorably, leaving it with one more committee assignment. The Senate version of this bill has not been heard for the last few weeks and also has one committee assignment left.

Concerns: Under this proposal, school districts continue to be limited in their authority to have input into the charter school process while still being responsible to sponsor and supervise schools that can be approved by people with no local knowledge of the district and under a “contract” for which no negotiations, for all practical purposes, are allowed. Also, school districts have limited capital funding to maintain facilities built and maintained with local tax dollars over the last 50+ years, and districts must annually determine where to allocate those dollars to meet critical needs. If a proportionate share of those funds are distributed to charter schools based solely on their enrollment, critical infrastructure needs may go unmet so that a charter school can get help making rent payments on a privately-owned facility that the taxpayers did not build.

On the issue of impact fees, districts must still account for every student in the county. If the impact fees are spent on charter school seats, there is no guarantee that those seats will be used by the new students. Districts still must assign schools for the new development and be prepared to educate the new students. These bills will limit a district’s ability to plan and prepare for these students by spending limited resources on an optional seat first.

While it would be better to leave the application process in the hands of the district being asked to sponsor the charter school, the amendment in the Senate to allow the local district to provide input before a decision is made on an application is a positive development, particularly when there are no requirements for membership on the review commission. There simply are too many charter school applications submitted for review that contain illegal provisions (e.g., “All students at the school will be required to speak English fluently”), inadequate curriculum plans, or unrealistic financial plans to leave the approval process to political appointees who may have no expertise in curriculum planning, school management, or school law.

### **Other Legislation of Interest**

#### **[CS/HB 225 \(Hawkins and Beltran\)](#) / [SB 892 \(Burgess\)](#)** – Charter School Charters

This bill would amend the law with respect to the nonrenewal of charter schools in response to an issue that arose in Hillsborough County last year. It would require school boards to make the decision not to renew or to terminate a charter at least 90 days before the end of the school year. IN the case of a renewal, if the decision is not made by that time, the charter will automatically renew under the same terms and conditions. The bill also adds a provision for requests to consolidate multiple charters outside the renewal term window.

Update: The House version has already completed the committee process. On the Senate side, the *Community Affairs Committee* reported the bill favorably, leaving it with one more committee assignment.

Concerns: This bill is a reaction to what happened in Hillsborough at the end of the last school year. While it makes sense to notify a charter before June whether the district will recommend nonrenewal, if for no other reason than allowing parents and students to make informed decisions earlier in the process, the need to terminate a charter can arise at any time. Finding out about something in May that would justify closing the school, but not necessarily require an immediate termination, should not prevent school districts from taking action until the following school year.

### **HB 497 (Persons-Mulicka)** – Lee County School District Lee County

This bill would repeal a Lee County School Board decision to have the superintendent be a position appointed by the school board. This bill would turn the Lee County Superintendency into an elected position again unless the voters of Lee County reject it this November. The position would then be filled by election in 2024.

Update: Having completed the committee process, the bill was heard this week by the House on 2<sup>nd</sup> Reading and then passed on 3<sup>rd</sup> Reading by a vote of 96-21. A similar attempt to bypass section 1001.461, Florida Statutes, in Hernando County failed last year after the bill died in the Senate. As was the case last year, there is no companion bill in the Senate.

### **CS/HB 851 (McClain)** / **CS/CS/SB 706 (Perry)** - School Concurrency

These bills, as originally drafted, would amend school concurrency law by requiring local governments that adopt school concurrency to apply it to development on a districtwide basis, not to specific and adjacent concurrency zones. Currently, local governments that adopt school concurrency are only encouraged by law to apply it to development on a districtwide basis, these bills, as originally drafted, would require it.

Update: Both bills have been amended to remove the districtwide language. Now, the bills would provide, “Any proportionate-share mitigation must be directed by the school board toward a school capacity improvement identified in the 5-year school board educational facilities plan or must be set aside and not spent until such an improvement has been identified that satisfies the demands created by the development in accordance with a binding developer’s agreement.”

Heading into this week, the only difference between the two bills was that the House version has language requiring local governments to respond to a developer’s commitment within 60 days. The Senate *Rules Committee* reported the bill favorably this week with another committee substitute. The Senate added the following sentence: “The district school board shall notify the local government that capacity is available for the development within 30 days after receipt of the developer’s legally binding commitment.”

The Senate version will now go to the Senate floor, while the House version was not heard this week and still has two committee assignments to complete.

**[CS/HB 255 \(Plasencia\)](#) / [SB 538 \(Hooper\)](#) – Private Instructional Personnel Providing Applied Behavior Analysis Services**

This bill would amend s. 1003.572, F.S., by expanding the definition of “private instructional personnel” allowed to collaborate and provide services to students at school to include registered behavior technicians. The registered behavior technician would have to have a nationally recognized professional certification and be under the supervision of a certified behavioral analyst.

Update: The House *Early Learning & Elementary Education Subcommittee* adopted one amendment and reported the bill favorably as a committee substitute. The amendment requires a registered behavior technician to be employed by an enrolled Medicaid provider in order to provide ABA services in a K-12 public school. This was the first of three assigned committee stops for the House version of the bill. The Senate version still has one committee assignment to clear.

Concerns: When this law was first enacted a few years ago, the idea was to allow psychologists and other professionals access to students during the school day even though they might be providing non-educational services or services beyond anything required in the IEP. So, the psychologist or occupational therapist could come observe the student in the school setting to help guide services outside of school for continuity purposes and provide input to assist school personnel. It could also allow a student to occasionally receive occupational therapy or physical therapy during the school day, provided it did not interfere with school operations. An issue that has arisen in recent years is that many students have been authorized to receive extensive ABA services, most of which are provided by a behavior technician, not a behavior analyst (BCBA). There are many students who seek to have a behavior technician spend every day with them at school. If allowed, this would put adults who are not district employees in multiple classrooms, exposed to many other students, and not under the direction of the teacher or principal. Further, if the student were to do much better with this extensive adult supervision at school, the argument will soon be that the district needs to pay for it as a required service under the IEP.

**[CS/HB 229 \(Arrington\)](#) / [SB 400 \(Bracy\)](#) – Guidance Services on Academic and Career Planning**

This bill would require personalized academic and career plans developed with school counselors to include more career-themed courses and work-based learning, such as apprenticeships, as opposed to just academic options. Notification to students of acceleration options would also need to include CTE and other career development pathways.

Update: The Senate *Education Committee* reported the bill favorably this week, but it still has two more committee assignments remaining. The House version was not heard this week and still has one committee assignment left.

**CS/HB 173 (Duran) / SB 340 (Garcia)** – Care of Students with Epilepsy or Seizure Disorders

This bill would create a new statutory section for students with epilepsies or seizure disorders to receive medical help at school through an individualized seizure action plan (ISAP). Parents can elect to submit a doctor-prescribed ISAP to the school, and the parents must give written permission each year for it to be carried out. The ISAP would be updated by a medical professional before the beginning of each school year and include certain information regarding the student, such as their symptoms and recommended care. It would create requirements for parents and school nurses and employees related to the care of such students. It would also provide training for certain school employees, and the school districts would have to provide specific information and training to school bus drivers who transport students who are susceptible to seizures. The school should also make sure that individuals working with the school are trained every two years in the care of students with epilepsy. In the Senate version of the bill, the law would specifically exempt school employees from liability for acting in good faith pursuant to the ISAP. The House bill was amended to remove this language on the grounds that the employees are already covered by sovereign immunity protections.

Update: The House version completed the committee process when it was reported favorably by the *Education and Employment Committee* and now goes to the House floor. The Senate version was not heard in committee this week and still has two committee assignments remaining.

**CS/HB 573 (Snyder) / CS/SB 896 (Burgess)** – Educator Certification Pathways for Veterans

This bill creates an additional pathway to educator certification for military service members. This bill specifies that a military service member may receive a temporary educator certificate if he or she can document 48 months of active-duty military service with an honorable discharge or a medical separation and 60 college credits with a minimum grade point average of 2.5. The bill further provides that a temporary certificate for military service members who meet the established requirements will be valid for a period of 5 years, instead of 3, but is nonrenewable.

Update: The Senate version was previously amended to require that the holder of one of these temporary certifications be assigned a teacher mentor for at least two years. This week, the bill completed the committee process in the Senate after being reported favorably by the *Rules Committee*. The House version was reported favorably by the *Local Administration and Veterans Affairs Subcommittee* and now has only one committee assignment left.

**SB 1240 (Harrell) / HB 899 (Hunschofsky)** - Mental Health of Students

This bill would require charter schools to report when a student is Baker Acted from school just as district schools do. It also requires the DOE to share certain data with DCF.

In addition, the bill requires districts to include in their annual mental health assistance allocation plans a process for providing parents of a student receiving mental health services with information about other services available at the school or within the local community. It would also require districts to provide other people living in the home with the student information about mental health services that may be available to them that would contribute to the student's well-being.

Concerns: While this raises numerous questions about how districts are supposed to know all of the community services available or who lives in the household and what services they might need, the bill does say, "A school may meet this requirement by providing information about and Internet addresses for web-based directories or guides for local behavioral health services."

Update: The Senate *Rules Committee* reported the bill favorably, and the bill will now go to the Senate floor. The House version still has one more committee assignment to clear.

#### **[HB 1115 \(Busatta Carbera\)](#) / [SB 1054 \(Hutson\)](#) - High School Graduation Requirements in Personal Finance**

These bills received their first committee hearings in both chambers this week. They would amend high school diploma requirements for students entering the 9<sup>th</sup> grade in the 2022-23 school year to include instruction in financial literacy and money management. This would be a semester/half credit class and reduce the amount of electives that students could take from 8 credits to 7.5. The instruction would include topics such as types of bank accounts, managing a bank account, balancing a check book, and completing a loan application.

Concerns: Financial literacy is already integrated into state standards and a part of the required Economics half-credit. School districts are already required to offer a financial literacy course as an elective, but this would make it a required course for graduation and further limit students' elective options.

Update: The bills were reported favorably in the House *Secondary Education and Career Development Subcommittee* and the Senate *Education Committee*. The House version still has two committee assignments to clear, while the Senate version has one more.

#### **[HB 447 \(Trabulsy\)](#) / [SB 1516 \(Jones\)](#) – Required Instruction in the History of African Americans**

These bills would amend the required instruction of the history of African-Americans to include the following provision: "Members of the instructional staff are encouraged to include the history of local African-American cemeteries in the study of the history of African Americans when practicable."

Update: The House version has completed the committee process and is awaiting placement on the special order calendar for consideration on the House floor. The Senate version received its first of three committee hearings this week and was reported favorably by the *Education Committee*.

**[HB 1317 \(Tant\)](#) / [SB 1674 \(Ausley\)](#) - Individual Education Plans**

To support students with disabilities and their parents when the student attains the age of majority while in school, this bill requires school districts to provide information and instruction to a student and his or her parent on self-determination and the legal rights and responsibilities relating to educational decisions that transfer to the student upon attaining the age of 18. The information provided must include mechanisms for maintaining parental involvement in educational decision-making including a Family Educational Rights and Privacy Act waiver, powers of attorney, guardian advocacy and guardianship.

Update: The Senate version received its first committee hearing and was reported favorably by the *Education Committee*. Both bills now have two committee assignments to clear.

**[CS/CS/HB 443 \(Beltran\)](#) / [SB 738 \(Hutson\)](#) – Athletic Associations**

These bills address the Florida High School Athletic Associations and other athletic associations in the state. Some version of these bills has been filed each of the last several years. In essence, they would allow the DOE to approve additional athletic associations.

Update: The House version has gone through some amendments. It would also expand eligibility for students who do not attend public school. For example, a home school or FLVS student can choose to play for any school within the district (not just the home-zoned school or school open through controlled open enrollment), and a student who starts a season at a public school but transfers to a private school during the season can continue playing at the public school (but the reverse is not true).

Additionally, the House version was amended this week to bring back a prayer provision. The FHSAA would be required to give any school participating in a championship game access to the public address system to make a two-minute pre-game remark, which could include prayer.

The amended House version was reported favorably by the *Education and Employment Committee*, completing the committee process. The Senate version has not been heard in any committee yet.

Concerns: This seems to be an ongoing issue over beach volleyball and is not something any of the districts have sought. It seems incredibly unfair to allow local students who do not attend public school to pick any school in the district to play for or to remain on a team even after they transfer to a different (as long as it is private) school. Why does a home school student get to play for any school in the district, while public school students need to play for their current school? Why does a student who leaves a public school for a private school get to stay on the public school team, but a student moving in the reverse direction does not?

The whole idea seems to invite unnecessary issues with recruitment. If a student does not live in the desired school zone and that school is too full to allow controlled open enrollment, he or she could simply withdraw to home school or FLVS and then pick any school.

### **The Week Ahead**

Now that we are in the second half of session, more bills should complete the committee process and more of the action will start taking place on the House and Senate floors. Next week's update may need to be greatly abbreviated or canceled, as FADSS staff will be busy with training and other events. However, if you have any questions or concerns about any pending 2022 legislation, please let us know.