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# **Education Committee**

**Thursday, March 10, 2011**

**8:00 AM – 12:00 PM**

**2:45 PM – 5:45 PM**

**17 HOB - Morris Hall**

**Meeting Packet**

**Dean Cannon  
Speaker**

**William Proctor  
Chair**



# The Florida House of Representatives

## Education Committee

Dean Cannon  
Speaker

William L. "Bill" Proctor  
Chair

### AGENDA

Education Committee  
March 10, 2011  
8:00 a.m. – 12:00 p.m.  
2:45 p.m. – 5:45 p.m.  
17 HOB Morris Hall

- I. Call to Order/Roll Call
- II. Opening Remarks
- III. Consideration of the following bill:  
HB 7019 Education Personnel  
by K-20 Competitiveness Subcommittee, Rep. Fresen
- IV. Closing Remarks and Adjournment

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 7019 (2011)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

1 Committee/Subcommittee hearing bill: Education Committee  
2 Representative(s) Fresen offered the following:

3  
4 **Amendment**

5 Remove lines 560-571 and insert:

6 3. Advanced degrees.-A district school board may not use  
7 advanced degrees in setting a salary schedule for instructional  
8 personnel or school administrators hired on or after July 1,  
9 2011, unless the advanced degree is held in the individual's  
10 area of certification and is only a salary supplement.

Amendment No. 2

COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

1 Committee hearing bill: Education Committee  
2 Representative(s) Bullard offered the following:

3  
4 **Amendment**

5 Remove lines 210-217 and insert:

6 a. For classroom teachers, excluding substitute teachers,  
7 the student growth portion of the evaluation must include  
8 growth, as defined in subsection (8) and in section (D)(2)(i) of  
9 the Race to the Top memorandum of understanding for students  
10 assigned to the teacher over the course of at least 3 years. If  
11 less than 3 years of data are available, the school district  
12 must include the years for which data are available. The school  
13 district may phase-in the evaluation system beginning with the  
14 2011-2012 school year but will use, at a minimum, student growth  
15 as defined in subsection (8) and in section (D)(2)(i) of the  
16 Race to the Top memorandum of understanding for at least 35% of  
17 the evaluation and student growth or achievement as determined  
18 by the school district for 15% of the evaluation. Beginning with  
19 the 2014-2015 school year the teacher evaluation system will

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 7019 (2011)

Amendment No. 2

20 use, at a minimum, student growth as defined in subsection (8)  
21 and in section (D)(2)(i) of the Race to the Top memorandum of  
22 understanding for at least 40% of the evaluation and student  
23 growth or achievement as determined by the school district for  
24 10% of the evaluation for students assigned to the teacher over  
25 the course of at least 3 years. If less than 3 years of data  
26 are available, the school district must include the years for  
27 which data are available. School districts may include at least  
28 one additional metric to combine the student performance and  
29 principal observation components to develop a "multi-metric"  
30 evaluation system. Examples of additional metrics include, but  
31 are not limited to, observations by master teachers or  
32 instructional coaches, student input, peer input, and parental  
33 input. for students assigned to the teacher over the course of  
34 at least 3 years.

Amendment No. 3

COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

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1 Committee hearing bill: Education Committee  
2 Representative(s) Clarke-Reed offered the following:

3

4

**Amendment**

5

Remove line 731 and insert:

6

(c) An annual contract shall be awarded if the

Amendment No. 4

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

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1 Committee hearing bill: Education Committee  
2 Representative(s) Fullwood offered the following:

3  
4 **Amendment**

5 Between lines 745 and 746, insert:

6 4. Where instructional personnel is eligible for a  
7 recommendation of an annual contract renewal by the district  
8 school superintendent based upon an individual's highly  
9 effective or effective evaluation, such employee shall be  
10 granted an annual contract unless charges of just cause as  
11 defined by s. 1012.335 (5) are brought based upon a pattern of  
12 ineffective teaching or performance by such instructional  
13 personnel, as defined in s. 1012.34. If such recommendation for  
14 an annual contract renewal is denied, notwithstanding fiscal  
15 constraints, the superintendent shall include a written  
16 explanation detailing the rationale for such non-renewal.

Amendment No. 5

COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

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1 Committee hearing bill: Education Committee

2 Representative(s) Fullwood offered the following:

3  
4 **Amendment**

5 Between lines 898 and 899, insert:

6 (c) The Department of Education and each school district  
7 shall annually report only the school name and the  
8 effectiveness rating levels, as defined in s. 1012.34, for each  
9 instructional personnel who were rated highly effective or  
10 effective and who were non-renewed by the district. The data  
11 must be reported via the department's website in a manner that  
12 is accessible by the public and must not include any personal  
13 identifying information.  
14



Amendment No. 6

COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

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1 Committee hearing bill: Education Committee  
2 Representative(s) Bullard offered the following:

**Amendment**

Remove lines 720-745 and insert:

3  
4  
5  
6 (d) "Professional performance contract" means an  
7 employment contract for instructional personnel for a period of  
8 3 school years, which shall be renewed for additional 3-year  
9 periods as long as the individual has not received two  
10 consecutive unsatisfactory evaluations under s. 1012.34, two  
11 unsatisfactory evaluations within a 3-year period under s.  
12 1012.34, or three evaluations of needs improvement within any 5-  
13 year period under s. 1012.34.

(2) EMPLOYMENT-

14  
15 (a) Beginning on July 1, 2011, each individual newly hired  
16 as instructional personnel by a Florida school district shall  
17 receive a probationary contract.

Amendment No. 6

18       (b) The district school board may issue an annual contract  
19 to instructional personnel who have successfully completed the  
20 probationary contract if the individual:

21       1. Holds a professional certificate or temporary  
22 certificate issued pursuant to s. 1012.56 and rules of the State  
23 Board of Education.

24       2. Has been recommended by the district school  
25 superintendent for the annual contract based upon the  
26 individual's evaluation, as determined under s. 1012.34, and  
27 approved by the district school board.

28       (c) Upon completion of no less than 3 years of employment  
29 in the same school district within a 5-year period, except for  
30 leave duly authorized and granted, instructional personnel  
31 recommended for additional employment shall be awarded a  
32 professional performance contract. Instructional personnel may  
33 be required to serve a fourth year of employment before becoming  
34 eligible to receive a professional performance contract when  
35 prescribed by the district school board for good reason.

36       1. A professional performance contract may be offered by a  
37 district school board to instructional personnel only if the  
38 individual:

39       a. Holds a professional certificate or temporary  
40 certificate as prescribed by s. 1012.56 and rules of the State  
41 Board of Education.

42       b. Has been recommended by the district school  
43 superintendent for further employment and approved by the  
44 district school board based on successful performance of duties  
45 and demonstration of professional competence under s. 1012.34.

Amendment No. 6

46 c. Has not received two consecutive unsatisfactory  
47 evaluations under s. 1012.34, two unsatisfactory evaluations  
48 within a 3-year period under s. 1012.34, or three evaluations of  
49 needs improvement within any 5-year period under s. 1012.34.

50 2. A district school board may issue a professional  
51 performance contract after July 1, 2011, to any instructional  
52 personnel staff member who has previously held a professional  
53 performance contract, a professional service contract, or a  
54 continuing contract in the same or another school district  
55 within this state. Any instructional personnel staff member who  
56 holds a professional service contract or a continuing contract  
57 may, but is not required to, exchange such contract for a  
58 professional performance contract in the same district.

59 3. If a professional performance contract is not renewed  
60 by the district school board based on performance of duties and  
61 demonstration of professional competence of the individual under  
62 s. 1012.34, upon the recommendation of the superintendent and  
63 upon the approval of the district school board, the individual  
64 may be appointed to up to three additional annual contracts or  
65 not be offered an additional contract. At the time of making  
66 such recommendation to the district school board, the  
67 superintendent shall state the performance-based reason for his  
68 or her recommendation and the district school board shall take  
69 final action on such recommendation.

70

Amendment No. 7

COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

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1 Committee hearing bill: Education Committee  
2 Representative(s) Clarke-Reed offered the following:

3  
4 **Amendment**

5 Remove lines 409-413 and insert:  
6 growth based upon a student's gender, race, or ethnicity. In the  
7 development of the formula, the commissioner shall consider  
8 other factors such as a student's attendance record, disability  
9 status, socioeconomic status, or status as an English language  
10 learner. The commissioner shall select additional  
11

1                                   A bill to be entitled  
 2           An act relating to education personnel; providing a short  
 3           title; amending s. 1012.34, F.S.; revising provisions  
 4           relating to the evaluation of instructional personnel and  
 5           school administrators; requiring the Department of  
 6           Education to approve each school district's instructional  
 7           personnel and school administrator evaluation systems;  
 8           requiring reporting by the Commissioner of Education  
 9           relating to the evaluation systems; providing requirements  
 10          and revising procedures and criteria for the evaluation  
 11          systems; requiring the commissioner to approve or select  
 12          and the State Board of Education to adopt formulas for  
 13          school districts to use in measuring student learning  
 14          growth; requiring the state board to adopt rules relating  
 15          to standards and measures for implementation of the  
 16          evaluation systems; amending s. 1008.22, F.S.; requiring  
 17          school districts to administer assessments for each course  
 18          offered in the district; requiring the commissioner to  
 19          identify methods to assist school districts; amending s.  
 20          1012.22, F.S.; revising provisions relating to  
 21          instructional personnel and school administrator  
 22          compensation and salary schedules; providing requirements  
 23          for a performance salary schedule, a grandfathered salary  
 24          schedule, adjustments, and supplements; revising criteria  
 25          for the promotion of instructional personnel; creating s.  
 26          1012.335, F.S.; providing criteria for employment  
 27          contracts for instructional personnel hired on or after  
 28          July 1, 2011; providing definitions; providing grounds for

29 suspension or dismissal; requiring rules to define the  
 30 term "just cause"; providing that certain individuals who  
 31 are hired as instructional personnel are ineligible for  
 32 contracts issued under s. 1012.33, F.S.; amending s.  
 33 1002.33, F.S.; requiring charter schools to comply with  
 34 provisions relating to compensation and salary schedules,  
 35 workforce reductions, contracts with instructional  
 36 personnel hired on or after July 1, 2011, and certain  
 37 requirements for performance evaluations; amending s.  
 38 1003.621, F.S.; requiring academically high-performing  
 39 school districts to comply with additional requirements  
 40 for personnel; amending s. 1006.09, F.S.; conforming  
 41 provisions to changes made by the act; amending s.  
 42 1012.07, F.S.; revising the methodology for determining  
 43 critical teacher shortage areas; amending s. 1012.2315,  
 44 F.S.; providing reporting requirements relating to  
 45 instructional personnel and school administrator  
 46 performance; amending s. 1012.27, F.S.; revising the  
 47 criteria for transferring a teacher; conforming provisions  
 48 to changes made by the act; amending s. 1012.28, F.S.;  
 49 authorizing a principal to refuse to accept the placement  
 50 or transfer of instructional personnel under certain  
 51 circumstances; amending s. 1012.33, F.S.; revising  
 52 provisions relating to contracts with certain education  
 53 personnel; revising just cause grounds for dismissal;  
 54 revising provisions relating to contract renewal; deleting  
 55 provisions to conform to changes made by the act;  
 56 requiring that a district school board's decision to

57 retain personnel be primarily based on the employee's  
 58 performance; repealing s. 1012.52, F.S., relating to  
 59 legislative intent and findings to improve student  
 60 achievement and teacher quality; amending s. 1012.795,  
 61 F.S.; conforming provisions to changes made by the act;  
 62 authorizing exemption from requirements for performance  
 63 evaluation systems and compensation and salary schedules  
 64 for certain school districts; providing requirements for  
 65 State Board of Education approval and renewal of  
 66 exemptions; providing for review and repeal; providing  
 67 that specified provisions of law do not apply to  
 68 rulemaking required to administer the act; providing for  
 69 the repeal of certain special acts or general laws of  
 70 local application relating to contracts for instructional  
 71 personnel or school administrators; providing for  
 72 application of specified provisions of the act; providing  
 73 for severability; providing effective dates.

74

75 Be It Enacted by the Legislature of the State of Florida:

76

77 Section 1. This act may be cited as the "Student Success  
 78 Act."

79 Section 2. Effective upon this act becoming a law, section  
 80 1012.34, Florida Statutes, is amended to read:

81 1012.34 Personnel evaluation ~~Assessment~~ procedures and  
 82 criteria.-

83 (1) EVALUATION SYSTEM APPROVAL AND REPORTING.-

84 (a) For the purpose of increasing student learning growth

85 | by improving the quality of instructional, administrative, and  
 86 | supervisory services in the public schools of the state, the  
 87 | district school superintendent shall establish procedures for  
 88 | evaluating ~~assessing~~ the performance of duties and  
 89 | responsibilities of all instructional, administrative, and  
 90 | supervisory personnel employed by the school district. The  
 91 | district school superintendent shall annually report the  
 92 | evaluation results of instructional personnel and school  
 93 | administrators to the Department of Education in addition to the  
 94 | information required under subsection (5).

95 |       **(b)** The department of Education must approve each school  
 96 | district's instructional personnel and school administrator  
 97 | evaluation systems assessment system. The department shall  
 98 | monitor each district's implementation of its instructional  
 99 | personnel and school administrator evaluation systems for  
 100 | compliance with the requirements of this section.

101 |       **(c)** By December 1, 2012, the Commissioner of Education  
 102 | shall report to the Governor, the President of the Senate, and  
 103 | the Speaker of the House of Representatives the approval and  
 104 | implementation status of each school district's instructional  
 105 | personnel and school administrator evaluation systems. The  
 106 | report shall include performance evaluation results for the  
 107 | prior school year for instructional personnel and school  
 108 | administrators using the four levels of performance specified in  
 109 | paragraph (2)(e). The performance evaluation results for  
 110 | instructional personnel shall be disaggregated by classroom  
 111 | teachers, as defined in s. 1012.01(2)(a), excluding substitute  
 112 | teachers, and all other instructional personnel, as defined in



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113 s. 1012.01(2)(b)-(d). The commissioner shall continue to report,  
 114 by December 1 each year thereafter, each school district's  
 115 performance evaluation results and the status of any evaluation  
 116 system revisions requested by a school district pursuant to  
 117 subsection (6).

118 (2) EVALUATION SYSTEM REQUIREMENTS.—The evaluation systems  
 119 for instructional personnel and school administrators must  
 120 ~~following conditions must be considered in the design of the~~  
 121 ~~district's instructional personnel assessment system:~~

122 (a) ~~The system must~~ Be designed to support effective  
 123 instruction and student learning growth, and performance  
 124 ~~evaluation results must be used when developing district and~~  
 125 ~~school level improvement plans.~~

126 (b) ~~The system must~~ Provide appropriate instruments,  
 127 procedures, and criteria for continuous quality improvement of  
 128 the professional skills of instructional personnel and school  
 129 administrators, and performance evaluation results must be used  
 130 when identifying professional development opportunities.

131 (c) ~~The system must~~ Include a mechanism to examine  
 132 performance data from multiple sources, including opportunities  
 133 for give parents an opportunity to provide input into employee  
 134 performance evaluations assessments when appropriate.

135 (d) Identify ~~In addition to addressing generic teaching~~  
 136 ~~competencies, districts must determine those teaching fields for~~  
 137 which special evaluation procedures and criteria are necessary  
 138 ~~will be developed.~~

139 (e) Differentiate among four levels of performance as  
 140 follows:

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141 1. Highly effective.  
 142 2. Effective.  
 143 3. Needs improvement or, for instructional personnel in  
 144 the first 3 years of employment who need improvement,  
 145 developing.

146 4. Unsatisfactory. ~~Each district school board may~~  
 147 ~~establish a peer assistance process. The plan may provide a~~  
 148 ~~mechanism for assistance of persons who are placed on~~  
 149 ~~performance probation as well as offer assistance to other~~  
 150 ~~employees who request it.~~

151 (f) ~~The district school board shall~~ Provide for training  
 152 ~~programs that are based upon guidelines provided by the~~  
 153 ~~department of Education to ensure that all individuals with~~  
 154 ~~evaluation responsibilities understand the proper use of the~~  
 155 evaluation assessment criteria and procedures.

156 (g) Include a process for monitoring and evaluating the  
 157 effective and consistent use of the evaluation criteria by  
 158 employees with evaluation responsibilities.

159 (h) Include a process for monitoring and evaluating the  
 160 effectiveness of the system itself in improving instruction and  
 161 student learning.

162  
 163 In addition, each district school board may establish a peer  
 164 assistance process. This process may be a part of the regular  
 165 evaluation system or used to assist employees placed on  
 166 performance probation, newly hired classroom teachers, or  
 167 employees who request assistance.

168 (3) EVALUATION PROCEDURES AND CRITERIA. ~~The assessment~~

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169 ~~procedure for~~ Instructional personnel and school administrator  
 170 performance evaluations ~~administrators~~ must be ~~primarily~~ based  
 171 upon ~~on~~ the performance of students assigned to their classrooms  
 172 or schools, as provided in this section ~~appropriate~~. Pursuant to  
 173 this section, a school district's performance evaluation  
 174 ~~assessment~~ is not limited to basing unsatisfactory performance  
 175 of instructional personnel and school administrators solely upon  
 176 student performance, but may include other criteria approved to  
 177 evaluate ~~assess~~ instructional personnel and school  
 178 administrators' performance, or any combination of student  
 179 performance and other approved criteria. Evaluation ~~The~~  
 180 procedures and criteria must comply with, but are not limited  
 181 to, the following requirements:

182 (a) A performance evaluation ~~An assessment~~ must be  
 183 conducted for each employee at least once a year, except that a  
 184 classroom teacher, as defined in s. 1012.01(2)(a), excluding  
 185 substitute teachers, who is newly hired by the district school  
 186 board must be observed and evaluated at least twice in the first  
 187 year of teaching in the school district. The performance  
 188 evaluation ~~assessment~~ must be based upon sound educational  
 189 principles and contemporary research in effective educational  
 190 practices. ~~The assessment must primarily use data and indicators~~  
 191 ~~of improvement in student performance assessed annually as~~  
 192 ~~specified in s. 1008.22 and may consider results of peer reviews~~  
 193 ~~in evaluating the employee's performance. Student performance~~  
 194 ~~must be measured by state assessments required under s. 1008.22~~  
 195 ~~and by local assessments for subjects and grade levels not~~  
 196 ~~measured by the state assessment program.~~ The evaluation

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197 ~~assessment~~ criteria must include, ~~but are not limited to,~~  
 198 ~~indicators that relate to the following:~~

199 1. Performance of students. At least 50 percent of a  
 200 performance evaluation must be based upon data and indicators of  
 201 student learning growth assessed annually by statewide  
 202 assessments or, for subjects and grade levels not measured by  
 203 statewide assessments, by school district assessments as  
 204 provided in s. 1008.22(8). Each school district must use the  
 205 formula adopted pursuant to paragraph (7)(a) for measuring  
 206 student learning growth in all courses associated with statewide  
 207 assessments and must select an equally appropriate formula for  
 208 measuring student learning growth for all other grades and  
 209 subjects, except as otherwise provided in subsection (7).

210 a. For classroom teachers, as defined in s. 1012.01(2)(a),  
 211 excluding substitute teachers, the student learning growth  
 212 portion of the evaluation must include growth data for students  
 213 assigned to the teacher over the course of at least 3 years. If  
 214 less than 3 years of data are available, the years for which  
 215 data are available must be used and the percentage of the  
 216 evaluation based upon student learning growth may be reduced to  
 217 not less than 40 percent.

218 b. For instructional personnel who are not classroom  
 219 teachers, the student learning growth portion of the evaluation  
 220 must include growth data on statewide assessments for students  
 221 assigned to the instructional personnel over the course of at  
 222 least 3 years, or may include a combination of student learning  
 223 growth data and other measureable student outcomes that are  
 224 specific to the assigned position, provided that the student

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225 learning growth data accounts for not less than 30 percent of  
 226 the evaluation. If less than 3 years of student growth data are  
 227 available, the years for which data are available must be used  
 228 and the percentage of the evaluation based upon student learning  
 229 growth may be reduced to not less than 20 percent.

230 c. For school administrators, the student learning growth  
 231 portion of the evaluation must include growth data for students  
 232 assigned to the school over the course of at least 3 years. If  
 233 less than 3 years of data are available, the years for which  
 234 data are available must be used and the percentage of the  
 235 evaluation based upon student learning growth may be reduced to  
 236 not less than 40 percent.

237 2. Instructional practice. Evaluation criteria used when  
 238 annually observing classroom teachers, as defined in s.  
 239 1012.01(2)(a), excluding substitute teachers, must include  
 240 indicators based upon each of the Florida Educator Accomplished  
 241 Practices adopted by the State Board of Education. For  
 242 instructional personnel who are not classroom teachers,  
 243 evaluation criteria must be based upon indicators of the Florida  
 244 Educator Accomplished Practices and may include specific job  
 245 expectations related to student support.

246 3. Instructional leadership. For school administrators,  
 247 evaluation criteria must include indicators based upon each of  
 248 the leadership standards adopted by the State Board of Education  
 249 pursuant to s. 1012.986, including performance measures related  
 250 to the effectiveness of classroom teachers in the school, the  
 251 administrator's appropriate use of evaluation criteria and  
 252 procedures, recruitment and retention of effective and highly

253 effective classroom teachers, improvement in the percentage of  
 254 instructional personnel evaluated at the highly effective or  
 255 effective level, and other leadership practices that result in  
 256 student learning growth. The system may include a means to give  
 257 parents and instructional personnel an opportunity to provide  
 258 input into the administrator's performance evaluation.

259 4. Professional and job responsibilities. For  
 260 instructional personnel and school administrators, other  
 261 professional and job responsibilities must be included as  
 262 adopted by the State Board of Education. The district school  
 263 board may identify additional professional and job  
 264 responsibilities.

265 ~~2. Ability to maintain appropriate discipline.~~

266 ~~3. Knowledge of subject matter. The district school board~~  
 267 ~~shall make special provisions for evaluating teachers who are~~  
 268 ~~assigned to teach out-of-field.~~

269 ~~4. Ability to plan and deliver instruction and the use of~~  
 270 ~~technology in the classroom.~~

271 ~~5. Ability to evaluate instructional needs.~~

272 ~~6. Ability to establish and maintain a positive~~  
 273 ~~collaborative relationship with students' families to increase~~  
 274 ~~student achievement.~~

275 ~~7. Other professional competencies, responsibilities, and~~  
 276 ~~requirements as established by rules of the State Board of~~  
 277 ~~Education and policies of the district school board.~~

278 (b) All personnel must be fully informed of the criteria  
 279 and procedures associated with the evaluation assessment process  
 280 before the evaluation assessment takes place.

281 (c) The individual responsible for supervising the  
 282 employee must evaluate ~~assess~~ the employee's performance. The  
 283 evaluation system may provide for the evaluator to consider  
 284 input from other personnel trained under paragraph (2)(f). The  
 285 evaluator must submit a written report of the evaluation  
 286 ~~assessment~~ to the district school superintendent for the purpose  
 287 of reviewing the employee's contract. The evaluator must submit  
 288 the written report to the employee no later than 10 days after  
 289 the evaluation ~~assessment~~ takes place. The evaluator must  
 290 discuss the written evaluation report ~~of assessment~~ with the  
 291 employee. The employee shall have the right to initiate a  
 292 written response to the evaluation ~~assessment~~, and the response  
 293 shall become a permanent attachment to his or her personnel  
 294 file.

295 (d) The evaluator may amend an evaluation based upon  
 296 assessment data from the current school year if the data becomes  
 297 available within 90 days after the close of the school year. The  
 298 evaluator must then comply with the procedures set forth in  
 299 paragraph (c).

300 (4) NOTIFICATION OF UNSATISFACTORY PERFORMANCE.—If an  
 301 employee who holds a professional service contract as provided  
 302 in s. 1012.33 is not performing his or her duties in a  
 303 satisfactory manner, the evaluator shall notify the employee in  
 304 writing of such determination. The notice must describe such  
 305 unsatisfactory performance and include notice of the following  
 306 procedural requirements:

307 (a) ~~1.~~ Upon delivery of a notice of unsatisfactory  
 308 performance, the evaluator must confer with the employee who

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309 holds a professional service contract, make recommendations with  
 310 respect to specific areas of unsatisfactory performance, and  
 311 provide assistance in helping to correct deficiencies within a  
 312 prescribed period of time.

313 (b) 1.2.a. ~~If~~ The employee who holds a professional service  
 314 contract ~~as provided in s. 1012.33,~~ the employee shall be placed  
 315 on performance probation and governed by ~~the provisions of this~~  
 316 section for 90 calendar days following the receipt of the notice  
 317 of unsatisfactory performance to demonstrate corrective action.  
 318 School holidays and school vacation periods are not counted when  
 319 calculating the 90-calendar-day period. During the 90 calendar  
 320 days, ~~the employee who holds a professional service contract~~  
 321 must be evaluated periodically and apprised of progress achieved  
 322 and must be provided assistance and inservice training  
 323 opportunities to help correct the noted performance  
 324 deficiencies. At any time during the 90 calendar days, the  
 325 employee who holds a professional service contract may request a  
 326 transfer to another appropriate position with a different  
 327 supervising administrator; however, if a transfer is granted  
 328 pursuant to ss. 1012.27(1) and 1012.28(6), it does not extend  
 329 the period for correcting performance deficiencies.

330 2.b. Within 14 days after the close of the 90 calendar  
 331 days, the evaluator must evaluate ~~assess~~ whether the performance  
 332 deficiencies have been corrected and forward a recommendation to  
 333 the district school superintendent. Within 14 days after  
 334 receiving the evaluator's recommendation, the district school  
 335 superintendent must notify the employee who holds a professional  
 336 service contract in writing whether the performance deficiencies



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337 have been satisfactorily corrected and whether the district  
 338 school superintendent will recommend that the district school  
 339 board continue or terminate his or her employment contract. If  
 340 the employee wishes to contest the district school  
 341 superintendent's recommendation, the employee must, within 15  
 342 days after receipt of the district school superintendent's  
 343 recommendation, submit a written request for a hearing. The  
 344 hearing shall be conducted at the district school board's  
 345 election in accordance with one of the following procedures:

346 a.~~(I)~~ A direct hearing conducted by the district school  
 347 board within 60 days after receipt of the written appeal. The  
 348 hearing shall be conducted in accordance with ~~the provisions of~~  
 349 ss. 120.569 and 120.57. A majority vote of the membership of the  
 350 district school board shall be required to sustain the district  
 351 school superintendent's recommendation. The determination of the  
 352 district school board shall be final as to the sufficiency or  
 353 insufficiency of the grounds for termination of employment; or

354 b.~~(II)~~ A hearing conducted by an administrative law judge  
 355 assigned by the Division of Administrative Hearings of the  
 356 Department of Management Services. The hearing shall be  
 357 conducted within 60 days after receipt of the written appeal in  
 358 accordance with chapter 120. The recommendation of the  
 359 administrative law judge shall be made to the district school  
 360 board. A majority vote of the membership of the district school  
 361 board shall be required to sustain or change the administrative  
 362 law judge's recommendation. The determination of the district  
 363 school board shall be final as to the sufficiency or  
 364 insufficiency of the grounds for termination of employment.

365 (5)(4) ADDITIONAL NOTIFICATIONS.—The district school  
 366 superintendent shall annually notify the department of any  
 367 instructional personnel or school administrators who receive two  
 368 consecutive unsatisfactory evaluations. The district school  
 369 superintendent shall also notify the department of any  
 370 instructional personnel or school administrators ~~and who are~~  
 371 ~~have been~~ given written notice by the district of intent to  
 372 terminate or not renew ~~that~~ their employment ~~is being terminated~~  
 373 ~~or is not being renewed or that the district school board~~  
 374 ~~intends to terminate, or not renew, their employment.~~ The  
 375 department shall conduct an investigation to determine whether  
 376 action shall be taken against the certificateholder pursuant to  
 377 s. 1012.795(1)(c).

378 ~~(5) The district school superintendent shall develop a~~  
 379 ~~mechanism for evaluating the effective use of assessment~~  
 380 ~~criteria and evaluation procedures by administrators who are~~  
 381 ~~assigned responsibility for evaluating the performance of~~  
 382 ~~instructional personnel. The use of the assessment and~~  
 383 ~~evaluation procedures shall be considered as part of the annual~~  
 384 ~~assessment of the administrator's performance. The system must~~  
 385 ~~include a mechanism to give parents and teachers an opportunity~~  
 386 ~~to provide input into the administrator's performance~~  
 387 ~~assessment, when appropriate.~~

388 ~~(6) Nothing in this section shall be construed to grant a~~  
 389 ~~probationary employee a right to continued employment beyond the~~  
 390 ~~term of his or her contract.~~

391 (6)(7) ANNUAL REVIEW OF AND REVISIONS TO THE SCHOOL  
 392 DISTRICT EVALUATION SYSTEMS.—The district school board shall

393 establish a procedure for annually reviewing instructional  
 394 personnel and school administrator evaluation ~~assessment~~ systems  
 395 to determine compliance with this section. All substantial  
 396 revisions to an approved system must be reviewed and approved by  
 397 the district school board before being used to evaluate ~~assess~~  
 398 instructional personnel or school administrators. Upon request  
 399 by a school district, the department shall provide assistance in  
 400 developing, improving, or reviewing an evaluation ~~assessment~~  
 401 system.

402 (7) MEASUREMENT OF STUDENT LEARNING GROWTH.-

403 (a) By June 1, 2011, the Commissioner of Education shall  
 404 approve a formula to measure individual student learning growth  
 405 on the Florida Comprehensive Assessment Test (FCAT) administered  
 406 pursuant to s. 1008.22(3)(c)1. The formula must take into  
 407 consideration each student's prior academic performance. The  
 408 formula must not set different expectations for student learning  
 409 growth based upon a student's gender, race, ethnicity, or  
 410 socioeconomic status. In the development of the formula, the  
 411 commissioner shall consider other factors such as a student's  
 412 attendance record, disability status, or status as an English  
 413 language learner. The commissioner shall select additional  
 414 formulas as appropriate for the remainder of the statewide  
 415 assessments included under s. 1008.22 and continue to select  
 416 formulas as new assessments are implemented in the state system.  
 417 After the commissioner approves the formula to measure  
 418 individual student learning growth on the FCAT and as additional  
 419 formulas are selected by the commissioner for new assessments  
 420 implemented in the state system, the State Board of Education

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421 shall adopt these formulas by rule.

422 (b) Beginning in the 2011-2012 school year, each school  
423 district shall measure student learning growth using the formula  
424 approved by the commissioner under paragraph (a) for courses  
425 associated with the FCAT. Each school district shall implement  
426 the additional student learning growth measures selected by the  
427 commissioner under paragraph (a) for the remainder of the  
428 statewide assessments included under s. 1008.22 as they become  
429 available. Beginning in the 2014-2015 school year, for grades  
430 and subjects not assessed by statewide assessments but otherwise  
431 assessed as required under s. 1008.22(8), each school district  
432 shall measure student learning growth using an equally  
433 appropriate formula. The department shall provide models for  
434 measuring student learning growth which school districts may  
435 adopt.

436 (c) For a course that is not measured by a statewide  
437 assessment, a school district may request, through the  
438 evaluation system approval process, to use a student achievement  
439 measure rather than a student learning growth measure if  
440 achievement is demonstrated to be a more appropriate measure of  
441 classroom teacher performance. A school district may also  
442 request to use a combination of student learning growth and  
443 achievement, if appropriate.

444 (d) If the student learning growth in a course is not  
445 measured by a statewide assessment but is measured by a school  
446 district assessment, a school district may request, through the  
447 evaluation system approval process, that the performance  
448 evaluation for the classroom teacher assigned to that course

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449 | include the learning growth of his or her students on FCAT  
 450 | Reading or FCAT Mathematics. The request must clearly explain  
 451 | the rationale supporting the request. However, the classroom  
 452 | teacher's performance evaluation must give greater weight to  
 453 | student learning growth on the district assessment.

454 | (e) For classroom teachers of courses for which the  
 455 | district has not implemented appropriate assessments under s.  
 456 | 1008.22(8) or for which the school district has not adopted an  
 457 | equally appropriate measure of student learning growth under  
 458 | paragraphs (b)-(d), student learning growth must be measured by  
 459 | the growth in learning of the classroom teacher's students on  
 460 | statewide assessments, or, for courses in which enrolled  
 461 | students do not take the statewide assessments, measurable  
 462 | learning targets must be established based upon the goals of the  
 463 | school improvement plan and approved by the school principal. A  
 464 | district school superintendent may assign to instructional  
 465 | personnel in an instructional team the student learning growth  
 466 | of the instructional team's students on statewide assessments.  
 467 | This paragraph expires July 1, 2015.

468 | (8) RULEMAKING.—The State Board of Education shall adopt  
 469 | rules pursuant to ss. 120.536(1) and 120.54 ~~which, that~~  
 470 | establish uniform ~~procedures~~ guidelines for the submission,  
 471 | review, and approval of district evaluation systems and  
 472 | reporting requirements ~~procedures~~ for the annual evaluation  
 473 | ~~assessment~~ of instructional personnel and school administrators;  
 474 | specific, discrete standards for each performance level required  
 475 | under subsection (2) to ensure clear and sufficient  
 476 | differentiation in the performance levels and to provide

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477 consistency in meaning across school districts; the measurement  
 478 of student learning growth and associated implementation  
 479 procedures required under subsection (7); and a process for  
 480 monitoring school district implementation of evaluation systems  
 481 in accordance with this section ~~that include criteria for~~  
 482 evaluating professional performance. Specifically, the rules  
 483 shall establish a student learning growth standard that, if not  
 484 met, will result in the employee receiving an unsatisfactory  
 485 performance evaluation rating. In like manner, the rules shall  
 486 establish a student learning growth standard that must be met in  
 487 order for an employee to receive a highly effective rating and a  
 488 student learning growth standard that must be met in order for  
 489 an employee to receive an effective rating.

490 Section 3. Subsection (8) of section 1008.22, Florida  
 491 Statutes, is amended to read:

492 1008.22 Student assessment program for public schools.—

493 (8) LOCAL ASSESSMENTS.—

494 (a) Measurement of the learning gains of students in all  
 495 subjects and grade levels other than subjects and grade levels  
 496 required for the state student achievement testing program is  
 497 the responsibility of the school districts.

498 (b) Beginning with the 2014-2015 school year, each school  
 499 district shall administer for each course offered in the  
 500 district a student assessment that measures mastery of the  
 501 content, as described in the state-adopted course description,  
 502 at the necessary level of rigor for the course. Such assessments  
 503 may include:

504 1. Statewide assessments.

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505 2. Other standardized assessments, including nationally  
 506 recognized standardized assessments.

507 3. Industry certification examinations.

508 4. District-developed or district-selected end-of-course  
 509 assessments.

510 (c) The Commissioner of Education shall identify methods  
 511 to assist and support districts in the development and  
 512 acquisition of assessments required under this subsection.

513 Methods may include developing item banks, facilitating the  
 514 sharing of developed tests among school districts, acquiring  
 515 assessments from state and national curriculum-area  
 516 organizations, and providing technical assistance in best  
 517 professional practices of test development based upon state-  
 518 adopted curriculum standards, administration, and security.

519 Section 4. Paragraphs (c) and (e) of subsection (1) of  
 520 section 1012.22, Florida Statutes, are amended to read:

521 1012.22 Public school personnel; powers and duties of the  
 522 district school board.—The district school board shall:

523 (1) Designate positions to be filled, prescribe  
 524 qualifications for those positions, and provide for the  
 525 appointment, compensation, promotion, suspension, and dismissal  
 526 of employees as follows, subject to the requirements of this  
 527 chapter:

528 (c) Compensation and salary schedules.—

529 1. Definitions.—As used in this paragraph:

530 a. "Adjustment" means an addition to the base salary  
 531 schedule that is not a bonus and becomes part of the employee's  
 532 permanent base salary and shall be considered compensation under

533 | s. 121.021(22).  
 534 |       b. "Grandfathered salary schedule" means the salary  
 535 | schedule or schedules adopted by a district school board before  
 536 | July 1, 2014, pursuant to subparagraph 4.  
 537 |       c. "Instructional personnel" means instructional personnel  
 538 | as defined in s. 1012.01(2)(a)-(d), excluding substitute  
 539 | teachers.  
 540 |       d. "Performance salary schedule" means the salary schedule  
 541 | or schedules adopted by a district school board pursuant to  
 542 | subparagraph 5.  
 543 |       e. "Salary schedule" means the schedule or schedules used  
 544 | to provide the base salary for district school board personnel.  
 545 |       f. "School administrator" means a school administrator as  
 546 | defined in s. 1012.01(3)(c).  
 547 |       g. "Supplement" means an annual addition to the base  
 548 | salary for the term of the negotiated supplement as long as the  
 549 | employee continues his or her employment for the purpose of the  
 550 | supplement. A supplement does not become part of the employee's  
 551 | continuing base salary but shall be considered compensation  
 552 | under s. 121.021(22).  
 553 |       2. Cost-of-living adjustment.—A district school board may  
 554 | provide a cost-of-living salary adjustment if the adjustment:  
 555 |       a. Does not discriminate among comparable classes of  
 556 | employees based upon the salary schedule under which they are  
 557 | compensated.  
 558 |       b. Does not exceed 50 percent of the annual adjustment  
 559 | provided to instructional personnel rated as effective.  
 560 |       3. Advanced degrees.—Beginning with instructional



561 personnel hired on or after July 1, 2011, a district school  
 562 board may not use advanced degrees in setting a salary schedule  
 563 for instructional personnel but may provide a supplement for  
 564 advanced degrees as follows:

565 a. For classroom teachers, as defined in s. 1012.01(2)(a),  
 566 excluding substitute teachers, the advanced degree must be in  
 567 the specific subject area in which the teacher is certified and  
 568 teaching.

569 b. For instructional personnel who are not classroom  
 570 teachers, the advanced degree must directly relate to the  
 571 specific job assignment.

572 4. Grandfathered salary schedule.-

573 a. The district school board shall adopt a salary schedule  
 574 or salary schedules to be used as the basis for paying all  
 575 school employees hired before July 1, 2014. Instructional  
 576 personnel on annual contract as of July 1, 2014, shall be placed  
 577 on the performance salary schedule adopted under subparagraph 5.  
 578 Instructional personnel on continuing contract or professional  
 579 service contract may opt into the performance salary schedule if  
 580 the employee relinquishes such contract and agrees to be  
 581 employed on an annual contract under s. 1012.335. Such an  
 582 employee shall be placed on the performance salary schedule and  
 583 may not return to continuing contract or professional service  
 584 contract status. Any employee who opts into the performance  
 585 salary schedule may not return to the grandfathered salary  
 586 schedule.

587 b. In determining the grandfathered salary schedule for  
 588 instructional personnel, a district school board must base a

589 portion of each employee's compensation upon performance  
 590 demonstrated under s. 1012.34 and shall provide differentiated  
 591 pay for both instructional personnel and school administrators  
 592 based upon district-determined factors, including, but not  
 593 limited to, additional responsibilities, school demographics,  
 594 critical shortage areas, and level of job performance  
 595 difficulties.

596 5. Performance salary schedule.—By July 1, 2014, the  
 597 district school board shall adopt a performance salary schedule  
 598 that provides annual salary adjustments for instructional  
 599 personnel and school administrators based upon performance  
 600 determined under s. 1012.34. Employees hired on or after July 1,  
 601 2014, or employees who choose to move from the grandfathered  
 602 salary schedule to the performance salary schedule shall be  
 603 compensated pursuant to the performance salary schedule once  
 604 they have received the appropriate performance evaluation for  
 605 this purpose. However, a classroom teacher whose performance  
 606 evaluation utilizes student learning growth measures established  
 607 under s. 1012.34(7)(e) shall remain under the grandfathered  
 608 salary schedule until his or her teaching assignment changes to  
 609 a subject with an assessment or the school district establishes  
 610 equally appropriate measures of student learning growth as  
 611 defined under s. 1012.34 and rules of the State Board of  
 612 Education.

613 a. Base salary.—The base salary shall be established as  
 614 follows:

615 (I) The base salary for instructional personnel or school  
 616 administrators who opt into the performance salary schedule

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617 shall be the salary paid in the prior year, including  
 618 adjustments only.

619 (II) Beginning July 1, 2014, instructional personnel or  
 620 school administrators new to the district, returning to the  
 621 district after a break in service without an authorized leave of  
 622 absence, or appointed for the first time to a position in the  
 623 district in the capacity of instructional personnel or school  
 624 administrator shall be placed on the performance salary  
 625 schedule.

626 b. Salary adjustments.—Salary adjustments for highly  
 627 effective or effective performance shall be established as  
 628 follows:

629 (I) The annual salary adjustment under the performance  
 630 salary schedule for an employee rated as highly effective must  
 631 be greater than the highest annual salary adjustment available  
 632 to an employee of the same classification through any other  
 633 salary schedule adopted by the district.

634 (II) The annual salary adjustment under the performance  
 635 salary schedule for an employee rated as effective must be equal  
 636 to at least 50 percent and no more than 75 percent of the annual  
 637 adjustment provided for a highly effective employee of the same  
 638 classification.

639 (III) The performance salary schedule shall not provide an  
 640 annual salary adjustment for an employee who receives a rating  
 641 other than highly effective or effective for the year.

642 c. Salary supplements.—In addition to the salary  
 643 adjustments, each district school board shall provide for salary  
 644 supplements for activities which must include, but are not

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645 limited to:

646 (I) Assignment to a Title I eligible school.

647 (II) Assignment to a school in the bottom two categories  
 648 of the school improvement system under s. 1008.33 such that the  
 649 supplement remains in force for at least 1 year following  
 650 improved performance in that school.

651 (III) Certification and teaching in critical teacher  
 652 shortage areas. Statewide critical teacher shortage areas shall  
 653 be identified by the State Board of Education pursuant to s.  
 654 1012.07. However, the district school board may identify other  
 655 areas of critical shortage within the school district for  
 656 purposes of this sub-sub-subparagraph and may remove areas  
 657 identified by the state board that do not apply within the  
 658 school district.

659 (IV) Assignment of additional academic responsibilities.

660

661 If budget constraints in any given year limit a district school  
 662 board's ability to fully fund all adopted salary schedules, the  
 663 performance salary schedule shall not be reduced, on the basis  
 664 of either total cost or the value of individual awards, in a  
 665 manner that is proportionally greater than reductions to any  
 666 other salary schedules adopted by the district. ~~The district~~  
 667 ~~school board shall adopt a salary schedule or salary schedules~~  
 668 ~~designed to furnish incentives for improvement in training and~~  
 669 ~~for continued efficient service to be used as a basis for paying~~  
 670 ~~all school employees and fix and authorize the compensation of~~  
 671 ~~school employees on the basis thereof.~~

672 ~~2. A district school board, in determining the salary~~

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673 ~~schedule for instructional personnel, must base a portion of~~  
 674 ~~each employee's compensation on performance demonstrated under~~  
 675 ~~s. 1012.34, must consider the prior teaching experience of a~~  
 676 ~~person who has been designated state teacher of the year by any~~  
 677 ~~state in the United States, and must consider prior professional~~  
 678 ~~experience in the field of education gained in positions in~~  
 679 ~~addition to district level instructional and administrative~~  
 680 ~~positions.~~

681 ~~3. In developing the salary schedule, the district school~~  
 682 ~~board shall seek input from parents, teachers, and~~  
 683 ~~representatives of the business community.~~

684 ~~4. Beginning with the 2007-2008 academic year, each~~  
 685 ~~district school board shall adopt a salary schedule with~~  
 686 ~~differentiated pay for both instructional personnel and school-~~  
 687 ~~based administrators. The salary schedule is subject to~~  
 688 ~~negotiation as provided in chapter 447 and must allow~~  
 689 ~~differentiated pay based on district determined factors,~~  
 690 ~~including, but not limited to, additional responsibilities,~~  
 691 ~~school demographics, critical shortage areas, and level of job~~  
 692 ~~performance difficulties.~~

693 (e) Transfer and promotion.—The district school board  
 694 shall act on recommendations of the district school  
 695 superintendent regarding transfer and promotion of any employee.  
 696 The district school superintendent's primary consideration in  
 697 recommending an individual for a promotion must be the  
 698 individual's demonstrated effectiveness under s. 1012.34.

699 Section 5. Section 1012.335, Florida Statutes, is created  
 700 to read:

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701 1012.335 Contracts with instructional personnel hired on  
 702 or after July 1, 2011.-

703 (1) DEFINITIONS.-As used in this section, the term:

704 (a) "Annual contract" means an employment contract for a  
 705 period of no longer than 1 school year which the district school  
 706 board may choose to award or not award without cause.

707 (b) "Instructional personnel" means instructional  
 708 personnel as defined in s. 1012.01(2)(a)-(d), excluding  
 709 substitute teachers.

710 (c) "Probationary contract" means an employment contract  
 711 for a period of 1 school year awarded to instructional personnel  
 712 upon initial employment in a school district. Probationary  
 713 contract employees may be dismissed without cause or may resign  
 714 without breach of contract. A district school board may not  
 715 award a probationary contract more than once to the same  
 716 employee unless the employee was rehired after a break in  
 717 service for which an authorized leave of absence was not  
 718 granted. A probationary contract shall be awarded regardless of  
 719 previous employment in another school district or state.

720 (2) EMPLOYMENT.-

721 (a) Beginning July 1, 2011, each individual newly hired as  
 722 instructional personnel by the district school board shall be  
 723 awarded a probationary contract. Upon successful completion of  
 724 the probationary contract, the district school board may award  
 725 an annual contract pursuant to paragraph (c).

726 (b) Beginning July 1, 2011, an annual contract may be  
 727 awarded pursuant to paragraph (c) for instructional personnel  
 728 who have successfully completed a probationary contract with the

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729 district school board and have received one or more annual  
 730 contracts from the district school board.

731 (c) An annual contract may be awarded only if the  
 732 employee:

733 1. Holds an active professional certificate or temporary  
 734 certificate issued pursuant to s. 1012.56 and rules of the State  
 735 Board of Education.

736 2. Has been recommended by the district school  
 737 superintendent for the annual contract based upon the  
 738 individual's evaluation under s. 1012.34 and approved by the  
 739 district school board.

740 ~~3. Has not received two consecutive annual performance~~  
 741 evaluation ratings of unsatisfactory, two annual performance  
 742 evaluation ratings of unsatisfactory within a 3-year period, or  
 743 three consecutive annual performance evaluation ratings of needs  
 744 improvement or a combination of needs improvement and  
 745 unsatisfactory under s. 1012.34.

746 (3) VIOLATION OF ANNUAL CONTRACT.—Instructional personnel  
 747 who accept a written offer from the district school board and  
 748 who leave their positions without prior release from the  
 749 district school board are subject to the jurisdiction of the  
 750 Education Practices Commission.

751 (4) SUSPENSION OR DISMISSAL OF INSTRUCTIONAL PERSONNEL ON  
 752 ANNUAL CONTRACT.—Any instructional personnel with an annual  
 753 contract may be suspended or dismissed at any time during the  
 754 term of the contract for just cause as provided in subsection  
 755 (5). The district school board shall notify the employee in  
 756 writing whenever charges are made and may suspend such person

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757 without pay. However, if the charges are not sustained, the  
 758 employee shall be immediately reinstated and his or her back pay  
 759 shall be paid. If the employee wishes to contest the charges, he  
 760 or she must, within 15 days after receipt of the written notice,  
 761 submit a written request for a hearing to the district school  
 762 board. A direct hearing shall be conducted by the district  
 763 school board or a subcommittee thereof within 60 days after  
 764 receipt of the written appeal. The hearing shall be conducted in  
 765 accordance with ss. 120.569 and 120.57. A majority vote of the  
 766 membership of the district school board shall be required to  
 767 sustain the district school superintendent's recommendation. The  
 768 district school board's determination is final as to the  
 769 sufficiency or insufficiency of the grounds for suspension  
 770 without pay or dismissal. Any such decision adverse to the  
 771 employee may be appealed by the employee pursuant to s. 120.68.

772 (5) JUST CAUSE.—The State Board of Education shall adopt  
 773 rules pursuant to ss. 120.536(1) and 120.54 to define the term  
 774 "just cause." Just cause includes, but is not limited to:

- 775 (a) Immorality.
- 776 (b) Misconduct in office.
- 777 (c) Incompetency.
- 778 (d) Gross insubordination.
- 779 (e) Willful neglect of duty.
- 780 (f) Being convicted or found guilty of, or entering a plea  
 781 of guilty to, regardless of adjudication of guilt, any crime  
 782 involving moral turpitude.

783 (6) LIMITATION.—An individual newly hired as instructional  
 784 personnel by a school district in this state under this section



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785 is ineligible for any contract issued under s. 1012.33.

786 Section 6. Paragraph (b) of subsection (16) of section  
787 1002.33, Florida Statutes, is amended to read:

788 1002.33 Charter schools.—

789 (16) EXEMPTION FROM STATUTES.—

790 (b) Additionally, a charter school shall be in compliance  
791 with the following statutes:

792 1. Section 286.011, relating to public meetings and  
793 records, public inspection, and criminal and civil penalties.

794 2. Chapter 119, relating to public records.

795 3. Section 1003.03, relating to the maximum class size,  
796 ~~except that the calculation for compliance pursuant to s.~~  
797 1003.03 shall be the average at the school level.

798 4. Section 1012.22(1)(c), relating to compensation and  
799 salary schedules.

800 5. Section 1012.33(5), relating to workforce reductions.

801 6. Section 1012.335, relating to contracts with  
802 instructional personnel hired on or after July 1, 2011.

803 7. Section 1012.34, relating to the substantive  
804 requirements for performance evaluations for instructional  
805 personnel and school administrators.

806 Section 7. Paragraph (h) of subsection (2) of section  
807 1003.621, Florida Statutes, is amended to read:

808 1003.621 Academically high-performing school districts.—It  
809 is the intent of the Legislature to recognize and reward school  
810 districts that demonstrate the ability to consistently maintain  
811 or improve their high-performing status. The purpose of this  
812 section is to provide high-performing school districts with

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813 flexibility in meeting the specific requirements in statute and  
 814 rules of the State Board of Education.

815 (2) COMPLIANCE WITH STATUTES AND RULES.—Each academically  
 816 high-performing school district shall comply with all of the  
 817 provisions in chapters 1000-1013, and rules of the State Board  
 818 of Education which implement these provisions, pertaining to the  
 819 following:

820 (h) Sections 1012.22(1)(c) and 1012.27(2), relating to  
 821 public school personnel compensation and salary schedules; s.  
 822 1012.34, relating to personnel evaluation procedures and  
 823 criteria; and ss. 1012.33 and 1012.335, relating to contracts  
 824 with instructional personnel, staff, supervisors, and school  
 825 administrators differentiated pay and performance pay policies  
 826 for school administrators and instructional personnel.  
 827 ~~Professional service contracts are subject to the provisions of~~  
 828 ~~ss. 1012.33 and 1012.34.~~

829 Section 8. Subsection (4) of section 1006.09, Florida  
 830 Statutes, is amended to read:

831 1006.09 Duties of school principal relating to student  
 832 discipline and school safety.—

833 (4) When a student has been the victim of a violent crime  
 834 perpetrated by another student who attends the same school, the  
 835 school principal shall make full and effective use of ~~the~~  
 836 ~~provisions of~~ subsection (2) and s. 1006.13(6). A school  
 837 principal who fails to comply with this subsection shall be  
 838 ineligible for any portion of the performance pay ~~policy~~  
 839 ~~incentive~~ or the differentiated pay under s. 1012.22. However,  
 840 if any party responsible for notification fails to properly

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841 | notify the school, the school principal shall be eligible for  
 842 | the performance pay incentive or differentiated pay.

843 | Section 9. Section 1012.07, Florida Statutes, is amended  
 844 | to read:

845 | 1012.07 Identification of critical teacher shortage  
 846 | areas.-

847 | ~~(1) As used in ss. 1009.57, 1009.58, and 1009.59, The term~~  
 848 | "critical teacher shortage area" means high-need content areas  
 849 | ~~applies to mathematics, science, career education, and high-~~  
 850 | priority high priority location areas identified by the State  
 851 | Board of Education ~~may identify career education programs having~~  
 852 | ~~critical teacher shortages~~. The State Board of Education shall  
 853 | adopt rules pursuant to ss. 120.536(1) and 120.54 necessary to  
 854 | annually identify ~~other~~ critical teacher shortage areas ~~and high~~  
 855 | ~~priority location areas~~. The state board must ~~shall~~ also  
 856 | consider current and emerging educational requirements and  
 857 | workforce demands ~~teacher characteristics such as ethnic~~  
 858 | ~~background, race, and sex~~ in determining critical teacher  
 859 | shortage areas. School grade levels may also be designated  
 860 | critical teacher shortage areas. Individual district school  
 861 | boards may identify and submit other critical teacher shortage  
 862 | areas. Such submissions ~~shortages~~ must be aligned to current and  
 863 | emerging educational requirements and workforce demands in order  
 864 | to be certified to ~~and~~ approved by the State Board of Education.  
 865 | High-priority High priority location areas shall be in high-  
 866 | density, low-economic urban schools, ~~and~~ low-density, low-  
 867 | economic rural schools, and schools identified as lowest  
 868 | performing under s. 1008.33(4)(b) ~~shall include schools which~~

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869 ~~meet criteria which include, but are not limited to, the~~  
 870 ~~percentage of free lunches, the percentage of students under~~  
 871 ~~Chapter I of the Education Consolidation and Improvement Act of~~  
 872 ~~1981, and the faculty attrition rate.~~

873 ~~(2) This section shall be implemented only to the extent~~  
 874 ~~as specifically funded and authorized by law.~~

875 Section 10. Subsection (5) of section 1012.2315, Florida  
 876 Statutes, is amended to read:

877 1012.2315 Assignment of teachers.—

878 (5) REPORT.—

879 (a) Beginning July 1, 2012, the Department of Education  
 880 shall annually report on its website, in a manner that is  
 881 accessible to the public, the performance rating data reported  
 882 by district school boards under s. 1012.34. The report must  
 883 include the percentage of classroom teachers, instructional  
 884 personnel, and school administrators receiving each performance  
 885 rating aggregated by school district and by school.

886 (b) Notwithstanding the provisions of s. 1012.31(3)(a)2.,  
 887 each school district shall annually report to a parent the fact  
 888 that his or her child has been assigned to a classroom teacher  
 889 or school administrator having two consecutive annual  
 890 performance evaluation ratings of unsatisfactory under s.  
 891 1012.34, two annual performance evaluation ratings of  
 892 unsatisfactory within a 3-year period under s. 1012.34, or three  
 893 consecutive annual performance evaluation ratings of needs  
 894 improvement or a combination of needs improvement and  
 895 unsatisfactory under s. 1012.34. Schools graded "D" or "F" shall  
 896 annually report their teacher retention rate. Included in this

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897 ~~report shall be reasons listed for leaving by each teacher who~~  
 898 ~~left the school for any reason.~~

899 Section 11. Subsections (1) and (2) of section 1012.27,  
 900 Florida Statutes, are amended to read:

901 1012.27 Public school personnel; powers and duties of  
 902 district school superintendent.—The district school  
 903 superintendent is responsible for directing the work of the  
 904 personnel, subject to the requirements of this chapter, and in  
 905 addition the district school superintendent shall perform the  
 906 following:

907 (1) POSITIONS, QUALIFICATIONS, AND NOMINATIONS.—

908 ~~(a) Recommend to the district school board duties and~~  
 909 responsibilities which need to be performed and positions which  
 910 need to be filled to make possible the development of an  
 911 adequate school program in the district.

912 (b) Recommend minimum qualifications of personnel for  
 913 these various positions, and nominate in writing persons to fill  
 914 such positions.

915  
 916 The district school superintendent's recommendations for filling  
 917 instructional positions at the school level must consider  
 918 nominations received from school principals of the respective  
 919 schools. Before transferring a teacher who holds a professional  
 920 teaching certificate from one school to another, the district  
 921 school superintendent shall consult with the principal of the  
 922 receiving school and allow the principal to review the teacher's  
 923 records, including student performance demonstrated under s.  
 924 1012.34, and interview the teacher. If, in the judgment of the

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925 principal, students would not benefit from the placement, an  
 926 alternative placement may be sought. A principal may refuse the  
 927 placement in accordance with s. 1012.28(6).

928 (2) COMPENSATION AND SALARY SCHEDULES.—Prepare and  
 929 recommend to the district school board for adoption a salary  
 930 schedule or salary schedules in accordance with s. 1012.22. ~~The~~  
 931 ~~district school superintendent must recommend a salary schedule~~  
 932 ~~for instructional personnel which bases a portion of each~~  
 933 ~~employee's compensation on performance demonstrated under s.~~  
 934 ~~1012.34. In developing the recommended salary schedule, the~~  
 935 ~~district school superintendent shall include input from parents,~~  
 936 ~~teachers, and representatives of the business community.~~  
 937 ~~Beginning with the 2007-2008 academic year, the recommended~~  
 938 ~~salary schedule for classroom teachers shall be consistent with~~  
 939 ~~the district's differentiated pay policy based upon s. 1012.22.~~

940 Section 12. Subsection (3) of section 1012.28, Florida  
 941 Statutes, is amended, present subsection (6) is renumbered as  
 942 subsection (7) and amended, and a new subsection (6) is added to  
 943 that section, to read:

944 1012.28 Public school personnel; duties of school  
 945 principals.—

946 (3) Each school principal is responsible for the  
 947 performance of all personnel employed by the district school  
 948 board and assigned to the school to which the principal is  
 949 assigned. The school principal shall faithfully and effectively  
 950 apply the personnel evaluation ~~assessment~~ system approved ~~by the~~  
 951 ~~district school board~~ pursuant to s. 1012.34.

952 (6) A principal may refuse to accept the placement or

953 transfer of instructional personnel by the district school  
 954 superintendent to his or her school unless the instructional  
 955 personnel has a performance rating of effective or highly  
 956 effective under s. 1012.34.

957 ~~(7)(6)~~ A school principal who fails to comply with this  
 958 section shall be ineligible for any portion of the performance  
 959 pay ~~policy incentive~~ and differentiated pay under s. 1012.22.

960 Section 13. Paragraph (a) of subsection (1) and  
 961 subsections (3) and (5) of section 1012.33, Florida Statutes,  
 962 are amended to read:

963 1012.33 Contracts with instructional staff, supervisors,  
 964 and school principals.

965 (1) (a) Each person employed as a member of the  
 966 instructional staff in any district school system shall be  
 967 properly certified pursuant to s. 1012.56 or s. 1012.57 or  
 968 employed pursuant to s. 1012.39 and shall be entitled to and  
 969 shall receive a written contract as specified in this section.  
 970 All such contracts, except continuing contracts as specified in  
 971 subsection (4), shall contain provisions for dismissal during  
 972 the term of the contract only for just cause. Just cause  
 973 includes, but is not limited to, the following instances, as  
 974 defined by rule of the State Board of Education: immorality,  
 975 misconduct in office, incompetency, two consecutive annual  
 976 performance evaluation ratings of unsatisfactory under s.  
 977 1012.34, two annual performance evaluation ratings of  
 978 unsatisfactory within a 3-year period under s. 1012.34, three  
 979 consecutive annual performance evaluation ratings of needs  
 980 improvement or a combination of needs improvement and

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981 unsatisfactory under s. 1012.34, gross insubordination, willful  
 982 neglect of duty, or being convicted or found guilty of, or  
 983 entering a plea of guilty to, regardless of adjudication of  
 984 guilt, any crime involving moral turpitude.

985 (3) (a) Each district school board shall provide a  
 986 professional service contract as prescribed herein. Each member  
 987 of the instructional staff who completed the following  
 988 requirements prior to July 1, 1984, shall be entitled to and  
 989 shall be issued a continuing contract in the form prescribed by  
 990 rules of the state board pursuant to s. 231.36, Florida Statutes  
 991 (1981). Each member of the instructional staff who completes the  
 992 following requirements on or after July 1, 1984, shall be  
 993 entitled to and shall be issued a professional service contract  
 994 in the form prescribed by rules of the state board as provided  
 995 herein:

996 1. The member must hold a professional certificate as  
 997 prescribed by s. 1012.56 and rules of the State Board of  
 998 Education.

999 2. The member must have completed 3 years of probationary  
 1000 service in the district during a period not in excess of 5  
 1001 successive years, except for leave duly authorized and granted.

1002 3. The member must have been recommended by the district  
 1003 school superintendent for such contract and reappointed by the  
 1004 district school board based on successful performance of duties  
 1005 and demonstration of professional competence.

1006 4. For any person newly employed as a member of the  
 1007 instructional staff after June 30, 1997, the initial annual  
 1008 contract shall include a 97-day probationary period during which



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1009 time the employee's contract may be terminated without cause or  
 1010 the employee may resign without breach of contract.

1011 (b) The professional service contract shall be effective  
 1012 at the beginning of the school fiscal year following the  
 1013 completion of all requirements therefor.

1014 (c) The period of service provided herein may be extended  
 1015 to 4 years when prescribed by the district school board and  
 1016 agreed to in writing by the employee at the time of  
 1017 reappointment.

1018 ~~(d) A district school board may issue a continuing~~  
 1019 ~~contract prior to July 1, 1984, and may issue a professional~~  
 1020 ~~service contract subsequent to July 1, 1984, to any employee who~~  
 1021 ~~has previously held a professional service contract or~~  
 1022 ~~continuing contract in the same or another district within this~~  
 1023 ~~state. Any employee who holds a continuing contract may, but is~~  
 1024 ~~not required to, exchange such continuing contract for a~~  
 1025 ~~professional service contract in the same district.~~

1026 ~~(d)~~~~(e)~~ A professional service contract shall be renewed  
 1027 each year unless:

1028 1. The district school superintendent, after receiving the  
 1029 recommendations required by s. 1012.34, charges the employee  
 1030 with unsatisfactory performance and notifies the employee of  
 1031 performance deficiencies as required by s. 1012.34; or

1032 2. The employee receives two consecutive annual  
 1033 performance evaluation ratings of unsatisfactory under s.  
 1034 1012.34, two annual performance evaluation ratings of  
 1035 unsatisfactory within a 3-year period under s. 1012.34, or three  
 1036 consecutive annual performance evaluation ratings of needs

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1037 improvement or a combination of needs improvement and  
 1038 unsatisfactory under s. 1012.34. ~~An employee who holds a~~  
 1039 ~~professional service contract on July 1, 1997, is subject to the~~  
 1040 ~~procedures set forth in paragraph (f) during the term of the~~  
 1041 ~~existing professional service contract. The employee is subject~~  
 1042 ~~to the procedures set forth in s. 1012.34(3)(d) upon the next~~  
 1043 ~~renewal of the professional service contract; however, if the~~  
 1044 ~~employee is notified of performance deficiencies before the next~~  
 1045 ~~contract renewal date, the procedures of s. 1012.34(3)(d) do not~~  
 1046 ~~apply until the procedures set forth in paragraph (f) have been~~  
 1047 ~~exhausted and the professional service contract is subsequently~~  
 1048 ~~renewed.~~

1049 ~~(f) The district school superintendent shall notify an~~  
 1050 ~~employee who holds a professional service contract on July 1,~~  
 1051 ~~1997, in writing, no later than 6 weeks prior to the end of the~~  
 1052 ~~postschool conference period, of performance deficiencies which~~  
 1053 ~~may result in termination of employment, if not corrected during~~  
 1054 ~~the subsequent year of employment (which shall be granted for an~~  
 1055 ~~additional year in accordance with the provisions in subsection~~  
 1056 ~~(1)). Except as otherwise hereinafter provided, this action~~  
 1057 ~~shall not be subject to the provisions of chapter 120, but the~~  
 1058 ~~following procedures shall apply:~~

1059 ~~1. On receiving notice of unsatisfactory performance, the~~  
 1060 ~~employee, on request, shall be accorded an opportunity to meet~~  
 1061 ~~with the district school superintendent, or his or her designee,~~  
 1062 ~~for an informal review of the determination of unsatisfactory~~  
 1063 ~~performance.~~

1064 ~~2. An employee notified of unsatisfactory performance may~~

1065 ~~request an opportunity to be considered for a transfer to~~  
 1066 ~~another appropriate position, with a different supervising~~  
 1067 ~~administrator, for the subsequent year of employment. If the~~  
 1068 ~~request for the transfer is granted, the district school~~  
 1069 ~~superintendent shall annually report to the department the total~~  
 1070 ~~number of employees transferred pursuant to this subparagraph,~~  
 1071 ~~where they were transferred, and what, if any, remediation was~~  
 1072 ~~implemented to remediate the unsatisfactory performance.~~

1073 ~~3. During the subsequent year, the employee shall be~~  
 1074 ~~provided assistance and inservice training opportunities to help~~  
 1075 ~~correct the noted performance deficiencies. The employee shall~~  
 1076 ~~also be evaluated periodically so that he or she will be kept~~  
 1077 ~~apprised of progress achieved.~~

1078 ~~4. Not later than 6 weeks prior to the close of the~~  
 1079 ~~postschool conference period of the subsequent year, the~~  
 1080 ~~district school superintendent, after receiving and reviewing~~  
 1081 ~~the recommendation required by s. 1012.34, shall notify the~~  
 1082 ~~employee, in writing, whether the performance deficiencies have~~  
 1083 ~~been corrected. If so, a new professional service contract shall~~  
 1084 ~~be issued to the employee. If the performance deficiencies have~~  
 1085 ~~not been corrected, the district school superintendent may~~  
 1086 ~~notify the district school board and the employee, in writing,~~  
 1087 ~~that the employee shall not be issued a new professional service~~  
 1088 ~~contract; however, if the recommendation of the district school~~  
 1089 ~~superintendent is not to issue a new professional service~~  
 1090 ~~contract, and if the employee wishes to contest such~~  
 1091 ~~recommendation, the employee will have 15 days from receipt of~~  
 1092 ~~the district school superintendent's recommendation to demand,~~

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1093 ~~in writing, a hearing. In such hearing, the employee may raise~~  
 1094 ~~as an issue, among other things, the sufficiency of the district~~  
 1095 ~~school superintendent's charges of unsatisfactory performance.~~  
 1096 ~~Such hearing shall be conducted at the district school board's~~  
 1097 ~~election in accordance with one of the following procedures:~~

1098 ~~a. A direct hearing conducted by the district school board~~  
 1099 ~~within 60 days of receipt of the written appeal. The hearing~~  
 1100 ~~shall be conducted in accordance with the provisions of ss.~~  
 1101 ~~120.569 and 120.57. A majority vote of the membership of the~~  
 1102 ~~district school board shall be required to sustain the district~~  
 1103 ~~school superintendent's recommendation. The determination of the~~  
 1104 ~~district school board shall be final as to the sufficiency or~~  
 1105 ~~insufficiency of the grounds for termination of employment; or~~

1106 ~~b. A hearing conducted by an administrative law judge~~  
 1107 ~~assigned by the Division of Administrative Hearings of the~~  
 1108 ~~Department of Management Services. The hearing shall be~~  
 1109 ~~conducted within 60 days of receipt of the written appeal in~~  
 1110 ~~accordance with chapter 120. The recommendation of the~~  
 1111 ~~administrative law judge shall be made to the district school~~  
 1112 ~~board. A majority vote of the membership of the district school~~  
 1113 ~~board shall be required to sustain or change the administrative~~  
 1114 ~~law judge's recommendation. The determination of the district~~  
 1115 ~~school board shall be final as to the sufficiency or~~  
 1116 ~~insufficiency of the grounds for termination of employment.~~

1117 ~~(g) Beginning July 1, 2001, for each employee who enters~~  
 1118 ~~into a written contract, pursuant to this section, in a school~~  
 1119 ~~district in which the employee was not employed as of June 30,~~  
 1120 ~~2001, or was employed as of June 30, 2001, but has since broken~~

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1121 ~~employment with that district for 1 school year or more, for~~  
 1122 ~~purposes of pay, a district school board must recognize and~~  
 1123 ~~accept each year of full-time public school teaching service~~  
 1124 ~~earned in the State of Florida for which the employee received a~~  
 1125 ~~satisfactory performance evaluation; however, an employee may~~  
 1126 ~~voluntarily waive this provision. Instructional personnel~~  
 1127 ~~employed pursuant to s. 121.091(9)(b) and (c) are exempt from~~  
 1128 ~~the provisions of this paragraph.~~

1129       (5) If workforce reduction is needed, a district school  
 1130 board must retain employees at a school or in the school  
 1131 district based upon educational program needs and the  
 1132 performance evaluations of employees within the affected program  
 1133 areas. Within the program areas requiring reduction, the  
 1134 employee with the lowest performance evaluations must be the  
 1135 first to be released; the employee with the next lowest  
 1136 performance evaluations must be the second to be released; and  
 1137 reductions shall continue in like manner until the needed number  
 1138 of reductions has occurred. A district school board may not  
 1139 prioritize retention of employees based upon seniority. Should a  
 1140 ~~district school board have to choose from among its personnel~~  
 1141 ~~who are on continuing contracts or professional service~~  
 1142 ~~contracts as to which should be retained, such decisions shall~~  
 1143 ~~be made pursuant to the terms of a collectively bargained~~  
 1144 ~~agreement, when one exists. If no such agreement exists, the~~  
 1145 ~~district school board shall prescribe rules to handle reductions~~  
 1146 ~~in workforce.~~

1147       Section 14. Section 1012.52, Florida Statutes, is  
 1148 repealed.

1149 Section 15. Paragraph (h) of subsection (1) of section  
 1150 1012.795, Florida Statutes, is amended to read:

1151 1012.795 Education Practices Commission; authority to  
 1152 discipline.-

1153 (1) The Education Practices Commission may suspend the  
 1154 educator certificate of any person as defined in s. 1012.01(2)  
 1155 or (3) for up to 5 years, thereby denying that person the right  
 1156 to teach or otherwise be employed by a district school board or  
 1157 public school in any capacity requiring direct contact with  
 1158 students for that period of time, after which the holder may  
 1159 return to teaching as provided in subsection (4); may revoke the  
 1160 educator certificate of any person, thereby denying that person  
 1161 the right to teach or otherwise be employed by a district school  
 1162 board or public school in any capacity requiring direct contact  
 1163 with students for up to 10 years, with reinstatement subject to  
 1164 the provisions of subsection (4); may revoke permanently the  
 1165 educator certificate of any person thereby denying that person  
 1166 the right to teach or otherwise be employed by a district school  
 1167 board or public school in any capacity requiring direct contact  
 1168 with students; may suspend the educator certificate, upon an  
 1169 order of the court or notice by the Department of Revenue  
 1170 relating to the payment of child support; or may impose any  
 1171 other penalty provided by law, if the person:

1172 (h) Has breached a contract, as provided in s. 1012.33(2)  
 1173 or s. 1012.335.

1174 Section 16. (1) Notwithstanding any other provision of  
 1175 this act, a school district that received an exemption under  
 1176 Florida's Race to the Top Memorandum of Understanding for Phase

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1177 2, as provided in section (D)(2)(ii) of the memorandum, is  
 1178 allowed to base 40 percent, instead of 50 percent, of  
 1179 instructional personnel and school administrator performance  
 1180 evaluations upon student learning growth under s. 1012.34,  
 1181 Florida Statutes, as amended by this act. The school district is  
 1182 also exempt from the amendments to s. 1012.22(1)(c), Florida  
 1183 Statutes, made by this act. The exemptions described in this  
 1184 subsection are effective for the 2011-2012 school year and are  
 1185 effective for each school year thereafter if the school district  
 1186 receives annual approval by the State Board of Education.

1187 (2) The State Board of Education shall base its approval  
 1188 upon demonstration by the school district of the following:

1189 (a) The instructional personnel and school administrator  
 1190 evaluation systems base at least 40 percent of an employee's  
 1191 performance evaluation upon student performance and that student  
 1192 performance is the single greatest component of an employee's  
 1193 evaluation.

1194 (b) The instructional personnel and school administrator  
 1195 evaluation systems adopt the Commissioner of Education's student  
 1196 learning growth formula for statewide assessments as provided  
 1197 under s. 1012.34(7), Florida Statutes, as created by this act.

1198 (c) The school district's instructional personnel and  
 1199 school administrator compensation system awards salary increases  
 1200 based upon sustained student performance.

1201 (d) The school district's contract system awards  
 1202 instructional personnel and school administrators based upon  
 1203 student performance and removes ineffective employees.

1204 (e) Beginning with the 2014-2015 school year and each

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1205 school year thereafter, student learning growth based upon  
 1206 performance on statewide assessments under s. 1008.22, Florida  
 1207 Statutes, must have significantly improved compared to student  
 1208 learning growth in the district in 2011-2012 and significantly  
 1209 improved compared to other school districts.

1210 (3) The State Board of Education shall annually renew a  
 1211 school district's exemptions if the school district demonstrates  
 1212 that it meets the requirements of subsection (2). If the  
 1213 exemptions are not renewed, the school district must comply with  
 1214 the requirements and laws described in subsection (1) by the  
 1215 beginning of the next school year immediately following the loss  
 1216 of the exemptions.

1217 (4) The State Board of Education shall adopt rules  
 1218 pursuant to ss. 120.536(1) and 120.54, Florida Statutes, to  
 1219 establish the procedures for applying for the exemptions and the  
 1220 criteria for renewing the exemptions.

1221  
 1222 This section shall be repealed August 1, 2017, unless reviewed  
 1223 and reenacted by the Legislature.

1224 Section 17. Chapter 2010-279, Laws of Florida, does not  
 1225 apply to any rulemaking required to administer this act.

1226 Section 18. The provisions of any special act or general  
 1227 law of local application relating to contracts for instructional  
 1228 personnel or school administrators in public schools or school  
 1229 districts in effect on or before the effective date of this act  
 1230 are repealed.

1231 Section 19. The amendments made by this act to s. 1012.33,  
 1232 Florida Statutes, apply to contracts newly entered into,



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1233 extended, or readopted on or after July 1, 2011, and to all  
 1234 contracts entered into on or after July 1, 2014.

1235 Section 20. If any provision of this act or its  
 1236 application to any person or circumstance is held invalid, the  
 1237 invalidity does not affect other provisions or applications of  
 1238 the act which can be given effect without the invalid provision  
 1239 or application, and to this end the provisions of this act are  
 1240 severable.

1241 Section 21. Except as otherwise expressly provided in this  
 1242 act and except for this section, which shall take effect upon  
 1243 this act becoming a law, this act shall take effect July 1,  
 1244 2011.

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 7019      PCB KCOS 11-01      Education Personnel  
**SPONSOR(S):** K-20 Competitiveness Subcommittee, Fresen  
**TIED BILLS:**            **IDEN./SIM. BILLS:** CS/CS/SB 736

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: K-20 Competitiveness Subcommittee	11 Y, 4 N	Beagle	Ahearn
1) Education Committee		Beagle <i>EB</i>	Klebacha <i>JK</i>

**SUMMARY ANALYSIS**

In August 2010, Florida was awarded a \$700 million federal Race to the Top grant. Grant funds will be used to develop performance evaluation systems that are at least 50 percent based upon student learning growth; assist districts in acquiring assessments for subjects and grades not tested on statewide assessments; develop value-added student learning growth formulas for subjects tested by statewide assessments and growth models for assessing subjects and grades not tested by statewide assessments. Evaluations must differentiate among multiple performance levels and must be used for employment decisions. Districts must also develop educator compensation systems that tie the most significant increases in salary to performance. Sixty-two school districts, 224 charter schools in 29 districts, and three university lab schools have signed formal commitments with the Department of Education to implement these reforms. The grant period ends after the 2013-14 school year.

The bill codifies the Race to the Top performance evaluation and educator compensation reforms into law so that, after the end of the grant period, school districts and charter schools must sustain implemented reforms. School districts and charter schools must adopt instructional personnel and school administrator performance evaluation systems that rank employees as highly effective, effective, needs improvement/developing, or unsatisfactory. At least 50 percent of an evaluation must be based upon student learning growth. Student learning growth must be measured by statewide assessments, and for subjects and grades not tested on statewide assessments, assessments selected by the district or charter school. Measurement of student learning growth will recognize each student's unique starting point by comparing prior student performance with learning achieved while assigned to the educator. Factors such as disability, attendance, and English proficiency will also be considered. Performance evaluation results, rather than seniority, must be used for employment decisions and workforce reductions.

School districts and charter schools must adopt a performance salary schedule for instructional personnel and school administrators by July 1, 2014. Districts must negotiate this salary schedule within the parameters set by the bill. Any increases to base salary must be based upon "effective" or "highly effective" performance, rather than seniority or advanced degrees. If provided, salary supplements must reward employees who are assigned to Title I or chronically low-performing schools, certified and teaching in a critical shortage area, or assigned additional academic responsibilities. Initially, the performance salary schedule applies to employees hired on or after July 1, 2014, and instructional personnel on annual contracts as of July 1, 2014. Instructional personnel on continuing or professional service contracts are "grandfathered" into the existing salary schedule, or, at anytime, may opt into the performance salary schedule. Employees who opt in must relinquish their continuing or professional service contract for an annual contract. The bill also limits the application of pay increases for seniority, advanced degrees, and cost-of-living adjustments.

The bill discontinues the award of new professional service contracts as of July 1, 2011; annual contracts may only be awarded to newly hired instructional personnel thereafter. The probationary period in an employee's first annual contract is extended from 97 days to one year. The bill specifies performance-based criteria for annual contract renewal and just cause grounds for suspension or dismissal.

See Fiscal Comments.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Overview

#### Florida Law

Florida law provides general requirements for contracts, compensation, and performance evaluation of instructional personnel and school administrators.<sup>1</sup> Instructional personnel are classroom teachers, guidance counselors, social workers, career specialists, school psychologists, librarians and media specialists, learning resource specialists, instructional trainers, adjunct educators, and education paraprofessionals.<sup>2</sup> School administrators are school principals, school directors, career center directors, and assistant principals.<sup>3</sup>

*Performance Evaluations.* Job performance of instructional personnel and school administrators is to be evaluated annually.<sup>4</sup> Since 1999, the performance evaluation has been statutorily required to be primarily based upon student performance, as measured by statewide assessments and, for subjects and grades not tested by statewide assessments, local assessments. The term "primarily based" is not defined.<sup>5</sup> The design features of school district performance evaluation systems are often established through collective bargaining.<sup>6</sup> The correlation between performance evaluations and student performance is questionable when comparing 2008-09 performance evaluation results and student learning gains in reading and math. That year, 99.97 percent of classroom teachers received satisfactory performance evaluations, while less than 70 percent of reading and mathematics teachers had 50 percent of their students make learning gains on statewide assessments.<sup>7</sup>

*Contracts.* Currently, a professional service contract is granted to instructional personnel who complete a period of probationary employment on annual contracts. Professional service contract employees are entitled to automatically renewing contracts and may only be dismissed for specified reasons after statutorily required due process.<sup>8</sup> Because of automatic contract renewal, a professional service contract is often referred to as tenure.<sup>9</sup>

*Compensation.* Instructional personnel salary schedules are collectively bargained, resulting in heavy reliance on seniority and advanced degrees to set compensation. A typical school district salary schedule sets forth an escalating salary scale based upon "steps." Each step represents the employee's years of experience. Instructional personnel receive automatic annual salary increases

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<sup>1</sup> Sections 1012.22, 1012.33, and 1012.34, F.S.

<sup>2</sup> Section 1012.01(2)(a)-(e), F.S. Instructional personnel provide direct instructional services or direct instructional support to students in grades K-12. Section 1012.01(2), F.S.

<sup>3</sup> Section 1012.01(3)(a), F.S. School administrators serve as school-level managers. Section 1012.01(3), F.S. (introductory paragraph at beginning of subsection).

<sup>4</sup> Section 1012.34(1), F.S.

<sup>5</sup> Section 58, ch. 99-398, L.O.F., *codified at* s.1012.34(3), F.S.

<sup>6</sup> *See, e.g.,* Miami-Dade Public Schools and United Teachers of Dade, *Collective Bargaining Agreement*, at 190 (2006), *available at* [http://www.dadeschools.net/employees/labor\\_union/UTD/entire.pdf](http://www.dadeschools.net/employees/labor_union/UTD/entire.pdf) [hereinafter *Miami-Dade Master Contract*](a successor contract extends this agreement with some changes).

<sup>7</sup> U.S. Department of Education, *Florida's Race to the Top Application for Initial Funding*, at 144 (June 1, 2010), *available at* <http://www2.ed.gov/programs/racetothetop/phase2-applications/florida.pdf> [hereinafter *Race to the Top Application*].

<sup>8</sup> Section 1012.33(3)(a) and (e) and (6), F.S. Forty-nine states and the District of Columbia have laws providing some form of tenure. Education Commission of the States, *Teacher Tenure/Continuing Contract Laws*, <http://www.ecs.org/clearinghouse/75/64/7564.htm> (last visited Feb. 9, 2011). In Wisconsin, tenure is determined locally. *Id.*

<sup>9</sup> Section 1012.33(3)(a), F.S.; *see also* 67B Am. Jur. 2d Schools s. 195 (defining tenure). Instructional personnel hired before July 1, 1984, were issued continuing contracts. Legislation enacted in 1981 phased out continuing contracts in favor of professional service contracts. Section 15, ch. 82-242, L.O.F.

based upon these steps. Additional automatic increases are provided to those with advanced degrees.<sup>10</sup>

## Research

Research indicates that classroom teacher effectiveness is the most important school-level variable influencing student learning. Students who are taught by ineffective teachers perform at much lower levels than students demonstrating comparable ability taught by high-performing teachers. Students taught by an ineffective teacher for even one year experience long-term negative impacts on achievement.<sup>11</sup>

Despite the impact teacher effectiveness has on student achievement, few states link employment decisions to annual performance evaluations.<sup>12</sup> Insufficient use of student performance to evaluate teachers impedes rewarding effective teachers, identifying ineffective teachers, and remediating those who need additional support. Tenure protections make removing chronically ineffective teachers difficult and costly.<sup>13</sup> Research suggests that states should make student performance the centerpiece of performance evaluations, tie employment decisions to evaluations, and provide a system that enables dismissal of chronically ineffective teachers.<sup>14</sup> In 2010, 13 states enacted legislation placing increased emphasis upon student learning when evaluating teacher performance.<sup>15</sup> Eight of these states also reformed teacher tenure, hiring practices, or both.<sup>16</sup>

Research also questions the heavy emphasis that traditional teacher compensation systems place upon seniority and educational degree level because no statistically significant evidence exists that either factor is a strong predictor of teacher effectiveness.<sup>17</sup> Regarding seniority, some studies show

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<sup>10</sup> See s. 1012.22(1)(c), F.S.; see, e.g., Hillsborough County Public Schools, *Salary Schedules 2009-2010*, at 8-10 (2009), available at [http://www.sdhc.k12.fl.us/HumanResources/PDFs/SALARY/HPCS\\_SalarySchedule\\_Entire.PDF](http://www.sdhc.k12.fl.us/HumanResources/PDFs/SALARY/HPCS_SalarySchedule_Entire.PDF) [hereinafter *Hillsborough Salary Schedule*]; see, e.g., Glades County School District and Glades County Teacher's Association, *Instructional Personnel Master Contract*, at 16 (Jan. 14, 2010)[hereinafter *Glades Teacher Contract*](copy on file with committee).

<sup>11</sup> Sanders and Rivers, *Cumulative and Residual Effects of Teachers on Future Student Achievement*, at 6-8 (Nov. 1996), available at <http://www.mccsc.edu/~curriculum/cumulative%20and%20residual%20effects%20of%20teachers.pdf>. Sanders and Rivers found that standardized mathematics assessment scores for students who were taught by a low-performing teacher for three consecutive years were 53 percentile points lower than those of students who were taught by a high-performing teacher for three consecutive years. *Id.* at 3.

<sup>12</sup> See, e.g., Center for American Progress, *Ring the Bell for K-12 Teacher Tenure Reform*, at 7 (Feb. 2010), available at [http://www.americanprogress.org/issues/2010/02/pdf/teacher\\_tenure.pdf](http://www.americanprogress.org/issues/2010/02/pdf/teacher_tenure.pdf) [hereinafter *Ring the Bell*]; see, e.g., National Council on Teacher Quality, *2009 State Teacher Policy Yearbook: Florida*, at 78-80 (2009), available at [http://www.nctq.org/stpy09/reports/stpy\\_florida.pdf](http://www.nctq.org/stpy09/reports/stpy_florida.pdf) [hereinafter *NCTQ 2009 State Report*]; see, e.g., The New Teacher Project, *The Widget Effect, Our Failure to Acknowledge and Act on Differences in Teacher Effectiveness*, at 24 (2009), available at <http://widgeteffect.org/downloads/TheWidgetEffect.pdf> [hereinafter *The Widget Effect*].

<sup>13</sup> Center for American Progress, *Removing Chronically Ineffective Teachers, Barriers and Opportunities*, at 9-11, 16 (March 2010), available at [http://www.americanprogress.org/issues/2010/03/pdf/teacher\\_dismissal.pdf](http://www.americanprogress.org/issues/2010/03/pdf/teacher_dismissal.pdf); The Brookings Institution, *Identifying Effective Teachers Using Performance on the Job*, at 12-15 (April 2006), available at [http://www.brookings.edu/views/papers/200604hamilton\\_1.pdf](http://www.brookings.edu/views/papers/200604hamilton_1.pdf) [hereinafter *Brookings Report*].

<sup>14</sup> *Ring the Bell*, *supra* note 12, at 7-8, 24; *NCTQ 2009 State Report*, *supra* note 12, at 70-73, 78-80, and 125-133; *The Widget Effect*, *supra* note 12, at 27-30; *Brookings Report*, *supra* note 13, at 13-15.

<sup>15</sup> National Council for State Legislatures, *Educators (Teachers/Principals) 2010 Enacted Evaluation Legislation*, <http://www.ncsl.org/default.aspx?tabid=21155> (last visited Feb. 10, 2011)(Arizona, California, Colorado, Connecticut, Illinois, Louisiana, Maine, Maryland, Michigan, Nevada, New York, Oklahoma, and Tennessee).

<sup>16</sup> *Id.* (Arizona, Colorado, Connecticut, Maryland, Michigan, New York, Oklahoma, and Tennessee).

<sup>17</sup> See National Council on Teacher Quality, *Increasing the Odds: How Good Policies Can Yield Better Teachers*, at 2-3 (Oct. 2004), available at [http://www.nctq.org/nctq/images/nctq\\_io.pdf](http://www.nctq.org/nctq/images/nctq_io.pdf) [hereinafter *NCTQ Research Review*]; Center for Educator Compensation Reform, *Research Synthesis: General Compensation Questions*, at 3 (2010), available at [http://cecr.ed.gov/researchSyntheses/Research%20Synthesis\\_Q%20A2.pdf](http://cecr.ed.gov/researchSyntheses/Research%20Synthesis_Q%20A2.pdf) [hereinafter *CECR Research Review*]; see, e.g., Aaronson, Barrow, and Sander, *Teachers and Student Achievement in the Chicago Public High Schools*, Federal Reserve Bank of Chicago, at 28-30 (Feb. 2003); see, e.g., Hanushek, *The Economics of Schooling: Production and Efficiency in Public Schools*, *Journal of Economic Literature*, Vol. 24, Issue 3, at 1162 (Sept. 1986); compare Goldhaber and Brewer, *Evaluating the Effect of Teacher Degree Level on Educational Performance*, in *Developments in School Finance 1996*, U.S. Department of Education, Nation Center for Education

that teachers become more effective after gaining some experience; however, gains in effectiveness are not sustained over time.<sup>18</sup> Instead, the most significant gains in teacher effectiveness occur early in a teacher's career and peak after a certain number of years, with little or no measurable increase thereafter.<sup>19</sup> According to DOE, 164,501 classroom teachers were paid approximately \$7.4 billion in the 2009-10 school year. Of this amount an estimated \$1.3 billion in base salary increases was paid based upon seniority. In addition, 59,232 classroom teachers were paid approximately \$186 million for advanced degrees. Compensation provided for advanced degrees averaged approximately \$2,800 for a master's degree, \$6,600 for a specialist, and \$6,600 for a doctorate degree.<sup>20</sup>

## Race to the Top

In August 2010, Florida was one of 11 states and the District of Columbia awarded federal Race to the Top grant funds.<sup>21</sup> Florida will receive \$700 million to implement various education reforms. At least \$69 million will be used to reform performance evaluation, compensation, and employment policies.<sup>22</sup> Sixty-two of 67 school districts, 224 charter schools in 29 of these districts, and three university lab schools are currently participating in the grant.<sup>23</sup> Fifty local teachers unions have agreed to collaborate with their school districts in implementing these reforms.<sup>24</sup>

## Performance Evaluations

### Current Law

Florida law requires each district school superintendent to establish procedures to assess the job performance of instructional personnel and school administrators.<sup>25</sup> A performance evaluation must be conducted at least once per year for these employees.<sup>26</sup> Some school districts require additional

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Statistics, at 208 (1997)(finding that teachers with advanced mathematics degrees produced slightly higher student mathematics test scores than those teaching out-of-field or without an advanced mathematics degree) with Rowan, Correnti, and Miller, *What Large Scale, Survey Research Tells Us About Student Achievement: Insights from the Prospects Study of Elementary Schools*, Consortium for Policy Research in Education, University of Pennsylvania, at 13-14 (2002)(Finding that teachers with advanced mathematics degrees produced lower student mathematics test scores than those without any mathematics degree); see also Clotfelder, Ladd, and Vigdor, *How and Why Teacher Credentials Matter for Student Achievement?*, Urban Institute, Working Paper 2, at 33 (March 2007)(finding that elementary teachers who earned an advanced degree within five years of entering teaching were no more effective than those without advanced degrees and elementary teachers with advanced degrees earned after five years in teaching were *less effective* than those without advanced degrees).

<sup>18</sup> NCTQ Research Review, *supra* note 17, at 3; CECR Research Review, *supra* note 17, at 2-3.

<sup>19</sup> *Id.*; see, e.g., Brookings Report, *supra* note 13, at 27 (finding significant gains in teacher effectiveness during the first two years in teaching, with little measurable increase after four years); see, e.g., Hanushek, Kain, O'Brien, and Rivkin, *The Market for Teacher Quality*, National Bureau of Economic Research, Working Paper 11154, at 29 (Feb. 2005), available at <http://edpro.stanford.edu/hanushek/admin/pages/files/uploads/w11154.pdf> (finding that the largest gains in teacher effectiveness occur during the first year in teaching).

<sup>20</sup> Email from Florida Department of Education (Dec. 6, 2010).

<sup>21</sup> American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (Feb. 17, 2009); Press Release, U.S. Department of Education, *Nine States and the District of Columbia Win Second Round Race to the Top Grants* (Aug. 24, 2010), <http://www.ed.gov/news/press-releases/nine-states-and-district-columbia-win-second-round-race-top-grants> (last visited Feb. 10, 2011). Delaware and Tennessee were selected to receive Race to the Top grant funds in Phase 1 of the competition. The District of Columbia, Florida, Georgia, Hawaii, Maryland, Massachusetts, New York, North Carolina, Ohio, and Rhode Island were selected in Phase 2. The winners were selected from a field of 46 states. *Id.*

<sup>22</sup> U.S. Department of Education, *Race to the Top Funding Status*, <http://www2.ed.gov/programs/racetothetop/funding.html> (last visited Feb. 14, 2011); Florida Department of Education, *Florida's Race to the Top: hearing before the House Education Comm.* (Jan. 13, 2011); Email from Florida Department of Education (Feb. 14, 2011).

<sup>23</sup> Florida Department of Education, *LEA Approval Status List*, <http://www.fldoe.org/arra/RacetotheTop.asp> (last visited Feb. 4, 2011). Participating lab schools are the Florida Atlantic University, Florida A & M University, and University of Florida lab schools. The Baker, Dixie, Hamilton, Palm Beach, and Suwannee County school districts are not participating in the grant. *Id.*

<sup>24</sup> Florida Department of Education, *Florida's Race to the Top Memorandum of Understanding: hearing before the House K-20 Competitiveness Subcomm.* (Feb. 23, 2011).

<sup>25</sup> Section 1012.34(1), F.S.

<sup>26</sup> Section 1012.34(3), F.S.

evaluations for beginning classroom teachers or those on annual contract.<sup>27</sup> State Board of Education rule requires each school district to identify the factors and evidence to be used to designate, document, and differentiate unsatisfactory, satisfactory, and outstanding performance. However, use of a specific set of performance levels is not required.<sup>28</sup> The design features of school district performance evaluation systems are often established through collective bargaining.<sup>29</sup> The Department of Education (DOE) must approve each school district's performance evaluation system.<sup>30</sup>

Each performance evaluation must measure the employee's subject area knowledge and ability to maintain classroom discipline; plan and deliver instruction; use technology in the classroom; evaluate instructional needs; and collaborate with parents to increase student achievement. Additional performance criteria may be established by the state board and district school boards.<sup>31</sup>

Since 1999, the law has required that performance evaluations be primarily based upon student performance and that districts use statewide assessments and, for subjects and grades not tested by statewide assessments, local assessments, for determining student performance.<sup>32</sup> The term "primarily based" is not defined, resulting in inconsistent weighting of student performance and use of student assessment data in district performance evaluation systems.<sup>33</sup>

Currently, there is no express requirement that performance be considered when making employee transfers and promotions. These actions are based upon district school superintendent recommendation and school board approval. When transferring a classroom teacher from one school to another, the superintendent must consult with the school principal and allow him or her to review the teacher's record and interview the teacher. If the school principal determines that the placement is not in the best interests of students, he or she may request an alternative placement.<sup>34</sup> The law does not grant school principals the right to refuse such placements.<sup>35</sup>

### *Race to the Top*

Race to the Top funds will be used to hire consultants to assist school districts in developing new instructional personnel and school administrator performance evaluations that are at least 50 percent based upon student learning growth. Each school district must use a comprehensive range of performance ratings that include "effective" and "highly effective." Additionally, each school district must conduct multiple evaluations for each first-year classroom teacher. Participating districts must use the performance evaluation to make employment decisions.<sup>36</sup>

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<sup>27</sup> See, e.g., Orange County Public Schools, *Instructional Personnel Performance Assessment Procedures Manual*, at 3 (2009), available at [https://www.ocps.net/es/hr/PDS/assessment/Documents/2009-10\\_Assessment\\_Manual\\_all.pdf](https://www.ocps.net/es/hr/PDS/assessment/Documents/2009-10_Assessment_Manual_all.pdf) [hereinafter *Orange County Performance Assessment*].

<sup>28</sup> Rule 6B-4.010(1)(c)2., F.A.C. The performance levels used by school districts vary. For example, Miami-Dade School District uses four performance levels – exemplary, proficient, developing/needs improvement, and unsatisfactory. Miami-Dade County School District, *Instructional Performance Evaluation and Growth System*, at 26 (2009), available at <http://ipegs.dadeschools.net/pdfs/Teacher%20Handbook%20FINAL%208-4-09.pdf> [hereinafter *Miami-Dade Performance Assessment*]. In contrast, Sumter School District uses three performance levels – satisfactory, needs improvement, and unsatisfactory. Sumter County Schools, *Instructional Performance Assessment System*, at II-11 (1999), available at <http://www.fldoe.org/profdev/pdf/pa/Sumter.pdf> [hereinafter *Sumter County Performance Assessment*].

<sup>29</sup> See, e.g., *Miami-Dade Master Contract*, *supra* note 6, at 245-247.

<sup>30</sup> Section 1012.34(1), F.S. Approved school district performance evaluations may be viewed on the DOE website. See Florida Department of Education, *District Performance Appraisal Systems*, <http://www.fldoe.org/profdev/pa.asp> (last visited Feb. 4, 2011).

<sup>31</sup> Section 1012.34(3)(a), F.S. The Educator Accomplished Practices are adopted in rule and include several competencies and skills that are essential to effective teaching. Rule 6A-5.065, F.A.C. Likewise, the Florida Principal Leadership Standards provide the standards by which school administrators must demonstrate competency to be considered effective. Rule 6A-5.080, F.A.C.

<sup>32</sup> Section 58, ch. 99-398, L.O.F., codified at s. 1012.34(3), F.S.

<sup>33</sup> *Race to the Top Application*, *supra* note 7, at 144.

<sup>34</sup> Section 1012.27(1), F.S.

<sup>35</sup> See s. 1012.28, F.S.

<sup>36</sup> Florida Department of Education, *Florida's Race to the Top Memorandum of Understanding for Phase 2*, at 10-13 (May 3, 2010), available at <http://www.fldoe.org/arra/pdf/phase2mou.pdf> [hereinafter *Race to the Top MOU*]; Florida Department of Education,

School districts participating in Race to the Top must measure student learning growth based upon statewide assessments and, for subjects and grades not tested by statewide assessments, district-developed or selected assessments aligned to state standards.<sup>37</sup> Currently, statewide assessments include the Florida Comprehensive Assessment Test (FCAT) and statewide standardized end-of-course assessments (EOC). The FCAT assesses reading (grades 3-10), mathematics (grades 3-8), science (grades 5 and 8), and writing (grades 4, 8, and 10). Statewide standardized EOCs for high school students include Algebra I (administration begins in 2010-11) and Biology I and Geometry (administration begins in 2011-12). Middle school students will begin taking an EOC in Civics beginning in the 2012-13 school year.<sup>38</sup>

Race to the Top funds will be used to hire consultants to assist DOE in developing a value-added student learning growth formula for statewide assessments and model formulas for subjects and grades not tested on statewide assessments. These formulas will be used to measure student learning growth over time, unlike student achievement,<sup>39</sup> which measures knowledge held at a particular point-in time. Student learning growth formulas will be used to measure instructional personnel and school administrator performance, using multiple years of student data. Other factors that may influence student learning will be considered during formula development, such as attendance, disability, and English proficiency.<sup>40</sup>

### **Effect of Bill**

The bill more closely aligns state law governing instructional personnel and school administrator performance evaluation systems with the reforms proposed by Race to the Top. These reforms will clearly focus evaluations on student learning, provide uniform standards for system design, and facilitate more consistent and reliable statewide evaluation of employee performance. This, in turn, will enhance the utility of the evaluation in rewarding effective employees, identifying ineffective employees, and remediating those who need additional support. Performance evaluation results must be used as a basis for professional development, compensation, retention, transfers, and promotions, thereby facilitating maximization of personnel resources. The bill authorizes a school principal to refuse the placement or transfer of instructional personnel who are not rated effective or higher.

Currently, a uniform set of performance levels is not required. The terminology used to describe each performance level, standards for measuring each level, and number of levels varies statewide. This makes it difficult to compare effective performance from one school district to another. To provide consistent statewide indicators of performance, the bill requires performance evaluation systems to differentiate among four consistent and clearly defined levels of performance:

- Highly effective;
- Effective;
- Needs improvement, or for instructional personnel in their first three years of employment who need improvement, developing; and
- Unsatisfactory.

The state board must adopt rules establishing uniform standards for each performance level.

Newly hired classroom teachers must be evaluated at least twice in their first year of teaching in the school district. "Newly hired classroom teachers" include first-time teachers new to the profession as

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*American Recovery and Reinvestment Act, Procurements*, <http://www.fldoe.org/arra/procurements.asp> (last visited Feb. 13, 2011)[hereinafter *Race to the Top Procurement*] (Improvement of Educator Evaluation Systems).

<sup>37</sup> *Race to the Top MOU*, *supra* note 36, at 10-13.

<sup>38</sup> Section 1008.22(3)(c), F.S.

<sup>39</sup> School districts may use a student achievement measure instead of a student learning growth measure for courses in which achievement is a more appropriate measure. *Race to the Top MOU*, *supra* note 36, at 10-13.

<sup>40</sup> *Race to the Top MOU*, *supra* note 36, at 10-13; *Race to the Top Procurement*, *supra* note 36 (Value Added Model); *see also* Office of Program Policy Analysis and Government Accountability, *Overview of Value-Added Analysis*, at 1 (2011).

well as veteran teachers new to the school district. This will enable districts to provide additional feedback and support to these teachers. All other employees must be evaluated annually. Performance evaluation systems must include processes for monitoring evaluator reliability and system effectiveness. Evaluators may consider input from other trained personnel.

The bill reorganizes the existing performance criteria into three distinct categories: student performance; instructional practice; and instructional leadership. All employees will be evaluated based upon student performance. Instructional practice criteria for instructional personnel are based upon the Florida Educator Accomplished Practices.<sup>41</sup> Instructional leadership criteria for school administrators are based upon the Florida Principal Leadership Standards.<sup>42</sup> School administrators will also be evaluated based upon recruitment and retention of effective or highly effective classroom teachers, school-level improvements in the percentage of such teachers, and execution of evaluation duties. The state board and school boards may adopt additional performance criteria based upon employee job responsibilities.

Current law does not clearly define the exact proportion of the performance evaluation that must be based upon student performance. Consequently, the weight assigned to student performance varies among school districts. The bill replaces the requirement that performance evaluations be "primarily based" upon student performance with a clear and specific requirement that student learning growth comprise at least 50 percent of instructional personnel and school administrator evaluations. Measurement of student learning growth must be based upon students assigned to the employee over three school years. If less than three years of data is available, the school district must include available data and may reduce the weight attributed to student learning growth to not less than 40 percent for classroom teachers and school administrators and not less than 20 percent for other instructional personnel. Using three years of data enables evaluators to examine how students assigned to the employee have performed in the past and determine performance trends. This also enables evaluators to examine drastic changes to established trends, and determine if the change is an anomaly.

Standards for measuring student learning growth vary by personnel classification, as follows:

- Student learning growth for students assigned to classroom teachers will be measured by statewide assessments or, for subjects and grades not tested by statewide assessments, school district-selected assessments.
- Student learning growth for students assigned to other instructional personnel will be measured by statewide assessments; however, a combination of growth data and measurable student outcomes unique to the personnel assignment may be used, provided that growth data accounts for at least 30 percent of the evaluation.
- Student learning growth for a school administrator's evaluation will be measured by learning growth data for students assigned to the school.

Since 1999, school districts have been required to measure student performance using statewide assessments, and for subjects and grades not tested on statewide assessments, local assessments. Currently, the extent that school districts use existing statewide assessments to measure student performance is unclear. Likewise, not all school districts have local assessments to measure subjects and grades not tested by statewide assessments. Beginning with the 2014-15 school year, each school district must adopt a rigorous student assessment for each course it offers. School districts may use statewide assessments, other standardized assessments, industry certification examinations, and district-developed or -selected assessments. The commissioner must identify methods to support school districts in the development or acquisition of assessments. Such methods include developing test item banks, facilitating the sharing of assessments among districts, acquiring assessments from

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<sup>41</sup> The Educator Accomplished Practices are adopted in rule and include include several competencies and skills that are essential to effective teaching. Rule 6A-5.065, F.A.C.

<sup>42</sup> The Florida Principal Leadership Standards provide the essential competencies and skills for school administrators. Rule 6A-5.080, F.A.C.



state and national curriculum-area organizations, and technical assistance. DOE and most school districts will already be undertaking most of these activities as part of Race to the Top implementation.

By June 1, 2011, the commissioner must approve a student learning growth formula for the FCAT. Additional formulas for other statewide assessments must be selected as these assessments are implemented. The state board must adopt formulas for statewide assessments into rule. Formulas must consider each student's prior performance and learning growth over time. Factors such as student attendance, disability, or English proficiency must be considered in formula development. The formula will recognize each student's unique starting point. A student's prior performance will be compared to performance in the year assigned to the employee. Lower expectations will not be established for students based upon gender, race, ethnicity, or socioeconomic status.

Beginning with the 2011-12 school year, each school district must use the commissioner-approved formula for courses associated with the FCAT. Formulas for additional statewide assessments must be implemented as they become available. Beginning with the 2014-15 school year, each district must measure student learning growth using an equally appropriate formula for assessments of subjects and grades not tested by statewide assessments. DOE must provide student learning growth models which school districts may adopt for this purpose. Much of this work will be accomplished during Race to the Top implementation.

The bill authorizes school districts to request DOE-approval to use a student achievement measure or a combination of student learning growth and achievement when such measures are appropriate. Likewise, districts may request approval to determine appropriate measures based upon course characteristics and personnel assignments. This enables districts to use student achievement when point-in-time knowledge more accurately reflects student performance in a course. Such courses may include industry certification, art, or music courses, in which mastering a job skill, painting a picture, or playing a song may be the goal of the course. This provides school districts with flexibility to select an appropriate measure of student performance based upon course characteristics.

Until July 1, 2015, the bill provides flexibility for school district phase-in of appropriate student assessments and learning growth formulas. If a district has not implemented an assessment or formula for a course, two alternative growth measures may be used for a classroom teacher of the course – student learning growth on statewide assessments or measurable learning targets in the school improvement plan. Additionally, a district school superintendent may assign student learning growth on statewide assessments to an instructional team. This provides flexibility to provide appropriate evaluation for employees who teach courses in which appropriate assessments or student learning growth formulas have not yet been adopted.

The bill adds a requirement that school districts report to DOE school administrators who receive two consecutive unsatisfactory evaluations and those who are given written notice of intent to terminate or not renew their employment. Currently, reporting of this information is limited to instructional personnel. This will enable DOE to monitor the extent to which school districts are removing chronically ineffective instructional personnel and school administrators. Additionally, districts must annually report to parents the fact that their child is assigned to a classroom teacher or school administrator who has two consecutive unsatisfactory performance evaluations, two unsatisfactory evaluations in a three-year period, or three consecutive evaluations of needs improvement or any combination of needs improvement and unsatisfactory. Thus, parents will know that their child is assigned to a chronically ineffective classroom teacher or school administrator.

School districts must annually report to DOE instructional personnel and school administrator performance evaluation ratings. Beginning July 1, 2012, DOE must post on its website the percentage of classroom teachers, instructional personnel, and school administrators receiving each performance rating by school district and school. By December 1, 2012, and annually thereafter, DOE must report evaluation ratings to the Governor and the Legislature. The initial report must also address district implementation of evaluation systems, and subsequent annual reports must include any changes in such systems. The state board must adopt a process for monitoring school district implementation of evaluation systems. Annual reporting will enable the public to compare the performance of instructional

personnel and school administrators across the state. Parents will be able to see which schools in their district have the best teachers and principals.

## **Salary Schedules**

### **Current Law**

Florida law requires district school boards to adopt and use a salary schedule in setting the compensation for district employees. An undefined portion of instructional personnel compensation must be based upon performance, as measured by annual performance evaluations.<sup>43</sup> Salary schedules for instructional personnel and school administrators must include differentiated pay based upon district-determined factors, including additional responsibilities, school demographics, critical teacher shortage areas, and level of job performance difficulties.<sup>44</sup>

District school boards bargain collectively with the certified bargaining agent (union) that represents the district's employees to set the salary schedule.<sup>45</sup> The district and union negotiate wages, hours, and terms and conditions of employment, which are included in the collective bargaining agreement.<sup>46</sup> Annual salary increases are largely based upon seniority and advanced degrees. Typically, instructional personnel receive nominal increases in pay earlier in their careers, with larger increases occurring as they acquire seniority or an advanced degree.<sup>47</sup> Because collectively bargained salary schedules rely heavily on seniority and advanced degrees to set compensation, differentiated pay incentives for assignment to high-need schools and subject areas have not been consistently implemented.<sup>48</sup>

Critical teacher shortage areas are adopted by the state board. District school boards may submit additional critical teacher shortage areas for state board approval. A critical teacher shortage area is a subject area, grade-level, or high-priority location area in which teachers are in short supply. A high-priority location area is a low socio-economic status urban or rural school with high levels of faculty attrition, economically disadvantaged students, and students receiving free lunches. Additional shortage areas may be based upon teacher demographic characteristics.<sup>49</sup> For 2010-11, the state board has identified as critical teacher shortage areas middle and high school level mathematics, science, and English/language arts; reading; exceptional student education; English for speakers of other Languages; foreign languages; and technology education/industrial arts.<sup>50</sup> State law establishes several tuition reimbursement and student loan forgiveness programs to attract teachers to critical teacher shortage areas.<sup>51</sup> However, these programs were not funded in 2010, after minimal participation in 2009.<sup>52</sup> The link between critical teacher shortage areas and differentiated pay is not

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<sup>43</sup> Sections 1011.60(4), 1012.22(1)(c)1.-2., and 1012.27(2), F.S. A district must also consider prior professional experience in the field of education gained in positions in addition to district level instructional and administrative positions. Section 1012.22(1)(c)2., F.S.

<sup>44</sup> Section 1012.22(1)(c)4., F.S.

<sup>45</sup> Sections 447.203(2), 447.309(1), and 1012.22(1)(c)4., F.S. The only school district whose instructional personnel are not represented by a union is Calhoun County. Telephone interview with Calhoun County School District, Assistant Superintendent (Oct. 5, 2010).

<sup>46</sup> Section 447.309(1), F.S.

<sup>47</sup> See s. 1012.22(1)(c), F.S.; see, e.g., *Hillsborough Salary Schedule*, supra note 10, at 8-10; see, e.g., *Glades Teacher Contract*, supra note 10, at 16.

<sup>48</sup> *Race to the Top Application*, supra note 7, at 165.

<sup>49</sup> Section 1012.07(1), F.S.

<sup>50</sup> Florida Department of Education, *Critical Teacher Shortage Areas 2010-2011*, 1 (Nov. 2009), available at <http://www.fl DOE.org/evaluation/teachdata.asp>; see Rule 6A-20.0131, F.A.C.

<sup>51</sup> Section 1009.54, F.S. (Critical Teacher Shortage Program); s. 1009.57, F.S. (Florida Teacher Scholarship and Forgivable Loan Program); s. 1009.58, F.S. (Critical Teacher Shortage Tuition Reimbursement Program); and 1009.59, F.S. (Critical Teacher Shortage Loan Forgiveness Program).

<sup>52</sup> See Office of Economic and Demographic Research, *Student Financial Aid Enrollment Conference Results, Executive Summary*, at 1 (Nov. 12, 2010), available at <http://edr.state.fl.us/Content/conferences/financialaid/sfaexecsummary.pdf>. In November 2009, 4,716 educators were participating in these programs. See Office of Economic and Demographic Research, *Student Financial Aid Enrollment Conference Results, Executive Summary*, at 1 (Nov. 20, 2009), available at <http://edr.state.fl.us/Content/conferences/financialaid/archives/091120financialaid.pdf>.

clearly established in law. Districts have discretion to award or not award differentiated pay for teaching in a critical teacher shortage area.<sup>53</sup>

### *Race to the Top*

School districts participating in the Race to the Top grant must develop compensation systems for instructional personnel and school administrators that tie the most significant salary increases to effectiveness, as demonstrated by annual performance evaluations. Participants must also provide differentiated pay based upon the factors in current law. These reforms must be implemented by the 2013-14 school year.<sup>54</sup>

### **Effect of Bill**

Currently, instructional personnel compensation is based largely upon seniority and advanced degrees. As a result, these employees do not begin earning significant pay increases until they acquire seniority or an advanced degree, regardless of how effective they are. The bill focuses compensation on employee performance, rather than seniority and advanced degrees.

Similar to Race to the Top, each district school board must adopt a performance salary schedule for instructional personnel and school administrators by July 1, 2014. Annual salary adjustments may only be given to employees rated effective and highly effective on annual performance evaluations. The adjustments become part of the employee's permanent base salary and are considered compensation under the Florida Retirement System. The salary adjustment for highly effective performance must be greater than the highest annual salary adjustment available to the employee through any other salary schedule adopted by the school district. The salary adjustment for effective performance must be between 50 and 75 percent of the adjustment provided to a highly effective employee. Employees rated below effective are not eligible for a salary adjustment. Salary adjustments will enable effective and highly effective instructional personnel to earn greater pay increases earlier in their careers. This will increase the likelihood that these employees remain in teaching, rather than leaving the profession for higher-paying fields.

The bill defines a supplement as an annual addition to the base salary which does not become part of permanent base salary; however, a supplement is considered compensation under the Florida Retirement System. Similar to differentiated pay under current law, salary supplements must reward instructional personnel and school administrators who are assigned to Title I<sup>55</sup> or chronically low-performing schools, certified and teaching in a critical teacher shortage area, or assigned additional academic responsibilities. Existing critical teacher shortage area tuition incentives and differentiated pay have not fulfilled the personnel needs of high-need schools and subject areas. Salary supplements will help attract high-performing instructional personnel and school administrators to work in such schools and subject areas.

To more closely align critical teacher shortage areas to the criteria for awarding salary supplements, the bill redefines critical teacher shortage areas as high-need content areas and high-priority location areas, e.g., low socio-economic status and chronically low-performing schools. The State Board of Education and district school boards must consider current and emerging educational requirements and workforce demands when identifying critical teacher shortage areas.

Initially, the performance salary schedule applies to instructional personnel and school administrators hired on or after July 1, 2014, and instructional personnel on annual contracts as of July 1, 2014. Instructional personnel on continuing or professional service contracts are grandfathered into the salary schedule adopted under current law, or, at anytime, may opt into the performance salary schedule. Employees who opt in must relinquish their continuing or professional service contract for an annual

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<sup>53</sup> Section 1012.22(1)(c)4., F.S.

<sup>54</sup> *Race to the Top MOU*, *supra* note 36, at 15-16.

<sup>55</sup> Typically, a Title I school is an urban or rural school serving a high proportion of economically disadvantaged students. See Pub. L. No. 89-10, 79 Stat. 27 (April 11, 1965).

contract. Such employees may not return to continuing or professional service contract status or the grandfathered salary schedule.

Consistent with research showing that holding an advanced degree has little bearing on a teacher's effectiveness, the bill prohibits the use of advanced degrees in setting base salary for instructional personnel hired on or after July 1, 2011. School districts may provide a salary supplement for advanced degrees to classroom teachers if the degree is in the subject area of teaching and certification. Other instructional personnel may receive a supplement if the degree is directly related to their job assignment. School districts may provide annual cost of living adjustments, subject to certain requirements. If budget constraints limit a school board's ability to fully fund all adopted salary schedules, the bill prohibits the board from disproportionately reducing the performance salary schedule. This increases the likelihood that, during budgetary shortfalls, limited personnel resources will be allocated based upon results.

## **Contracts for Instructional Personnel**

### **Current Law**

Three types of contracts are used to employ instructional personnel in Florida – annual contracts, professional service contracts, and continuing contracts. The eligibility and renewal requirements for each type of contract differ.<sup>56</sup> Holding a continuing contract or professional service contract is often referred to as tenure.<sup>57</sup> There is no requirement that performance evaluation results be considered in awarding any of these contracts.<sup>58</sup>

An annual contract expires at the end of its term.<sup>59</sup> An employee's first 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.<sup>60</sup>

Florida law specifically states that instructional personnel hired on or after July 1, 1984, are "entitled to and must receive" a professional service contract after three years of probationary service on annual contracts if fully certified, recommended for a professional service contract by the superintendent, and reappointed by the school board.<sup>61</sup> A professional service contract must be renewed each year, unless the employee is charged with unsatisfactory performance.<sup>62</sup> In such cases, the school board must follow the due process procedures set forth in s. 1012.34(3), F.S., before dismissing the employee.<sup>63</sup> Because of automatic contract renewal, a professional service contract is often referred to as tenure.<sup>64</sup>

Legislation enacted in 1982 discontinued continuing contracts for instructional personnel hired on or after July 1, 1984.<sup>65</sup> The eligibility requirements for a continuing contract were similar to a professional

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<sup>56</sup> Section 1012.33(3), F.S.; *see also* s. 231.36, F.S. (1981).

<sup>57</sup> Section 1012.33(3)(e), F.S.

<sup>58</sup> Section 1012.33(3)(a)1.-4., F.S.; *see also* s. 231.36, F.S. (1981).

<sup>59</sup> Section 1012.33(3), F.S.

<sup>60</sup> Section 1012.33(3)(a)4., F.S. This 97-day period applies to instructional personnel employed after June 30, 1997. *Id.*

<sup>61</sup> Section 1012.33(3)(a)1.-3., F.S. Probationary employment must be completed in the same school district during a period not to exceed five successive years, except for leave duly authorized and granted. *Id.* Probationary employment may be extended to four years if agreed upon in writing by the district school board and the employee. Section 1012.33(3)(c), F.S.

<sup>62</sup> Sections 1012.33(3)(e) and 1012.34(3)(c)-(d), F.S.

<sup>63</sup> Section 1012.34(3)(d), F.S.

<sup>64</sup> Section 1012.33(3)(a), F.S.; *see also* 67B Am. Jur. 2d Schools s. 195 (defining tenure). Instructional personnel hired before July 1, 1984, were issued continuing contracts. Legislation enacted in 1981 phased out continuing contracts in favor of professional service contracts. Section 15, ch. 82-242, L.O.F.

<sup>65</sup> Section 15, ch. 82-242, L.O.F.

service contract.<sup>66</sup> Unlike a professional service contract, instructional personnel who were granted continuing contracts are entitled to continued employment without the necessity of annual renewal.<sup>67</sup>

Continuing contract employees may exchange such contract for a professional service contract. District school boards have discretion to award a continuing or professional service contract to newly hired instructional personnel who previously earned such contract in the same or another school district in the state. Thus, the portability of such contracts is not guaranteed by law.<sup>68</sup>

All instructional personnel may be suspended or dismissed during the term of their contract for just cause.<sup>69</sup> Just cause includes incompetency, immorality, misconduct in office, gross insubordination, willful neglect of duty, and being convicted or found guilty of, or entering a plea of guilty to, regardless of adjudication of guilt, any crime involving moral turpitude.<sup>70</sup> Due process must be provided as required under s. 1012.33(6)(a), F.S.<sup>71</sup> The due process requirements for “just cause” suspension or dismissal under s. 1012.33(6)(a), F.S., are significantly different from the due process requirements for non-renewal of a professional service contract under s. 1012.34 (3)(d), F.S.

District-wide reductions to instructional positions caused by declining enrollment or budgetary conditions are known as “reductions-in-force.”<sup>72</sup> In such situations, Florida law requires district school boards to establish policies, through collective bargaining or by rule, for determining which employees are retained during a reduction-in-force.<sup>73</sup> When making reductions-in-force, the school district must determine which schools, grade-levels, and subject areas will be affected and make reductions according to priorities established in the collective bargaining agreement.<sup>74</sup> In most Florida school districts, the primary factor considered when making reductions-in-force is seniority, tenure, or both.<sup>75</sup> This practice is known as “last hired, first fired.”<sup>76</sup>

### Effect of Bill

The bill discontinues professional service contracts for instructional personnel on annual contract as of July 1, 2011, and those hired thereafter. Unlike automatically renewing professional service contracts, these employees will be employed on an annual basis. This reform shifts the focus of Florida’s instructional personnel contracting system away from entitled employment to employment based upon performance.

The first annual contract for newly hired instructional personnel is a one-year probationary contract, which may be terminated without cause or the employee may resign without breach of contract. “Newly hired instructional personnel” include employees new to the profession or employees with experience

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<sup>66</sup> Section 231.36(1) and (3)(a)1.-4., F.S. (1981).

<sup>67</sup> Section 231.36(3)(e), F.S. (1981). A continuing contract employee may be dismissed upon discontinuation of the position, resignation, dismissal, or return to annual contract. *Id.*

<sup>68</sup> Section 1012.33(3)(d), F.S.

<sup>69</sup> Section 1012.33(1)(a), (4)(c), and (6)(a), F.S. School administrators may also be suspended or dismissed on just cause grounds. Section 1012.33(4)(c) and (6)(b), F.S.

<sup>70</sup> Section 1012.33(1)(a), F.S.; rule 6B-4.009, F.A.C. The just cause grounds for dismissal are further defined in state board rule. See rule 6B-4.006(1)-(6), F.A.C.

<sup>71</sup> Section 1012.33(6)(a), F.S.; see s. 120.68(1) and (2), F.S.

<sup>72</sup> National Council on Teacher Quality, *Teacher Layoffs: Rethinking “Last Hired, First Fired” Policies*, at 3 (Feb. 2010), available at [http://www.nctq.org/p/docs/nctq\\_dc\\_layoffs.pdf](http://www.nctq.org/p/docs/nctq_dc_layoffs.pdf) [hereinafter *Rethinking “Last Hired, First Fired”*].

<sup>73</sup> Section 1012.33(5), F.S. Calhoun County does not have a collective bargaining agreement because its instructional personnel are not unionized. Telephone interview with Calhoun County School District, Assistant Superintendent (Oct. 5, 2010).

<sup>74</sup> See, e.g., Hillsborough County School District and Hillsborough Classroom Teachers Association, Inc., *Teacher Contract 2007-2010*, at 79-84 (2007), available at [http://www.sdhc.k12.fl.us/HumanResources/PDFs/CONTRACT/barqaining\\_agreement.pdf](http://www.sdhc.k12.fl.us/HumanResources/PDFs/CONTRACT/barqaining_agreement.pdf); see, e.g., *Miami-Dade Master Contract*, *supra* note 6, at 245-247.

<sup>75</sup> *Id.*; see, e.g., Collier County School District and Collier County Education Association, *Instructional Personnel Collective Bargaining Agreement*, at 9.01, (2009), available at [http://www.ccea-ocap.org/index.php?option=com\\_content&view=article&id=17&Itemid=70](http://www.ccea-ocap.org/index.php?option=com_content&view=article&id=17&Itemid=70).

<sup>76</sup> *Rethinking “Last Hired, First Fired,” supra* note 72, at 1.

who are new to the school district. This extends the current probationary period in the first annual contract from 97 days to one year.

Upon successful completion of the one-year probationary contract, district school boards may award subsequent annual contracts if the employee is certified, recommended by the superintendent based upon his or her performance evaluation, and approved by the district school board. Annual contracts may not be awarded to instructional personnel who have two consecutive unsatisfactory evaluations, two unsatisfactory evaluations within a three-year period, or three consecutive evaluations of needs improvement or any combination of needs improvement and unsatisfactory. This increases the likelihood that all students will have effective or highly effective classroom teachers.

Effective July 1, 2011, the bill repeals all special laws or general laws of local application relating to contracts for public school instructional personnel and school administrators to achieve statewide consistency regarding such contracts. District school board authorization to award a continuing contract or professional service contract to newly hired instructional personnel who previously earned such contract in the same or another school district in the state is also repealed as are provisions allowing a continuing contract to be exchanged for a professional service contract. Continuing contract employees have had since July 1, 1984, to exchange their contract. The bill also repeals the requirement that a school district must recognize and accept each year of employment when a new employee arrives in the district.

All contracts for instructional personnel will allow suspension or dismissal at any time during the term of the contract based upon the same just cause grounds currently in law. For professional service contracts, the bill expands "just cause" to authorize suspension or dismissal for two consecutive unsatisfactory performance evaluations, two unsatisfactory evaluations within a three-year period, or three consecutive evaluations of needs improvement or any combination of needs improvement and unsatisfactory. Similarly, a school district is not required to renew a professional service contract if the employee has two consecutive unsatisfactory performance evaluations, two unsatisfactory evaluations within a three-year period, or three consecutive evaluations of needs improvement or any combination of needs improvement and unsatisfactory. This will allow chronically ineffective professional service contract employees to be removed from the classroom.

The bill effectively ends the practice of "last hired, first fired" in Florida. District school boards, when making reductions-in-force, must prioritize retention of instructional personnel and school administrators upon educational program needs and performance evaluation results. Specifically, employees with the lowest performance evaluation ratings must be released before higher-rated employees. Unlike current practice, school boards may not prioritize retention of employees based upon seniority.

### **Applicability of Exemptions**

#### **Current Law**

Academically high-performing school districts are generally exempt from the Florida K-20 Education Code (chs. 1000-1013, F.S.), with several exceptions. These school districts are statutorily required to comply with provisions governing instructional personnel and school administrator salary schedules, professional service contracts, and performance evaluations.<sup>77</sup>

Charter schools are generally exempt from the Florida K-20 Education Code (Chapters 1000-1013, F.S.), except statutes directly applicable to charter schools and statutes for which compliance is specifically required. Charter schools are currently exempt from statutory provisions pertaining to instructional personnel and school administrator performance appraisals, salary schedules, and

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<sup>77</sup> Section 1003.621(1)(b) and (2), F.S.

contracts.<sup>78</sup> The 224 charter schools participating in Race to the Top will be implementing reforms to performance evaluations and compensation systems.<sup>79</sup>

On November 19, 2009, the Hillsborough County School District received a \$100 million grant award from the Bill and Melinda Gates Foundation. Funds from this grant will be used to implement several instructional personnel and school administrator quality reforms, including:

- Development of a performance evaluation system that is at least 40 percent based upon student performance.
- Use of a value-added student learning growth formula.
- Consideration of performance before instructional personnel tenure is awarded.
- Implementation of performance pay linked to performance evaluations.
- Granting greater authority to school principals to recruit and dismiss instructional personnel based upon performance.<sup>80</sup>

Hillsborough County is also participating in Race to the Top. Florida's *Race to the Top Memorandum of Understanding for Phase 2* contains an exemption allowing the district to develop a performance evaluation system that is 40 percent based upon student performance, rather than the 50 percent required by Race to the Top. This enables the district to implement the performance evaluation it proposed in obtaining the Gates grant.<sup>81</sup>

### **Effect of Bill**

To ensure consistent statewide implementation of the reforms made by the bill, academically high performing school districts are subjected to provisions governing contracts for instructional personnel on annual contract as of July 1, 2011, and those hired thereafter.

Similarly, the bill requires charter schools to comply with provisions governing salary schedules; reductions-in-force; contracts for instructional personnel on annual contract as of July 1, 2014, or hired thereafter; and instructional personnel and school administrator performance evaluations.

Beginning with the 2011-12 school year, Hillsborough County School District is exempted from the bill's requirement that 50 percent of its performance evaluation be based upon student performance. In accordance with the Gates grant, student learning growth may comprise 40 percent of its evaluation. The school district is also exempt from the bill's performance pay provisions. The exemptions may be extended annually with state board approval. To receive such approval, the district must:

- Maintain a performance evaluation system that is at least 40 percent based upon student performance.
- Maintain an instructional personnel and school administrator compensation system that awards employee salary increases based upon sustained student performance.
- Use the student learning growth formula for statewide assessments approved by the commissioner pursuant to the bill.
- Contract with instructional personnel and school administrators based upon student performance and demonstrate that ineffective employees are dismissed.
- Demonstrate improvements in student learning growth on statewide assessments beginning with the 2014-15 school year, and annually thereafter, above 2011-12 school year levels.

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<sup>78</sup> Section 1002.33(16), F.S.

<sup>79</sup> Email from Florida Department of Education (Feb. 15, 2011).

<sup>80</sup> Bill and Melinda Gates Foundation, *Intensive Partnership Fact Sheet: Hillsborough County Public Schools*, <http://www.gatesfoundation.org/united-states/Pages/hillsborough-county-public-schools-fact-sheet.aspx> (last visited Feb. 15, 2011).

<sup>81</sup> *Race to the Top MOU*, *supra* note 36, at 11.

If the state board denies the exemption, the school district must comply with the bill's performance evaluation, contracting, and compensation reforms by the beginning of the next school year immediately following loss of the exemption. The state board must adopt rules establishing a procedure for obtaining the exemption. The exemption sunsets on August 1, 2017, unless reviewed and reenacted by the Legislature.

The exemption enables Hillsborough County to continue implementing the Gates grant, while holding it accountable for improving student performance. Statewide use of the same student learning growth formula will allow for an accurate comparison of the Gates grant reforms and those made by the bill and Race to the Top.

## B. SECTION DIRECTORY:

**Section 1:** Providing a short title.

**Section 2:** Amending s. 1012.34, F.S.; revising the instructional personnel and school administrator performance evaluation system design components; revising the performance criteria; requiring inclusion of specific performance levels; requiring adoption of a student learning growth formula; requiring reporting; requiring the state board to adopt rules.

**Section 3:** Amending s. 1008.22, F.S.; requiring school districts to administer assessments to measure student learning growth for all courses offered; requiring the commissioner to identify methods to assist and support districts in administering such assessments.

**Section 4:** Amending s. 1012.22, F.S.; providing for employee placement on salary schedules; requiring adoption of a performance salary schedule; requiring salary adjustments to be based upon performance; requiring salary supplements to be based upon specified criteria; prohibiting use of advanced degrees to set base salary; authorizing salary supplements for advanced degrees; authorizing cost of living adjustments; providing definitions; requiring consideration of performance when making employee transfers and promotions.

**Section 5:** Creating s. 1012.335, F.S.; providing new employment criteria for instructional personnel hired on or after July 1, 2011; providing grounds for suspensions and dismissals; providing definitions.

**Section 6:** Amending s. 1002.33, F.S.; requiring charter schools to comply with statutes governing salary schedules, workforce reductions, contracts for instructional personnel hired on or after July 1, 2011, and instructional personnel and school administrator performance evaluations.

**Section 7:** Amending s. 1003.621, F.S.; requiring academically high-performing school districts to comply with statutes governing salary schedules, personnel transfers, employee contracts, instructional personnel and school administrator performance evaluations.

**Section 8:** Amending s. 1006.09, F.S.; revising terminology.

**Section 9:** Amending s. 1012.07, F.S.; revising the methodology for identifying critical teacher shortage areas.

**Section 10:** Amending s.1012.2315, F.S.; requiring the department to post performance evaluation results online; requiring school districts to report to parents.

**Section 11:** Amending s. 1012.27, F.S.; revising the procedure for employee transfers.

**Section 12:** Amending s.1012.28, F.S.; authorizing school principal to refuse transfer of certain employees.

**Section 13:** Amending s. 1012.33, F.S.; providing additional grounds for suspension and dismissal; revising the criteria for renewal of professional service contracts; repealing authorization to award a continuing or professional service contract to newly hired employees who received such contract in the same or another school district; repealing authorization to exchange certain contracts; repealing an expired due process procedure; revising the priorities for workforce reductions.

**Section 14:** Repealing s. 1012.52, F.S.; relating to teacher quality legislative intent.

**Section 15:** Amending s.1012.795, F.S.; granting the Education Practices Commission jurisdiction to pursue charges for breach of an annual contract entered into on or after July 1, 2011.

**Section 16:** Providing an exemption.

**Section 17:** Providing that Chapter 2010-279, Laws of Florida, does not apply to rulemaking required under the bill.

**Section 18:** Repealing special acts or general laws of local application relating to contracts for public school instructional personnel and school administrators.



**Section 19:** Providing that amendments made to s. 1012.33, F.S., apply to contracts entered into, extended, or readopted on or after July 1, 2011, and to all contracts entered into on or after July 1, 2014.

**Section 20:** Providing a severability clause.

**Section 21:** Providing an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill does not have a fiscal impact on state revenues.

#### 2. Expenditures:

See Fiscal Comments.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill does not have a fiscal impact on local revenues.

#### 2. Expenditures:

See Fiscal Comments.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not have a direct economic impact on the private sector.

### D. FISCAL COMMENTS:

Florida's \$700 million Race to the Top grant is funding implementation of most bill requirements. DOE will allocate at least \$69 million in grant funds to improve teacher and principal effectiveness.<sup>82</sup> Grant funds will be used to assist school districts in the development of new educator performance evaluations; test item banks; student learning growth formulas for subjects tested on statewide assessments; and growth models for district-developed assessments. DOE will provide assistance to school districts in developing or acquiring assessments for subjects and grades not tested on statewide assessments, including:

- Resources for districts to develop test items for "hard to measure" content areas, such as physical education, fine arts, and foreign language.
- Test items for core content areas such as math, social studies, science, and language arts for subjects and grades not tested on statewide assessments; and
- A technology platform to provide districts with secure access to high-quality test items and tools for the creation and administration of student assessments.

Additional resources may be necessary to maintain a test item bank or platform at the conclusion of the grant period, which is the end of the 2013-14 school year.<sup>83</sup>

Since 1999, school districts have been required to measure student performance on educator performance evaluations using statewide assessments and, for subjects and grades not tested on

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<sup>82</sup> Florida Department of Education, *Florida's Race to the Top: hearing before the House Education Comm.* (Jan. 13, 2011); Email from Florida Department of Education (Feb. 14, 2011).

<sup>83</sup> Florida Department of Education, *Legislative Bill Analysis for CS/SB 736* (2011); Staff of the Florida Senate, *Legislative Bill Analysis for CS/SB 736* (2011).

statewide assessments, local assessments. During the next three years, the grant will provide funding for the development of assessments in most subjects.

The bill establishes new priorities that must be met by school districts when determining educator compensation; however, it does not require school districts to expend any new funds on adjustments and supplements if funds are not available to do so.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

The bill does not require a city or county to expend funds or to take any action requiring the expenditure of funds.

The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

The bill does not reduce the percentage of state tax shared with counties or municipalities.

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

The bill requires the State Board of Education to adopt rules:

- Establishing student learning growth measures and implementation procedures for performance evaluations.
- Defining standards for performance levels.
- Establishing procedures for annual reporting and monitoring of school district implementation of performance evaluation systems.
- Defining just cause dismissal based upon unsatisfactory performance.
- Establishing a procedure for obtaining an exemption from certain requirements.

Additionally, the rulemaking requirements of the bill are exempt from ch. 2010-279, L.O.F.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On February 23, 2011, the K-20 Competitiveness Subcommittee reported the Proposed Committee Bill (PCB) favorably with four amendments. The amendments made the following changes to the bill:

Amendment 1 adds provisions prohibiting the award of an annual contract to instructional personnel who receive three consecutive performance evaluations of needs improvement or any combination of needs improvement and unsatisfactory. In the PCB, this prohibition was limited to receipt of two consecutive unsatisfactory performance evaluations or two unsatisfactory evaluations in a three-year period.

Amendment 2, in addition to the bill's requirement that DOE report, online, each school district's performance evaluation rating percentages, requires school districts to annually report to parents the fact that their child is assigned to a classroom teacher or school administrator who has two consecutive unsatisfactory performance evaluations, two unsatisfactory evaluations in a three-year period, or three

consecutive evaluations of needs improvement or any combination of needs improvement and unsatisfactory.

Amendment 3 adds receipt of three consecutive performance evaluations of needs improvement or any combination of needs improvement and unsatisfactory as just cause for suspending or dismissing instructional personnel on professional service contracts. In the PCB, performance-based "just cause" was limited to receipt of two consecutive unsatisfactory performance evaluations or two unsatisfactory evaluations in a three-year period.

Amendment 4 provides that a professional service contract is not required to be renewed if the employee receives two consecutive unsatisfactory performance evaluations, two unsatisfactory evaluations within a three-year period, or three consecutive evaluations of needs improvement or any combination of needs improvement and unsatisfactory. This provision is new to the bill.