

**MIXON AND ASSOCIATES
LEGISLATIVE FISCAL ISSUES
FEBRUARY 12, 2016 REPORT**

There were a number of fiscal issues of significance to the district that were addressed during the fifth week of the 2016 regular session. The House and the Senate addressed the General Appropriations Acts (GAA) and related bills. The House Appropriations Committee heard and passed CS/HB 873 related to school district fixed capital outlay programs and charter school capital outlay funding. The Senate Education Appropriations Subcommittee proposed and moved language related to the same matters, and proposed language related to the level of increase in the required local effort that would be permitted in the fiscal year (FY) 2016-2017 budget. The House State Affairs Committee passed HB 7107 and the Senate passed and sent to the House SB 7012 related to the Florida Retirement System (FRS). Each of these issues will be addressed below.

THE GAA AND RELATED BILLS

The House took up and passed HB 5001, the House's proposed GAA, and HB 5003, the proposed GAA Implementing Bill. Also taken up and passed was HB 5005, the House FRS rate bill, and other budget related bills of less direct importance to the school district. The Senate received the House bills, took up their proposed GAA, SB 2500, implementing bill, SB 2502, FRS rate bill, SB 7042 and their other budget related bills. The Senate refused to pass the proposed House budget bills. The Senate passed its budget and related bills unanimously and took the steps necessary to begin the conference committee process.

These are all steps in the normal budget making process. There was nothing unusual about of the steps that were taken. **It is important for the district to note that while there were amendments made to the budget and related bills, there were no amendments to the proposed budget, implementing, or FRS rate bills that impacted the district.** The report that was sent last week still accurately represents the pre-conference budget positions and appropriations that impact the district as the process moves into conference.

FRS RATE BILLS

HB 5005 and SB 7042, the respective FRS rate bills, were passed by the their respective chambers. There were no changes made to either bill, and the report that was sent last week remains accurate. There were no differences in the rates recommended in the bills. The increases remain the same as those reported last week, and the fiscal impacts remain the same as previously reported. The bills are postured for conference.

HB 7107 proposed changes in policies related to the Florida Retirement System. The bill proposes a death benefit for survivors of FRS members killed in the line of duty. The benefit would allow the survivors of FRS members killed in the line of duty to receive a survivors benefit equal to half of the annual salary of the member at the time of his or her death. Survivors of members who were enrolled in the Investment Plan may receive the death benefits by transferring the balance in the investment plan to the FRS fund in exchange for the continuing payment of the death benefit.

The change that impacts the largest number of potential employees changes the default FRS enrollment of new employees. The bill proposes that FRS members initially enrolled on or after July 1, 2017 will have the election period for selecting either the Pension or the Investment Plans extended from the last business day of the fifth month after the date of hire to the last business day of the eighth month after hire. If the member fails to make an affirmative election by that time, the member will default to the Investment Plan, not the Pension Plan as is now the case.

Absent the provision of the funds to pay for its reinstatement, the Cost of Living Adjustment (COLA) that was formerly part of the Pension Plan, but has been in abeyance since 2011, will not be restored, This makes the Pension Plan somewhat less attractive to new employees.

SB 7012 has been passed by the Senate and sent to the House for its consideration. SB 7012 provides for the death benefit for FRS members killed in the line of duty. It does not contain the provisions to change the initial default placement of new FRS members in the Investment Plan.

LOCAL FUNDING INCREASES FOR THE FEFP

On February 11, 2016 the Senate Education Appropriations Subcommittee heard proposed language concerning the proportion of state and local funds that could be used to pay for an increase in total potential funding in the Florida Education Finance Program (FEFP). The language would stipulate that for FY 2016-2017 any increase in total potential funding for the FEFP could include no more than 50% of local funds from the Required Local Effort. The subcommittee provided illustrations of the impact of the proposed language. For example, if the total funding increase proposed in SB 2500 were retained, the Required Local Effort would have to be reduced about \$183.2 million and state funds would have to be increased by the same amount to retain the level of funding. If there were no increase in state funding in the FEFP proposed by SB 2500 and this language were approved the total funding increase would be reduced about by about \$250 million.

SCHOOL DISTRICT CAPITAL OUTLAY FUNDING AND CHARTER SCHOOL CAPITAL OUTLAY FUNDING

PROVISIONS IN HB 837

The House Appropriations Committee passed HB 873. The bill contains provisions related to local school district capital outlay spending and charter school capital outlay funding.

HB 837 changes the standards for charter school eligibility for capital outlay funding. According to the staff analysis HB 837 eliminates the current eligibility standards and replaces them as follows.

To be eligible for charter school capital outlay funding, a charter school must:

Be in operation for 2 or more years;

Not have more than two consecutive school grades lower than "B" unless the school serves a student population at least 50 percent of which is eligible for free or reduced-price meals; and

Have an annual audit with no financial emergency conditions; **or**

Be part of a high-performing charter school system.

Additionally, a charter school must have received final approval from its sponsor for operation during that fiscal year and may not operate in facilities provided by the sponsor in order to receive capital outlay funding.

The bill substantially changes the funding formula for charter school capital outlay funding. The bill eliminates provisions granting priority for funding to charter schools that received capital outlay funding in FY 2005-06 and revises the method of calculating the amount of state funding for charter school capital outlay from 1/15th to 1/40th of the cost per student station. It was not stated in the committee, the bill, or the staff analysis why 1/40th of a student station cost was chosen for the calculation.

The next change is a very fundamental. Previously, the state assumed responsibility for funding charter school capital outlay needs, and a district could choose to provide charter schools in their district with capital funding from their local discretionary capital improvement millage. HB 837 makes capital outlay funding a per student entitlement. The bill provides that if state funds for charter school capital outlay do not fully fund 1/40th of the cost per student station **or** the amount of per student funding generated by the district school board's discretionary ad valorem tax levy for capital improvement, **whichever is less**, then the school district **must** share discretionary ad valorem tax revenues to make up the difference.

The bill requires the Department of Education to calculate the amount of funds due to charter schools by December 30 based on the school taxable value and millage rate as certified in the TRIM ad. The Department will certify to the school district the amount it must pay based on the amount of funding required to reach either the 1/40th of a student station cost or the average of the local district's capital improvement per student (whichever is less). The district is required to make payments to the charter schools no later than February 1 each year beginning February 1, 2017.

The Staff Analysis estimates the total cost of funding eligible charter schools capital outlay based on the methodology provided in the bill to be about \$152.9 million. If the Legislature approved the House proposal to provide \$90 million in state funding for charter school capital outlay, then districts would be responsible for about \$62.9 million of the costs for FY 2016-2017. The Staff Analysis also notes that Clay, Columbia, Dixie, Escambia, Gadsden, Glades, Hernando, Hillsborough, Levy, Madison, Marion, Osceola, Pasco, Polk, Putnam, Santa Rosa, and Wakulla Counties all have sufficiently low school taxable values that charter schools in these districts would not receive the full funding generated February 12.

by the 1/40th of a student station cost. It was also noted that these low property values would mean charter schools in those counties would receive about \$67.9 million less than they would have received at the 1/40th of a student station cost factor.

HB 837 also makes changes in the current law concerning the cost of public school construction projects. The most important changes include the following:

The bill removes the current provision that funds provided by local referendum approved revenue sources, such as the School Capital Outlay Sales Surtax, the Local Government Infrastructure Sales Surtax, or local referendum approved bond issues paid by voter approved increased millage were not subject to the maximum student station cost requirements for new construction. Should the bill become law, all new construction projects would be subject to the student station cost maximums, regardless of the source of funds for the project.

HB 837 imposes penalties on districts if new construction projects exceed the student station cost maximums. Districts that exceed the maximum costs per student station will be ineligible for Public Education Capital Outlay Trust Fund (PECO) and Capital Outlay and Debt Services (CO&DS) revenue for three years.

The bill requires the Department of Education and the Office of Economic and Demographic Research to conduct a study of the actual new construction costs. The bill contemplates that the results of this study will lead to the recommendations to the Legislature for new statutory costs per student station for school construction projects.

In a major change from the past, the bill will require that the cost of land and off-site improvements would be added to the calculated cost per student station. The Legislature did not include these costs in the calculation of student station costs originally, because the availability of appropriate high, dry, flat, well drained land, the actual cost of land, and the need for offsite improvements were so variable from one part of the state to another that including these components in the student station cost cap would make applying a single statewide cost factor unfeasible.

HB 837 also makes significant changes in the Special Facilities program that helps provide small districts with restricted land values new schools when they are needed.

PROPOSED LANGUAGE BY THE SENATE EDUCATION APPROPRIATIONS SUBCOMMITTEE

At the February 11, 2016 Education Appropriations Subcommittee meeting, the Chair, Senator Don Gaetz presented proposed bill language to make changes in charter school capital outlay funding and to address concerns about the cost of school district new construction projects. The subcommittee passed a motion to move the language forward into a bill. The proposed bill language includes the following key provisions that change current law.

PROPOSED SENATE BILL LANGUAGE FOR CHARTER SCHOOL CAPITAL OUTLAY FUNDING

The bill language proposes a new charter school capital outlay funding model. The language repeals the current language concerning funding priorities and distribution. It then establishes new standards for eligibility for charter school capital outlay funding. The language requires that for a charter school to be eligible for a funding allocation the chair of the governing board and the chief administrative officer of the charter school must annually certify under oath that the funds will be used solely and exclusively for constructing, renovating, or improving charter school facilities that are owned by a school district, political subdivision of the state, municipality, Florida College System institution or state university or owned by a qualified 501-3-c organization whose articles of incorporation specifically state that the subject property shall revert to a school district or other specified governmental entity upon its dissolution.

There is very specific language that states that if the property is owned by and leased from a person or entity that said person or entity can in not an affiliated party in any way with the charter school, its governing board, its employees or any entity associated with the school's operation. The specific language is pasted below for information purposes.

"3. Owned by and leased from a person who or an entity that is not an affiliated party of the charter school. For purposes of this paragraph, the term "affiliated party of the charter school" means the applicant for the charter school pursuant to s. 1002.33; the governing board of the charter school or a member of the governing board; the charter school owner; the charter school principal; an employee of the charter school; an independent contractor of the charter school or the governing board of the charter school; a relative, as defined in s.1002.33 (24)(a) 2., of a charter school governing board member, a charter school owner, a charter school principal, a charter school employee, or an independent contractor of a charter school or charter school governing board; a subsidiary corporation, a service corporation, an affiliated corporation, a parent corporation, a limited liability company, a limited partnership, a trust, a partnership, or a related

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party that individually or through one or more entities that share common ownership or control that directly or indirectly manages, administers, controls, or oversees the operation of the charter school; or any person or entity, individually or through one or more entities that share common ownership, that directly or indirectly manages, administers, controls, or oversees the operation of any of the foregoing.”

The proposed bill then establishes a funding formula for distributing the “state appropriation” for charter school capital outlay funds. The formula establishes a weight of 1.00 for each FTE student in a charter school. If a charter school has 75% or more of their students who qualify for free or reduced price school lunch, each FTE student will have a weight of 1.25. If a charter school has 25% or more of their students who are students with disabilities, each FTE student will have a weight of 1.25. If a charter school has 75% or more of its students who qualify for free or reduced price school lunch and 25% or more of its students are students with disabilities, each student will have a weight of 1.50. The total charter school weighted FTE count will then be divided into the state appropriation and the funds will be distributed accordingly on a dollar per weighted FTE student basis to the qualifying charter schools.

The proposed bill language also addresses concerns about the cost of school district new school construction. The proposed language requires an OPPAGA study of the statutory costs per student station, and makes recommendations for revised costs to the Governor, the Senate President and the Speaker of the House of Representatives by December 31, 2016.

The proposed language makes all new construction costs subject to the per student station cost limits, without regard to the source of the revenues used for the construction project.

The proposed language calls for an annual audit by the auditor General’s Office to determine the district’s compliance with the statutory per student station cost maximum.

If the Auditor General verifies that a district has exceeded the statutory student station cost maximums, the district will be ineligible for funds from the PECO Trust Fund for the next three years that such funds are available. In addition the district will be subject to the supervision of a district capital outlay oversight committee that will be authorized to approve all capital outlay expenditures of the school district including new construction, renovations, and remodeling for three fiscal years following the violation. The bill language specifies that one appointee shall be by the Commissioner of Education, one by the State’s Attorney with jurisdiction in the area, and one by the Auditor General.

Obviously the differences between the Senate proposed language and HB 837 will have to be resolved if a bill is to be passed.