



To: Florida District School Superintendents  
From: Brian T. Moore, FADSS General Counsel  
Subject: FADSS Legislative Update – Week of February 21, 2022  
Date: Thursday, February 24, 2022

---

The 2022 Legislative Session, otherwise known as the Year of the Trial Lawyer, entered the home stretch this week, as there are now only two weeks remaining if legislators want to adjourn *sine die* by March 11, 2022. This week saw some of the final committee action on some bills still working their way to the finish line and a lot more activity on the House and Senate floors. This week's update will continue to focus on the bigger bills that are likely to have a significant operational or budgetary impact on school districts.

### **Budget Discussions**

Last week, both the House and Senate passed their budget proposals with no significant changes to what has been discussed previously. The real work will now take place behind the scenes in conference as the two chambers work out a final budget, which will need to be presented by March 8, 2022, if they want to end session on time. This is where we will see what happens to some of the different ideas that have been presented.

### **High-Impact Legislation**

#### **[CS/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 Senate version of the bill was heard in the *Rules Committee* this week. A strike-all amendment was adopted which would create a tiered approach to sovereign immunity. Small counties and municipalities, as well as school districts, universities, and colleges, would stay at the current \$200,000 / \$300,000 limits. Medium-sized counties and cities of 50,000 to 250,000 people would have caps of \$300,000 / \$400,000. Finally, state agencies and counties and cities above 250,000 people would have caps of \$400,000 / \$600,000. The language of the amended bill created some confusion about which category applied to school districts, but the sponsor of

the amendment clarified during the meeting that school districts would continue to be considered subdivisions and treated the same as colleges and universities. As the bill progresses, we will work to make sure that there is no confusion about this if they continue with this population-based, tiered approach. The amended bill was reported favorably and now goes to the *Appropriations Committee*.

In the House, the bill was scheduled to receive its final committee hearing in the *Judiciary Committee*, but it was pulled from the agenda just before the meeting started. Before it was pulled, several amendments were filed. The most important amendment would bring the proposed caps down from \$1 million / unlimited to \$500,000 / \$1 million. This would still represent a significant increase over the current caps, but it is an improvement, particularly with respect to the original plan of no cap per occurrence. The next Judiciary Committee meeting has yet to be noticed, so it is not clear when the House will next take up this bill.

Concerns: Obviously, an increase in the sovereign immunity caps could greatly increase litigation costs for school districts and may encourage more suits to be filed. The tiered approach of the Senate would result in no change to the current caps for school districts. Also, both versions of the bill, assuming the latest House amendments are adopted, would allow districts to reach a settlement above the cap amounts without requiring a claims bill. This is permissive and would require agreement by the district, the plaintiff, and the insurance carrier, but it may increase local pressure and lobbying efforts to reach settlements above the statutory caps.

#### [CS/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. The main provisions have been discussed in previous updates.

Update: The House version of this bill also included changes to the turnaround statutes which have been discussed previously at length. However, in its final committee stop, the *Education and Employment Committee* approved an amendment to remove the turnaround language that would prohibit districts from using the same method that helped raise a school to a grade of C or above should the school return to a D or F within two years. The House version will now go to the floor for further debate.

Concerns: As mentioned in a previous update, the House version has been amended 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 is still awaiting further consideration on the Senate floor.

*Additional Concern:* 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 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 points revolve around the way some information might make students or employees feel.

*Update:* Previously, the House version was amended to say, “**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 about feeling discomfort.

The full House debated the bill on second reading and rejected most of the attempted amendments. However, they did approve one amendment, which would add language to the required instruction statute for the history of African Americans to match the language already in statute concerning required instruction of the Holocaust.

The House version is now awaiting its third and final reading, which may occur today. The Senate version has not been heard for about a month and still has one committee assignment remaining.

*Concerns:* As previously mentioned in these weekly updates, 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.

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, this bill would not apply to charter schools and their instruction of students, as the section of law being amended is not included in the list of statutes with which charter schools must comply.

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

These are the bills that address school board members (term limits or salaries) and library and classroom books.

*Update:* As previously discussed, the House amended its version to change from removing school board salaries to installing eight-year term limits. The bill was scheduled to be heard in the Senate *Judiciary Committee* this week but was temporarily postponed. 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, which have been covered in previous updates.

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

These bills 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 House has amended its version to say grades K to 3 instead of “primary,” while the Senate sponsor said multiple times that he thinks “primary” means 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: Last week, the House version underwent some changes, which included changing the reference from “primary” grades to grades K to 3. It also added a provision that would require schools to notify parents at the start of every year of the healthcare services offered at the school as well as the option to “withhold consent or decline” any specific service. Finally, they added a provision prohibiting a school from giving a healthcare questionnaire or screening form to any student in grades K to 3 without first providing the form to the parent and obtaining consent.

This week, the House debated this bill on the House floor and eventually passed it along party lines. Numerous amendments were filed and rejected, but one amendment did get adopted. It would require each district to adopt procedures for a parent to notify the principal of his or her “concerns” related to the provisions covered in this bill and a process for resolving those concerns within seven days. If the parent thinks that the concerns remain unresolved, the district would have to resolve them within 30 days or explain why it has not resolved them. If not resolved, the parent can ask the Commissioner of Education to appoint a special magistrate to render a recommended decision to the State Board of Education at district expense. Alternatively, the parent can seek a declaratory judgment and injunctive relief in court with the district responsible for attorney’s fees and costs if the parent prevails (but not vice versa).

The House version was sent to the Senate and is scheduled to be heard in the Senate *Appropriations Committee* on February 28, 2022. The Senate version has only been heard in one committee thus far.

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. At one point this week, there was an amendment filed that would require school districts to out students to their parents within six weeks, but it was withdrawn under heavy pressure.

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 3<sup>rd</sup> 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 or special magistrate hearings with every disgruntled parent who can trigger expensive proceedings at district expense based on their subjective beliefs? 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.

This week’s amendments only add to this concern, as it is not hard to imagine a parent deciding that an issue was not “resolved” if the school did not do exactly what the parent expected or wanted. Thus, any parent who disagrees with a principal’s resolution of an issue can obtain a special magistrate to conduct a hearing at district expense.

Last week’s amendments also create some concern with respect to healthcare services and screenings. Does the new language require parents to affirmatively decline specific services, like vision or hearing screenings, or does “withhold consent” suggest that they have to opt-in for such screenings?

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

These bills 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.

There are also multiple provisions that address charter school renewals, funding for charter schools, and charter school access to interlocal agreements between local governments and school districts. Those have been discussed in previous updates.

**Update:** The Senate previously amended the bill 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 was scheduled to be heard this week in the *Education and Employment Committee* but was temporarily postponed. However, it does have several amendments pending, including one that would match the Senate’s language requiring notice to the district and an opportunity for the district to provide input.

The Senate version is scheduled to receive its third and final committee stop today. If the *Appropriations Committee* reports it favorably today, it would probably go to the Senate floor for debate next week.

Concerns: Please see above and previous updates.

#### **[CS/CS/CS/HB 1421 \(Hawkins\)](#) / **[CS/SB 802 \(Gruters\)](#)** - School Safety**

These bills attempt to codify most of the remaining recommendations from the MSD Commission (the recommendation to “restore local authority to public school boards to levy up to a half mill without a referendum for law enforcement officers or guardians, or other direct school security expenses” has remained absent from proposed school safety legislation). As discussed in previous updates, they would expand state-level oversight and enforcement of district compliance with school safety laws and require the development of family reunification plans for both natural and man-made disasters and emergencies. The bills would also require that the safe school officer assigned to the school be physically present whenever an emergency drill is conducted.

Update: The House version is ready for its final vote on the House floor, which may occur today. The Senate version is scheduled to receive its final committee hearing in the *Appropriations Committee* next week. Both bills have been amended to remove language that would have allowed the Commissioner of Education to direct school boards to withhold a superintendent’s salary based on a finding of noncompliance by the Office of Safe Schools.

#### **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 heard the bill on 2<sup>nd</sup> reading this week and is expected to take it up for a final vote today. On the Senate side, the bill was scheduled to be heard on second reading this week as well, but it was not heard on February 23, 2022, and will have its next opportunity on March 1, 2022.

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.

**[CS/HB 395 \(Borrero\)](#) / [SB 268 \(Diaz\)](#) – Victims of Communism Day**

This bill would create s. 683.334, F.S., and require the November 7 to be proclaimed “Victims of Communism Day”. This would require high school US government classes to have 45 minutes of instruction relating to various historical communist leaders such as Mao Zedong, Joseph Stalin, Vladimir Lenin, and Fidel Castro. There would have to be instruction on how people suffered under such regimes.

Update: The House heard the bill on second reading this week and may pass it on third reading some time today. The Senate Appropriations Committee is scheduled to hear the Senate version on February 28, 2022, which would be its final committee stop.

**[HB 15 \(Tant\)](#) / [SB 236 \(Jones\)](#) – Children with Developmental Delays**

This bill would expand the definition of “exceptional student” to include children with developmental delays identified from birth through nine years of age or completion of second grade (whichever occurs first), as opposed to the current birth through five years of age. Moving the upper limit to age 9 would align Florida’s definition with the maximum allowable age under federal law.

Update: The House *Education and Employment Committee* reported the bill favorably, sending it to the House floor for further debate. The Senate *Appropriations Committee* is scheduled to hear the Senate version today. If reported favorably, the Senate version will also go to the floor for further debate.

**[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: After having passed the House a couple of weeks ago, it remains in the Senate *Rules Committee* at this time. A similar attempt to bypass section 1001.461, Florida Statutes, in Hernando County failed last year after the bill died in the Senate.

[CS/CS/CS/HB 851 \(McClain\)](#) / [CS/CS/CS/SB 706 \(Perry\)](#) - School Concurrency

These bills, which have been amended several times and are now virtually identical, would amend school concurrency law.

Update: Both bills have been amended to remove language that would have required applying a districtwide approach to school concurrency decisions. 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.” Further, both bills have been amended to say, “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.”

Last week, the Senate passed its version of the bill unanimously. The House version completed the committee process this week and will now go to the House floor.

[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 *Education and Employment Committee* reported the bill favorably, and the bill will now go to the House floor. The Senate version still has one committee assignment to clear but has not been heard since January 13, 2022.

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 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 is on the Special Order calendar today and may receive a final vote in the House as early as tomorrow. The Senate version is scheduled to receive its third and final committee hearing today in the *Appropriations Committee*.

**[CS/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 passed its version of the bill this week unanimously. The House version has completed the committee process and is awaiting placement on the Special Order Calendar for further debate. Both bills were previously amended to require that the holder of one of these temporary certifications be assigned a teacher mentor for at least two years.

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

These bills 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 numerous state standards and is also a part of the required Economics half-credit. As important a topic as it is, this bill would make it a required course for graduation and further limit students' elective options.

Update: The Senate version has completed the committee process but has not yet been heard on the Senate floor after it was temporarily postponed yesterday. The House version was reported favorably by the *Education and Employment Committee*, which was its final committee assignment. It will now go to the House floor for further action.

### [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 House version was reported favorably by the *Education and Employment Committee*, which was its final committee assignment. The Senate version still has two committee assignments to clear.

### **The Week Ahead**

Next week will see the end of the committee process absent some special circumstances. Several bills should emerge in their final form after completing the process through both chambers, and we hopefully will start getting some information about budget discussions before the end of the week.