

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Education Pre-K - 12 Committee

BILL: CS/SB 6

INTRODUCER: Education Pre-K Committee, Senator Thrasher, and others

SUBJECT: Education Personnel

DATE: March 11, 2010

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	deMarsh-Mathues	Matthews	ED	Fav/CS
2.			WPSC	
3.				
4.				
5.				
6.				

I. Summary:

The bill is a comprehensive education personnel initiative that provides for:

Contracts with Classroom Teachers

- Revises the contractual requirements for classroom teachers hired beginning July 1, 2010, including the eligibility, duration, and requirements for probationary contracts and annual contracts;

Performance and Differentiated-Pay

- Provides that greater than 50 percent of each instructional personnel and school-based administrator's pay would be based on student learning gains and provides that the remainder would be based on the performance appraisal;
- Provides for differentiated pay based on high-priority locations, critical teacher shortage areas, or additional academic responsibilities with continued awards contingent upon student learning gains;
- Provides for a salary schedule for beginning teachers that is in effect for the first year that the teacher provides instruction in a Florida K-12 classroom;
- Prohibits districts from using time-served or degrees-held in setting pay schedules;
- Provides that non-instructional personnel would be paid on the basis of performance;

Performance Appraisals

- Revises the current educator and school-based administrator personnel assessment system, establishes an appraisal system, and revises the appraisal procedures and criteria for instructional, administrative, and supervisory personnel, including the

requirement that beginning teachers be reviewed at least twice in the first year of teaching;

End-of-Course Assessments

- Requires districts to develop or acquire valid and reliable end-of-course assessments for grade levels and subjects not assessed on the FCAT, exams for a College Board Advanced Placement (AP) course, International Baccalaureate (IB) program, Advanced International Certificate of Education (AICE) program, or industry-approved exams to earn national industry certification;
- Establishes district-wide implementation of assessments in 2013-2014;
- Provides that the district school-superintendent is responsible for the security of assessments and must certify the integrity of the exam process;
- Requires the Commissioner of Education (commissioner) to identify methods to support districts in the development or acquisition of assessments, including item banks;
- Requires the commissioner to review district assessments on a sample basis for compliance;

Professional Certification

- Requires a certified teacher from another state to demonstrate subject area mastery by the conclusion of the first semester of teaching;
- Requires temporary certificate holders to pass a subject area test within the first year of the temporary certificate with some extenuating exceptions;
- Requires the State Board of Education (SBE) to review the subject area exam and reading instruction rigor;
- Allows the SBE to adopt rules for accepting college credit recommended by the American Council on Education (ACE);
- Provides an acceptable means of demonstrating mastery of professional competency by Teach for America graduates who complete a professional training program and pass a professional competency exam;
- Removes the provision for automatic renewal of National Board for Professional Teaching Standards certificateholders, beginning in 2014;
- Ties renewal to effective or highly effective performance, as determined under the performance appraisal;
- Prohibits the assignment of a beginning teacher to teach reading, science, or mathematics if the teacher is not certified in reading, science, or mathematics;
- Revises the composition of the Education Practices Commission;
- Allows the Department of Education (DOE) access to child abuse records for the investigation or prosecution of educator misconduct;

School District and Charter School Accountability

- Requires charter schools and academically high-performing school districts to comply with the requirements for end-of-course assessments, salary schedules, and contracts;
- Provides a penalty for charter schools that fail to comply with the requirements;

- Requires the commissioner to review evidence of a district's compliance with the assessment and salary schedule requirements and the Auditor General to determine compliance with classroom teacher contract requirements;
- Requires an ad valorem tax penalty for districts that violate the law on professional service contracts, assessments, or performance pay;
- Requires an additional required local effort to generate revenue that is equal to five percent of the district's salaries for instructional and school-based administrators;
- Requires the commissioner to withhold state funds in the Florida Education Finance Program (FEFP) for the fiscal year in which the levy occurred;
- Provides that the revenue generated by the levy may only be used to compensate for the loss of state funds;

State-Approved Educator Preparation Programs

- Eliminates the admissions waiver for up to 10 percent of students admitted to the program;
- Requires continued approval of programs contingent upon learning gains, as measured by state assessments;
- Revises the requirements for pre-service field experiences for student teachers;
- Requires Educator Preparation Institute (EPI) participants to have evidence of eligibility for a temporary certificate and to complete field experiences, mastery of general knowledge, and subject area testing prior to completion of the program;
- Requires EPI instructors to meet same requirements as instructors in traditional teacher preparation programs; and
- Requires the DOE to submit a report to the Governor and the Legislature on the effectiveness of state-approved teacher preparation programs; and
- Requires the Office of Program Policy Analysis and Government Accountability (OPPAGA) to review the current standards for the continued approval of teacher preparation programs and make recommendations to the Legislature.

This bill substantially amends sections 39.202, 200.065, 447.403, 1002.33, 1003.52, 1003.621, 1004.04, 1004.85, 1009.40, 1009.94, 1011.69, 1012.05, 1012.07, 1012.22, 1012.33, 1012.34, 1012.42, 1012.56, 1012.585, 1012.79, and 1012.795; creates sections 1008.222, 1011.626, 1012.335; and repeals sections 1003.62, 1003.63, 1004.04(11) and (12), 1009.54, 1009.57, 1009.58, 1009.59, 1012.225, 1012.2251, 1012.52, and 1012.72 of the Florida Statutes.

II. Present Situation:

Teacher Quality and Effectiveness

Federal law established requirements that all teachers of core academic subjects be “highly qualified.”¹ This means teachers must generally have a bachelor's degree, be fully certified, and demonstrate their knowledge of the subjects they teach.² According to the U.S. DOE, most teachers have been designated as highly qualified under the federal law, but teachers in high-

¹ 20 U.S.C. sections 6319(a)(1) and 7801(23). In order to receive funding under Part A of Title I of the Elementary and Secondary Education Act, as reauthorized by the No Child Left Behind Act (NCLB), states must comply with its requirements.

² *Id.*

poverty schools had less experience and were less likely to have a degree in the subject that they teach.³

The American Recovery and Reinvestment Act of 2009 (ARRA) provides \$4.3 billion for the Race to the Top Fund, a competitive grant program designed to encourage and reward states that are implementing significant education reforms across four education areas: implementing standards and assessments, improving teacher effectiveness and achieving equity in teacher distribution, improving the collection and use of data, and supporting struggling schools.⁴

To receive funds, a state must provide assurance that it will improve teacher effectiveness and comply with the requirements that school programs and targeted assistance schools provide instruction by highly qualified teachers, that poor and minority students are not taught at higher rates than other students by inexperienced, unqualified, or out-of-field teachers, and that it will evaluate and publicly report progress with respect to these requirements.⁵ The criteria include the extent to which a state differentiates the effectiveness of teachers and principals and uses this information for decisions on evaluation, compensation, promotion, termination, and tenure.⁶ Under the criteria, teacher and principal effectiveness would be judged in significant part by student growth.⁷

Private sector support for improving teacher effectiveness includes recent funding provided by the Bill & Melinda Gates Foundation.⁸ In November 2009, Hillsborough County Public Schools was awarded a \$100 million grant from the foundation for seven years to support effective teaching and raise student achievement.⁹

Distribution of Effective Teachers

In 2009, the Florida Legislature enacted legislation to address the quality of teachers assigned to the lowest performing schools.¹⁰ School districts may not assign a higher percentage than the school district average of temporarily certified teachers, teachers in need of improvement, or out-of-field teachers to these schools. A school district must certify to the commissioner that it has assigned teachers equitably and the commissioner must notify the SBE if a school district is not in compliance. The SBE may then exercise its power to enforce school district compliance.¹¹

³ *State and Local Implementation of the No Child Left Behind Act: Volume VII—Teacher Quality Under NCLB: Final Report*, U.S. DOE, 2009. See <http://www2.ed.gov/rschstat/eval/teaching/nclb-final/highlights.pdf>.

⁴ ARRA, Public Law 111-5, section 14005(d)(2),(3),(4), and (5). See also section 14006 which provides for incentive grants to states that have made significant progress in meeting the objectives in paragraphs (2),(3),(4), and (5) of section 14005(d).

⁵ 20 U.S.C. section 6311(b)(8)(C).

⁶ Federal Register, Vol. 74, No. 221, *Final Priorities, Requirements, Definitions, and Selection*

Criteria, November 18, 2009, and *Supplemental Information*, Federal Register, Vol. 75, No. 17, January 27, 2010. See <http://www2.ed.gov/legislation/FedRegister/finrule/2009-4/111809a.html> The U.S. DOE proposes the use of \$4 billion for this initiative and a potential for \$350 million to support the development of assessments by a consortia of states.

⁷ *Id.*

⁸ *Empowering Effective Teachers: Strategies for Implementing Reforms*, Bill & Melinda Gates Foundation, February 2010, See <http://www.gatesfoundation.org/united-states/Documents/empowering-effective-teachers-empowering-strategy.pdf>

⁹ See <http://communication.sdhc.k12.fl.us/empoweringteachers/>.

¹⁰ ch. 2009-144, L.O.F., amended s. 1012.2315, F.S. Prior to this change, the provision only applied to schools designated as “D” or “F” schools. Low performing schools are defined in s. 1008.33, F.S.

¹¹ s. 1008.32, F.S.

For the 2007-2008 school year, the DOE reviewed data to determine whether districts are succeeding in ensuring that children in schools that earned a grade of “D” or “F,” which were above the district’s average in minority population or level of poverty, were not taught at higher rates by first year teachers, teachers holding a temporary certificate, or out-of-field teachers.¹² The data shows that high need schools have higher percentages of teachers who are inexperienced, hold a temporary certificate, or are out-of-field, contrary to statutory requirements that teachers with more experience are assigned to high need schools.¹³

District School Boards

School boards are assigned certain duties related to school personnel, including designating positions to be filled, prescribing the qualifications for those positions, and providing for the appointment, compensation, promotion, suspension, and dismissal of employees.¹⁴

Contracts for Instructional Personnel

Section 1012.33, F.S., states that instructional employees hired on or after July 1, 1984, are classified for a term of three years as probationary employees, with an extension to four years if the district school board and the employee have agreed in writing.¹⁵

For instructional staff newly employed after June 30, 1997, the initial annual contract includes a 97-day period during which the employee’s contract may be terminated without cause or the employee may resign without breach of contract.¹⁶ All contracts must contain provisions for dismissal during the term of the contract only for just cause. Just cause includes immorality, misconduct in office, incompetency, gross insubordination, willful neglect of duty, or being convicted or found guilty of, or entering a plea of guilty to, regardless of adjudication of guilt, any crime involving moral turpitude, as defined in SBE rule.¹⁷

Following the probationary period, the employee may receive a professional service contract, provided he or she is recommended by the district school superintendent for such contract. This would also require that the individual be reappointed by the district school board based on successful performance of duties and demonstration of professional competence.

Section 1012.33(3)(e), F.S., currently stipulates that a professional service contract must be renewed each year unless the district school superintendent charges the employee with unsatisfactory performance and notifies the employee of performance deficiencies.

Section 1012.33(3)(g), F.S., states that as of July 1, 2001, for each employee who enters into a written contract, school districts must, for purposes of pay, recognize and accept each year of

¹² DOE, *Assignment of Teachers and Paraprofessionals Under Differentiated Accountability for Title I and Non-Title I Schools for the 2007-2008 School Year*, September 4, 2009. See <http://info.fldoe.org/docushare/dsweb/Get/Document-5457/dps-2009-120.pdf>.

¹³ s. 1012.2315, F.S. (2008). See also 20 U.S.C. s. 6311(b)(8)(C).

¹⁴ s. 1001.42(5), F.S.

¹⁵ Each year of service is pursuant to an annual contract. The 3-year probation must be completed in the same school district during a period of time not in excess of five successive years, except for leave duly authorized and granted. An employee’s annual contract is not required to be renewed during the probationary period of service.

¹⁶ s. 1012.33(1)(a)4., F.S.

¹⁷ s. 1012.33(1)(a), F.S., and Rule 6B-4.009, F.A.C.

public, full-time teaching service earned in Florida and for which the employee received a satisfactory performance evaluation.

Performance and Differentiated Pay

Current law provides for the compensation and salary schedules of public school personnel and includes provisions by which the district school board must abide in the determination and development of the salary schedule.¹⁸ Furthermore, each district school board is required to adopt a salary schedule with differentiated pay for both school-based administrators and instructional personnel. The adopted salary schedule is subject to negotiation and must allow school administrators and instructional personnel to receive differentiated pay based upon a number of district-determined factors, including, but not limited to, additional responsibilities, school demographics, level of job performance difficulties, and critical shortage areas.¹⁹ The DOE does not currently review school district salary schedules.

Under Florida's Merit Award Program (MAP), a voluntary performance pay program for instructional personnel and school-based administrators, school districts must designate outstanding performers to receive a merit-based pay supplement of at least five percent, but no more than ten percent of the district's average teacher's salary.²⁰ School districts determine eligibility for the supplement based upon student academic proficiency, learning gains, or both as measured by statewide standardized assessments and local district-determined assessments, as well as other performance factors. At least 60 percent of the overall personnel evaluation must relate to student performance and up to 40 percent must relate to professional practices.

Performance Appraisals

In Florida, the assessment of instructional personnel and school-based administrators is currently based on the performance of students assigned to their classroom as well as other educational practices.²¹ The Florida Educator Accomplished Practices were adopted by SBE rule in 1998.²² While the practices are currently referenced in several sections of law pertaining to teacher preparation programs and merit pay,²³ there is no reference to them in the provision of law related to the annual performance appraisal of instructional personnel.²⁴ Similarly, current rule establishes the Florida Principal Leadership Standards,²⁵ which are referenced in the law related to professional development.²⁶ The standards are not referenced in the performance appraisal for school-based administrators.²⁷ The current array of statutory citations makes it difficult to identify and monitor expectations for teacher and principal performance.

¹⁸ s. 1012.22(1)(c), F.S.

¹⁹ *Id.*

²⁰ s. 1012.225, F.S. Charter schools may participate in the program.

²¹ ss. 1012.225(3)(e) and 1012.34(3)(a), F.S. Other criteria include the ability to maintain appropriate discipline, knowledge of subject matter, ability to plan and deliver instruction, the use of technology in the classroom, ability to evaluate instructional needs, ability to establish and maintain a positive collaborative relationship with students' families, and other professional competencies, responsibilities, and requirements established by the SBE and district school board policy.

²² Rule 6A-5.065, F.A.C.

²³ ss. 1004.04, 1004.85, 1012.225, and 1012.56, F.S.

²⁴ s. 1012.34, F.S.

²⁵ Rule 6A-5.080, F.A.C.

²⁶ s. 1012.986, F.S.

²⁷ s. 1012.34, F.S.

Professional Certification

There are two types of state educator certificates: the temporary certificate and the professional certificate.²⁸ The temporary certificate is valid for three years and is nonrenewable. A professional certificate is valid for five years, is renewable, and required for teachers who wish to continue teaching in public classrooms. Certification requirements for school-based administrators are specified by the State Board of Education.²⁹ The requirements for renewing a certificate, including professional development, are specified in law.³⁰

Teacher Preparation

The SBE is required to maintain a system for the development and approval of teacher preparation programs that allows postsecondary teacher preparation institutions to employ a variety of innovative teacher preparation practices while being held accountable for producing graduates with the competencies and skills necessary to achieve the state's education goals.³¹

Florida provides several pathways to meet professional teacher certification requirements, including traditional teacher preparation programs provided by universities and colleges for individuals seeking a degree.³² The EPIs and school district alternative certification programs provide individuals who already have baccalaureate degrees with professional training on the competencies needed for professional certification.³³

The DOE reviews and approves educator preparation programs in Florida, including public and private colleges and universities.³⁴ The DOE recently provided each postsecondary institution and district that offers a teacher preparation program with student achievement data for 2008-2009 that is tied to the identity of each classroom teacher who completed their program in 2007-2008 and who taught each course in reading/language arts and math in grades 4 through 10 in public schools during the 2008-2009 school year.³⁵ For the first time, the postsecondary institutions and districts have the opportunity to review and analyze the impact of their program completers on student learning. The DOE expects each institution and district, as a condition of continued teacher preparation program approval, to demonstrate that the data is used to improve the program and the performance of individuals who complete the program.

²⁸ s. 1012.56, F.S. Districts issue certificates to adjunct teachers, pursuant to s. 1012.57, F.S.

²⁹ Section 1012.55(1), F.S., requires the SBE to designate the certification requirements for all school-based personnel. These requirements are specified in SBE rule and the DOE Course Code Directory and Instructional Personnel Assignments 2009-2010, adopted by reference in Rule 6A-1.09441, F.A.C. See <http://www.fldoe.org/articulation/CCD/files/0910Admin-Curric-Serv.pdf>.

³⁰ s. 1012.585, F.S.

³¹ s. 1004.04, F.S.

³² *Id.*

³³ ss. 1004.85 and 1012.56(8), F.S. Individuals can also qualify for a teaching certificate without participating in a formal teacher preparation program by documenting that they have met all requirements for a professional certificate.

³⁴ s. 1004.04, F.S., Rules 6A-4.003 and 6A-5.066, F.A.C., and *Initial and Continued Approval Standard Guidelines*, DOE, May 2009. Programs are approved for seven years.

³⁵ Correspondence with DOE, March 5, 2010, on file with the committee. See also *Teacher Quality*, Issue Brief 2010-313, Florida Senate, October 2009, available at http://www.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-313ed.pdf.

End-of-Course Assessments

Current law allows end-of-course assessments to be administered for a subject in addition to the Florida Comprehensive Assessment Test (FCAT), which measures a student's content knowledge and skills in reading, writing, science, and mathematics. These assessments may be used as long as they are rigorous, statewide, standardized, aligned to the core curricular content established in the Sunshine State Standards, and developed or approved by the DOE.³⁶ The commissioner may select one or more nationally developed comprehensive examinations, which may include examinations for a College Board Advanced Placement (AP) course, International Baccalaureate (IB) program, Advanced International Certificate of Education (AICE) program, or industry-approved examinations to earn national industry certifications as defined in s. 1003.492, F.S., for use as end of course assessments.³⁷

School District Funding

The Florida Education Finance Program (FEFP) is the primary mechanism for funding the operating costs of Florida school districts. School districts receive their financial support from state sources, local sources, including the required local effort portion of the FEFP, and federal sources.³⁸ Funds for state support to school districts are provided primarily by legislative appropriations. The major portion of state support is distributed through the FEFP.³⁹

Local revenue for school support is derived almost entirely from property taxes levied by Florida's 67 counties,⁴⁰ each of which constitutes a school district.⁴¹ Each school board participating in the state allocation of funds for the current operation of schools must levy the millage set for its required local effort from property taxes.⁴² Each district's share of the state total required local effort is determined by a statutory procedure that is initiated by certification of the property tax valuations of each district by the Department of Revenue.⁴³

Current law establishes three categories of school millage rates which must be set by a district school board and are not subject to a public referendum.⁴⁴ School board adoption of millage levies is governed by the advertising, notice, and public meeting requirements in law.⁴⁵

Other Provisions*High Performing School Districts*

Section 1003.621, F.S., recognizes certain school districts that earn a district grade of "A" for two consecutive years, have no district-operated "F" schools, comply with all class size requirements, and have no material weaknesses or instances of material noncompliance in an annual financial audit. The reward for high-performance is an exemption from certain laws and rules as specified in s. 1003.621(2), F.S. The designation is for a 3-year period as long as the school district continues to meet certain criteria.

³⁶ s. 1008.22(3)(c), F.S.

³⁷ *Id.*

³⁸ DOE, *Funding for Florida School Districts, Statistical Report, 2009-2010*. See <http://www.fldoe.org/fefp/pdf/fefpdist.pdf>.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Art. IX, s. 4, of the State Constitution.

⁴² s. 1011.71(1), F.S.

⁴³ s. 1011.62(4), F.S.

⁴⁴ s. 200.001(3), F.S.

⁴⁵ s. 200.065, F.S.

*Academic Performance-Based Charter School Districts*⁴⁶

In 1999, the law authorized the SBE to enter into a performance contract with up to six school districts to establish them as pilot charter school districts to be exempt from statutes and administrative rules if the district agreed to meet specific performance goals.⁴⁷ The law was subsequently amended to allow for the designation of “academic performance-based charter school districts” and grandfather the original four pilot programs (Palm Beach, Hillsborough, Orange, and Volusia) until July 1, 2010.⁴⁸

Deregulated Public Schools

Section 1003.63, F.S., allows the following school districts to participate in a pilot program for deregulated public schools until the end of the 2003-2004 school year: Citrus, Lee, Leon, Palm Beach, Pinellas, Seminole, and Walton. Schools in these districts could be given deregulated status and be exempt from all statutes in the School Code, with some exceptions.

Charter Schools

Florida law specifies that all charter schools are considered public schools.⁴⁹ The schools are exempt from certain laws and rules, as specified in s. 1002.33(16), F.S. Charter schools are formed through the creation of a new school or the conversion of an existing public school.⁵⁰ A charter, or the written contractual agreement between the sponsor and applicant, establishes the terms and conditions of operation.⁵¹

American Council on Education (ACE)

Currently, courses completed and evaluated to establish college credit by the American Council on Education cannot be accepted for educator certification purposes, unless accepted as transfer credit and shown on an official transcript by an accredited institution. This is an additional and usually significant expense to an applicant.⁵²

Records of the Department of Children and Families (DCF)

The DOE, as the licensing body for professional educators, investigates and prosecutes educators who engage in criminal or ethical misconduct; however, the DOE is not currently granted statutory authority to access DCF information regarding an educator who may have committed an act of abuse or neglect.⁵³ Without clarity in the law, the DCF does not provide information to the DOE for use in investigating and prosecuting educators.

⁴⁶ s. 1003.62, F.S.

⁴⁷ Section 228.058, F.S., was created by ch. 99-374, L.O.F.

⁴⁸ ch. 2003-391, L.O.F., and ch. 2007-234, L.O.F.

⁴⁹ s. 1002.33(1), F.S.

⁵⁰ *Id.*

⁵¹ s. 1002.33(6)(i), F.S.

⁵² DOE correspondence, March 6, 2010, on file with the committee.

⁵³ s. 39.202(2) F.S. During an investigation regarding educator misconduct, occasions arise when an educator has been investigated through the DCF for an allegation of abuse or neglect. This investigation by the DCF may be related to the same incident that the DOE is investigating, or may be historical information pertinent to the pending case.

III. Effect of Proposed Changes:

Contracts with Classroom Teachers

Classroom teachers hired in a Florida school district on or after July 1, 2010, would be employed under the revised probationary and annual contracts. In effect, professional service contracts would not be given to any classroom teacher hired on or after July 1, 2010. This gives school districts greater flexibility in meeting student instructional needs by retaining effective teachers and removing poor performing teachers more quickly and cost-effectively.

Probationary Contracts

Beginning July 1, 2010, each new classroom teacher would be hired under a probationary contract. The probationary contract may not extend beyond one year. A classroom teacher may be dismissed without cause or may resign from the contractual position without violating the contract. The probationary contract would lengthen from 97 days to one school year the timeframe under which either the school district or the staff member may terminate the agreement to teach without creating a breach of the contract.

Annual Contracts

Upon successful completion of the probationary contract, a classroom teacher would be eligible to receive an annual contract. The contract may not exceed one year in duration and the school board can choose to renew or not renew without cause. A classroom teacher may receive four annual contracts if the teacher:

- Holds a professional certificate as prescribed by s. 1012.56, F.S., and SBE rules; and
- Is recommended by the superintendent for the contract and approved by the district school board.

An annual contract may only be granted for the sixth year of teaching and thereafter to a state-certified classroom teacher who was approved by the school board for a contract and whose performance is rated effective or highly effective in at least two of the preceding three years by the performance appraisal, based on objective student learning gains and Florida's Educator Accomplished Practices.

In effect, the school district would make the determination whether to renew an annual contract in its discretion, rather than the contract automatically renewing.

A classroom teacher with an annual contract may be suspended or dismissed at any time for just cause, which includes poor performance, as demonstrated by a lack of student learning gains. If charges against a teacher are not sustained, he or she would be immediately reinstated with back pay.

Performance and Differentiated-Pay

Under the bill, greater than 50 percent of the pay for instructional personnel and school-based administrators would be based on student learning gains. The remainder would be based on the performance appraisal. Non-instructional personnel would be paid on the basis of performance.

Districts may not use time-served or degrees-held in setting pay schedules. Instead, student outcomes would have a potentially significant effect on compensation. Effective teachers would be paid more, while those that are unsatisfactory or in need of improvement would be paid less. The State Board of Education would define student learning gains in rule.

Beginning teachers, teachers with valid professional certificates from another state, and teachers with a Florida professional certificate who have been out of the classroom in the last five years would be subject to a district-created salary schedule for the first year that they provide instruction in a Florida K-12 classroom. However, these teachers would be subject to the same salary schedule as other teachers after the first year.

The bill provides for differentiated pay based on assignment to a high-priority location, teaching in a critical teacher shortage area, or the assignment of additional academic responsibilities. Continued differentiated pay, however, is contingent upon student learning gains. This provision allows districts to attract and compensate classroom teachers in high-need areas, such as STEM (Science, Technology, Engineering, and Mathematics), who will better prepare students to graduate ready to meet the demands of the global economy.

Performance Appraisal System

The DOE would approve the district's appraisal instruments and appraisal system for instructional personnel and school-based administrators. The bill also adds components to monitor the use of the system and evaluate the system's effectiveness in improving instruction and student learning. Beginning teachers, teachers with valid professional certificates from another state, and teachers with a Florida professional certificate who have been out of the classroom in the last five years would be evaluated at least twice in the first year of teaching. Appraisals of instructional personnel and school-based administrators would include parent and teacher input.

Components of appraisal systems described in the bill are divided into two parts: performance of students and instructional practice or leadership (for instructional or administrative personnel, respectively). The revision of instructional practice components and instructional leadership components in the bill refers specifically to the Florida Educator Accomplished Practices and the Florida Principal Leadership Standards. The appraisal system must differentiate among four levels: highly effective, effective, needs improvement, and unsatisfactory. The commissioner would be required to consult with classroom teachers and performance pay experts on developing the performance levels for the appraisal systems.

The bill provides for a transition in the appraisal process until 2014-2015 when learning gains can be determined for end-of-course assessments. In effect, the bill restores current law with one exception. Current law requires an appraisal to be primarily based on student performance.⁵⁴ Under the bill, primarily means more than 50 percent of an individual's appraisal.

Beginning in 2014-2015, more than 50 percent of a classroom teacher's performance would be based on learning gains of students assigned to the teacher. For other instructional personnel and school-based administrators, more than 50 percent of their performance must be based on the

⁵⁴ s. 1012.34(3), F.S.

learning gains of students assigned to the school. Student learning gain thresholds would be set in State Board of Education rule. Personnel may not be rated as effective or highly effective if students fail to demonstrate learning gains. If an individual receives a poor performance rating, he or she may request a review by the superintendent.

Professional Certification and Recruitment

The bill adds requirements related to subject area mastery and an option for satisfying mastery of professional preparation and education competency for instructional personnel. The bill also revises the requirements for the renewal of a professional certificate and restricts the assignment of beginning teachers who are not certified in certain subject areas.

A certified teacher from another state would be required to demonstrate subject area mastery by the end of his or her first semester of teaching. The DOE notes that this provision would affect Florida's reciprocity with other states.⁵⁵ Currently and for the last five years, 20 to 25 percent of individuals receiving their initial Florida educator's certificate were certified by presenting a valid standard certificate from another state. According to the DOE, an individual with this credential would have to apply for a Florida temporary certificate and then reapply for a professional certificate after having taken and passed the Florida subject area test. The DOE notes that this individual would incur costs associated with the new requirement and districts could lose a source of teachers if the individual chose not to come to Florida for this reason. If the same number of out-of-state certificateholders continues to enter the state and seek certification in Florida, the DOE estimates that the department's workload would at least double.⁵⁶

Additionally, the DOE indicated that it is unclear as to how the department would monitor, for certification purposes, whether subject knowledge was demonstrated by an out-of-state teacher during the first semester of employment.

Temporary certificateholders must pass the subject area exam within the first year of employment under the temporary certificate, with some extenuating exceptions, such as an applicant's serious illness or injury.

The State Board of Education would review the subject area exam and the rigor of reading instruction required for certification. For purpose of certification, the State Board of Education may adopt rules to accept college credit recommended by the ACE, as posted on its official transcript.⁵⁷

The bill provides an acceptable means of demonstrating mastery of professional competency by Teach for America graduates who complete a professional training program and pass a professional competency exam.⁵⁸

⁵⁵ DOE analysis of SB 6, March 7, 2010, on file with the committee.

⁵⁶ *Id.*

⁵⁷ See ACE Transcript Services, available at <http://www.acenet.edu/AM/Template.cfm?Section=CCRS&Template=/CM/HTMLDisplay.cfm&ContentID=26938>.

⁵⁸ Teach for America is a national corps of college graduates who commit to teach for two years in urban and rural public schools. See <http://www.teachforamerica.org>.

Beginning with the 2014-2015 school year, an individual must meet new requirements for renewal of a professional certificate. An applicant must provide evidence that he or she received a performance appraisal rating of effective or highly effective in four of the last five years of certification. According to the DOE, there are currently 263,976 individuals who hold a valid Florida professional certificate.⁵⁹ Of these certificateholders, 74,222 (28 percent) are not employed in Florida public schools and would need a comparable means of demonstrating the effectiveness required to renew their certificates.

After July 1, 2014, an individual with certification from the National Board for Professional Teaching Standards would no longer have his or her state professional certificate automatically renewed. The applicant would be required to meet all renewal requirements.

A provision is added to prohibit the assignment of a beginning teacher to teach reading, science, or mathematics if the teacher is not certified in reading, science, or mathematics.

The composition of the Education Practices Commission (EPC) would be revised to add three teachers, but would not increase the number of commission members. Additionally, the bill would provide clear guidance to DCF to allow the DOE access to records related to child abuse and neglect by an educator. These provisions would support DOE in determining if an educator should be subject to EPC disciplinary action.

Lastly, the DOE and school districts are authorized to sponsor virtual job fairs to recruit potential teachers. An individual attending a job fair would no longer be subject to the \$20 registration fee authorized in statute.

State-Approved Educator Preparation Programs

As a condition of continued approval, traditional teacher preparation programs, EPIs, and alternative certification programs must provide evidence that the students of their graduates made learning gains, as measured by state assessments.

Traditional Teacher Preparation Programs

The bill eliminates the admissions waiver for up to 10 percent of students admitted to a traditional teacher program.

Traditional teacher preparation programs are required to report the percentage of graduates whose public school students achieved learning gains on statewide assessments. The bill is silent on the manner in which graduates of the teacher preparation program are to be reported if they do not teach a subject or grade assessed under the statewide assessment program. Institutions offering training in school readiness related professions are required to report the percentage of their graduates who obtain teaching employment within the first year of graduation.

Pre-service field experiences for student teachers must be based on the skills of instructors or supervisors who have documented evidence of sustained student learning gains. Preservice programs would be required to provide students with continuous participation in supervised classroom settings.

⁵⁹ DOE analysis of SB 6, March 7, 2010, on file with the committee.

For a graduate who fails to demonstrate student learning gains two years immediately following graduation or initial certification, his or her teacher preparation program would be required to provide additional training by the program at no expense to the educator or employer.

EPI Alternative Certification Programs

The bill requires participants to provide evidence of eligibility for a temporary certificate, complete field experiences, and demonstrate mastery of general knowledge, and subject area testing prior to completion of the program. An EPI alternative certification program must submit to the DOE a review of learning gains of the students taught by program completers. Continued approval of the program would be contingent upon this review and student learning gains. EPI alternative certification program instructors would have to meet the same requirements as instructors in traditional teacher preparation programs.

Review of Funding

The bill incorporates OPPAGA's recommendations for measuring the effectiveness of teacher preparation programs.⁶⁰ The DOE would issue a report by December 1, 2011, on the effectiveness of state-approved teacher preparation programs. The review would include alternative certification programs offered through EPIs and Florida school districts. In a separate report, OPPAGA would review the current standards for the continued approval of teacher preparation programs and make recommendations to the Legislature by January 1, 2012.

End-of-Course Assessments

The bill requires districts to develop or acquire valid and reliable end-of-course assessments for subject areas and grade levels that are not assessed by the FCAT or AP, IB, AICE, or national industry certification exams. Under the bill, district-wide implementation of the assessments would occur in 2013-2014. Each district school-superintendent would be responsible for the security of the assessments and would certify the integrity of the exam process. It is grounds for removal of the superintendent, if his or her certification is invalid.⁶¹

The commissioner would identify methods to support school districts in the development or acquisition of assessments, including item banks. For compliance, the commissioner would review district assessments on a sample basis.

School District Accountability

The bill requires the commissioner to review a sample of assessments from multiple districts, beginning with the 2013-2014 fiscal year and to review salary schedules, beginning with the 2014-2015 fiscal year. All school districts must provide the commissioner with their adopted salary schedules and supporting evidence. Compliance with classroom teacher contract requirements would be determined by the Auditor General, based on a sample of contracts reviewed during a district's financial audit.

The bill provides an ad valorem tax penalty for districts that violate the requirements in law for professional service contracts, assessments, and performance pay. Each school board

⁶⁰ *Production of Teachers Who Remain in the Classroom Varies by Preparation Program*, OPPAGA, Report 09-28, June 2009.

⁶¹ Article IV, s. 7, of the State Constitution.

participating in the state allocation of funds for the operation of schools must levy a nonvoted additional millage for its required local effort from property taxes. The additional effort would be certified and levied at the same time as the required local effort.

Under the bill, the commissioner would withhold an amount equal to the revenue generated by the levy from the districts share of state funds in the FEFP for the fiscal year in which the levy occurred. The revenue generated by the levy may only be used to compensate for the loss of state funds.

The bill requires charter schools and high-performing school districts to comply with the requirements for salary schedules and assessments and with the prohibition for professional service contracts. Charter schools would be subject to the pay schedule requirements beginning in 2014-2015, and the assessment requirements in 2013-2014. The commissioner would monitor a sample of charter schools for compliance.

The bill also requires the following:

- DOE must report performance appraisal information for all instructional and school-based administrative personnel by category, by school, and by district to the Governor and the Legislature;
- Charter school governing boards must certify to the commissioner that the schools meet the requirements for assessments, salary schedules, and contracts; and
- A sample of charter schools must submit evidence of compliance to the commissioner.

Repealed Provisions

The bill repeals the following: the deregulated public schools pilot programs; academic performance-based charter school districts (Hillsborough, Volusia, Orange, and Palm Beach); the Preteacher and Teacher Education Pilot Programs; the Teacher Education Pilot Programs for High-Achieving Students; the National Board for Professional Teaching Standards Program; the Merit Award Program; the Critical Teacher Shortage Program; the Florida Teacher Scholarship and Forgivable Loan Program; the Critical Teacher Shortage Tuition Reimbursement Program; and the Critical Teacher Shortage Student Loan Forgiveness Program.

Other Potential Implications:

Initiatives at the state and national level are increasingly linking evaluations, performance pay, and employment decisions for effective teachers and principals with student achievement. The provisions of the bill could enable meaningful decision-making for performance evaluations and compensation and provide incentives for educators to remain focused on the learning gains of their students.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:Collective Bargaining

Provisions in the bill which require criteria to be used in the adoption of public classroom teacher and school-based administrator salary schedules may be challenged as violative of art. I, sec. 6, of the state constitution.⁶² This constitutional provision classifies collective bargaining as a fundamental right. As such, attempts to impose a blanket ban on the ability of a specific group of public employees to collectively bargain have been subject to strict scrutiny analysis and struck down by the courts in several cases.⁶³ In the absence of outright bans on collective bargaining, courts have upheld as legitimate, and even warranted, certain restrictions on employer-employee negotiations.

Section 447.309(1), F.S., specifies that mandatory subjects for collective bargaining encompass wages, hours, and terms and conditions of employment of public employees. Case law authorizes the public employer to unilaterally control one of these areas only where it can be considered a managerial prerogative,⁶⁴ or a fundamental policy decision relating to the primary mission of the employer.⁶⁵ In other words, a court may uphold as a managerial prerogative subject matter that constitutes broad policy or public management of governmental functions.⁶⁶

Where an item is found to be both a managerial prerogative and a term or condition of employment (i.e., essential to the functioning of an enterprise and a condition of employment), the court will apply a balancing test to determine which characteristic takes precedence.⁶⁷ Therefore, if the employer's legitimate assertion of a managerial

⁶² Although the Legislature is not the public employer for classroom teachers and school-based administrators, it is important to note that much of the case law on this issue involves disputes between a public employer and an affected employee, collectively as an employer and as a union.

⁶³ See, e.g., *Chiles v. State Employees Attorneys Guild*, 734 So.2d 1030 (Fla. 1999), in which the court invalidated a statute that prevented attorneys who were state employees from engaging in collective bargaining. See also *Coastal Florida Police Benevolent Association v. Williams*, 838 So.2d 543 (Fla. 2003), in which the court reached a similar holding where deputy sheriffs were excluded from collective bargaining.

⁶⁴ *School District of Martin County v. Public Employees Relations Commission*, 15 So.3d 42 (4th DCA 2009).

⁶⁵ 51 C.J.S. Labor Relations s. 209.

⁶⁶ The court of appeals in New York determined that the setting of classroom teacher to student ratio, i.e. class size, failed to constitute a term or condition of employment even with its undisputed impact on teacher workload. In so doing, the court categorized class size as an "educational policy." *West Irondequoit Teachers Association v. Helsby*, 315 N.E.2d 775 (1974).

⁶⁷ *Fraternal Order of Police v. City of Miami*, 609 So.2d 31, 34 (Fla. 1992); "No Florida case has adequately discussed the analysis to be utilized in determining whether a subject must be collectively bargained when that subject both directly relates to employment security or conditions of employment and also directly relates to the functioning of an enterprise.... Where, as here...a subject...is arguably both a managerial prerogative and a "term or condition of employment," we hold that a balancing test should apply to determine which characteristic predominates."

prerogative or public policy outweighs an employee's interest in wages, hours, and conditions of employment, the restriction is typically upheld.

Several cases in Florida have addressed the constitutionality of statutes authorizing bonuses for high-performing teachers. In United Teachers of Dade v. Dade County School Board, the Florida Supreme Court upheld a statute providing for teacher bonuses based on high-performance. In addition to finding that annual awards do not constitute a wage, the court held that the relevant sections of law "...reflect a legislative policy decision...which contemplates encouraging superior instructors to continue teaching in Florida's public schools." In so doing, the court continued, the element of educational policy is appropriately balanced against the effect the subject has on teacher employment.⁶⁸ In a First District Court of Appeals case, the court reviewed a program which provided economic incentives for teachers pursuant to a scheme designed to increase student performance. In finding that there was no abridgment of collective bargaining, the court noted that participation was voluntary and locally-negotiated.⁶⁹

In two respects, the statutes challenged in these cases and the provision of the bill markedly differ. Pursuant to the bill, participation is mandatory and the subject at issue, pay, is delivered through salary, rather than a bonus. However, it is critical to note that at the time the Florida courts decided these cases, art. IX, sec. 1, of the state constitution, required only that adequate provision be made by law for a "uniform system of free public schools." A 1998 amendment to the constitution expanded the role of the Legislature in characterizing as a "paramount duty of the state" the provision in law of statewide "high-quality" public education, and deeming the education of children a "fundamental value of the people."⁷⁰ As such, a court deciding today may afford additional weight to the recently-added amendment which imposes a significant mandate on the Legislature.

In considering case law on collective bargaining, the determination of pay has been considered a subject of collective bargaining. However, this bill does not directly legislate pay, but rather sets overall parameters to be applied in negotiation proceedings, i.e., rewarding high-performing teachers based on student gains. Moreover, the state constitution squarely designates the Legislature, in its capacity to enact laws, as the provider of high-quality public education. In fulfillment of this role, the Legislature is conferring statutory guidance to the local school districts to use in pay negotiations. If a balancing test is imposed, in recognition of the considerable constitutional mandate on the Legislature, a court may conclude that legislative provision of quality instruction takes precedence over requiring all aspects of teacher pay to be bargained.

⁶⁸ 500 So.2d 508, 511 (Fla. 1986).

⁶⁹ *Florida Teaching Profession-National Education Association v. Turlington*, 490 So.2d 142, 143, 145 (Fla. 1st DCA 1986).

⁷⁰ art. IX, sec. 1(a), of the state constitution, provides, in part: "*The education of children is a fundamental value of the people of the State of Florida. It is, therefore, a paramount duty of the state to make adequate provision for the education of all children residing within its borders. Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education....*" The words that are italicized represent language proposed by the Constitution Revision Commission and adopted by Florida voters on November 3, 1998.

Millage

The provision requiring millage to be imposed in the event that local districts have failed to meet statutory requirements may possibly be challenged pursuant to the constitutional ban on state ad valorem taxes.

Section 1., Article VII, of the State Constitution, provides, in part:

- (a) No tax shall be levied except in pursuance of law. No state ad valorem taxes shall be levied upon real estate....

The Florida Supreme Court has interpreted this language as providing a constitutional separation between tax revenues available for state use and those allotted to local government.⁷¹

Courts have cited art. VII, sec. 1., of the state constitution, as a constitutional prohibition on the levy of ad valorem tax on real property for state purposes. Likewise, the Legislature is precluded from requiring local ad valorem taxes to fund essentially state functions, thereby circumventing the constitutional prohibition. Therefore, laws that mandate ad valorem to support the funding of state government are constitutionally suspect.⁷²

In the court case that established this rule against circumvention, the Florida Supreme Court upheld a law that provides for local support of junior colleges through the levy of ad valorem taxation, even given that the junior colleges are not subject to local control.⁷³ In so doing, the court held that:

Junior colleges also serve a distinctly local function....One of the major reasons for establishing a junior college is to bring this level of education within commuting distance of large numbers of students who could not otherwise attend college.....Ad valorem taxes levied by school districts for support of such institutions are local taxes levied for local purposes.⁷⁴

The Florida Supreme Court also reviewed a challenge of a statute which created a local basin as a subdistrict of a water management district, and authorized the water management district to levy taxes to support the basin. In analyzing the constitutionality of the law, the court opined that the “determinative question is whether the ad valorem tax receipts are used to further a local purpose.”⁷⁵ In so holding, the court stated that the fact that water conservation and control are state functions is not dispositive, when, as here, water preservation is also critically important to the local area.

⁷¹ *Alachua County v. Adams*, 702 So.2d 1253 (Fla. 1997).

⁷² *Id.*

⁷³ *Board of Public Instruction of Brevard County v. State Treasurer*, 231 So.2d 1 (Fla. 1970).

⁷⁴ *Id.* at 4.

⁷⁵ *St. Johns River Water Management District v. Deseret Ranches of Florida, Inc.*, 421 So.2d 1067, 1070 (Fla. 1982).

The court additionally upheld a mental health plan provided in statute that required local government to match state funds for community mental health services, on the grounds that the Legislature is authorized to enact legislation that requires the expenditure of local funds to support programs at the local level.⁷⁶ In this case, the statute required a match on a three-to-one basis. “The legislature has decided, therefore, that local governments must bear a share of the cost of mental health services.”⁷⁷

Clearly, the levy of ad valorem to fund classroom teacher and school-based administrator salaries will fund a local purpose. As such, a court will, in all likelihood, uphold this provision.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill requires school districts that fail to comply with the requirements for salary schedules, assessments, and contracts to levy an additional ad valorem millage equal to five percent of the salaries of instructional personnel and school-based administrators.

B. Private Sector Impact:

For applicants for certification, there may be a cost savings associated with the ACE provision. Currently, an applicant must have the credit accepted by an institution as transfer credit. If he or she has not enrolled in the course, the applicant may incur a cost.

C. Government Sector Impact:

The fiscal impact of this bill is indeterminate.

There will be costs associated with the following:

- Developing and modifying the system to assess student learning gains;
- Developing and revising the teacher and school-based administrator’s appraisal system to include student learning gains;
- Developing a system of teacher compensation to include student performance, as measured by student learning gains, and differentiated responsibilities, such as assignment to a school in a high priority area or teaching in a critical shortage area;
- Revising teacher contracts to assist in making personnel decisions; and
- Training personnel to implement the revised systems.

For the learning gains and performance appraisal system, there will be additional school district and charter school costs for development and acquisition of valid and reliable local end-of-course assessments for which there are no state exams. These costs will vary among the many different courses for which end-of-course exams will be developed and

⁷⁶ *Sandegren v. State*, 397 So.2d 657 (Fla. 1981), citing *Board of Public Instruction of Brevard County*, 231 So.2d 1 (Fla. 1970).

⁷⁷ *Id.* at 659.

will vary widely among the districts. Costs will include efforts for coordination, standardization, and test security. The DOE notes that district funds for end-of-course exams may be supplemented if the department is successful in receiving a Race to the Top grant award and if the district participates in the grant.⁷⁸

It is not anticipated that the bill revises the total funds for teacher and administrator compensation but rather, it provides a means by which compensation can be based on performance.

The bill requires a review of state teacher preparation programs, including education preparation institute alternative certification programs, school district certification programs, and colleges of education programs. The emphasis will be placed on student learning gains associated with a program's graduates, which will provide accountability and may affect funding for individual programs, depending on the performance of their graduates.

The DOE and the Auditor General may have additional costs to implement a number of the provisions of the bill. Support for these activities may be provided in the future if the department is successful in receiving a Race to the Top grant award; however, it should be noted that there will be an additional cost to the DOE to determine charter school compliance and to review the validity of school district end-of-course exams.

The bill creates s. 1011.626, F.S., District Millage Accountability Adjustment. The commissioner will determine school district compliance with the provisions of the bill, i.e., salary schedules that include performance-based and differentiated compensation for instructional personnel and school-based administrators; implementation of local end-of-course exams; and revisions to teacher contracts as required by the bill. For those districts that do not comply with these criteria, the commissioner will calculate the dollar amount and an equivalent ad valorem millage for five percent of the salaries of instructional personnel and school-based administrators. The district will then be required to provide a notice of proposed tax increase which lists the violations and the resulting additional required local effort funds and the millage levy that will be assessed from local taxpayers.

Practically, the notice of proposed tax increase would take place at the time of the school district budget adoption process in July or August and would be effective for the fiscal year following non-compliance. The millage would be in addition to the Required Local Effort millage as the last step in the determination of the Required Local Effort calculation of the FEFP and will be subtracted from the total FEFP funds so that state funds will be reduced in an equal amount.

In addition, the bill proposes a five percent fine for charter schools that fail to do not comply with the bill's provisions. The fine may not be paid from funds appropriated by the Legislature.

⁷⁸ DOE analysis of SB 6, March 7, 2010, on file with the committee. The DOE has applied for Race to the Top funds. See <http://www.fldoe.org/arra/racetothetop.asp>.

Using salary information from the 2008-2009 Annual Financial Report and the forecasted 2010-2011 tax roll, if a district does not comply with the requirements of this bill, on average, the additional millage assessment would be approximately equal to .4 mills. However, the millage will differ considerably among the districts because of the wide variation in property values.

The bill repeals the Excellent Teaching Program which was funded with \$46.9 million federal stimulus funds in 2009-2010; the Merit Award Program which was funded in the FEFP for \$20 million in 2009-2010; and the Critical Teacher Shortage Program, the Florida Teacher Scholarship and Forgivable Loan Program, the Critical Teacher Shortage Tuition Reimbursement Program, and the Critical Teacher Shortage Student Loan Forgiveness Program for a total \$2.5 million appropriation from General Revenue in 2009-2010.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Education Pre-K – 12 Committee on March 10, 2010:

The committee substitute:

- Requires a classroom teacher, hired on or after July 1, 2010, to earn an appraisal performance rating of effective or highly effective in at least two of the preceding three years to receive an annual contract for the 6th year of teaching;
- Requires a certificate-holder seeking renewal of the certificate to earn a performance appraisal rating of effective or highly effective in four of the preceding five years of certification;
- Restores current law for performance appraisals until 2014-2015, and clarifies that appraisals must be primarily based (i.e., more than 50 percent) on student performance;
- Provides an acceptable means of demonstrating mastery of professional competency by Teach for America graduates who complete a professional training program and pass a professional competency exam; and
- Provides a severability clause.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
