

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill requires school districts to provide a tax-sheltered annuity or custodial account available to eligible participants for the Distinguished Educator Retirement Option Program.

Safeguard individual liberty – The bill increases the retirement options for classroom teachers and instructional personnel by creating the Distinguished Educator Retirement Option Program.

B. EFFECT OF PROPOSED CHANGES:

Effect of Bill

The bill creates the Distinguished Educator Retirement Option Program (program). The program is a tax-sheltered annuity or custodial account established pursuant to s. 403(b) of the United States Internal Revenue Code. It is administered by the local school district and is funded by the Florida Education Finance Program.¹ All 67 school districts currently offer such accounts.²

The purpose of the program is to provide increased retirement contributions for qualified instructional personnel³ and classroom teachers.⁴ The following are qualified participants for the program:

- Instructional personnel employed in Title I⁵ schools that have at least 75 percent of their eligible students⁶ making learning gains in both reading and mathematics, based upon results on the statewide assessment.
- Classroom teachers teaching reading or mathematics and who have at least 75 percent of their students making learning gains in each subject taught by that teacher, based upon results on the statewide assessment.

¹ Florida school districts and developmental research schools receive State funding through the Florida Education Finance Program (FEFP), which was established by the Florida Legislature in 1973. To provide equalization of educational opportunity in Florida, the FEFP formula recognizes (1) varying local property tax bases, (2) varying program cost factors, (3) district cost differentials, and (4) differences in per student cost for equivalent educational programs due to sparsity and dispersion of student population. The funding provided by FEFP is based upon the numbers of individual students participating in particular educational programs. A numerical value is assigned to each student according to the student's hours and days of attendance in those programs. The individual student thus becomes equated to a numerical value known as an unweighted FTE (full-time equivalent student). For example, one student would be reported as one FTE if the student was enrolled in six classes per day at 50 minutes per class for the full 180-day school year (i.e., six classes at 50 minutes each per day is five hours of class a day or 25 hours per week, which equals one FTE). Summary of Florida Auditor General Report 2007-199, *FEFP-Alexander D. Henderson University School*, June 28, 2007, available at <http://www.myflorida.com/audgen/pages/summaries/2007-199.htm> (site last visited March 19, 2008).

² Telephone conversation with the Chair of the Creative Benefits for Educators and staff of the Department of Education, March 19, 2008.

³ Section 1012.01(2), F.S., defines “instructional personnel” to mean “any K-12 staff member whose function includes the provision of direct instructional services to students. Instructional personnel also includes K-12 personnel whose functions provide direct support in the learning process of students.” Included in the classification of instructional personnel are the following K-12 personnel: classroom teachers, student personnel services, librarians and media specialists, other instructional staff (e.g., primary specialists, learning resource specialists, and instructional trainers), education paraprofessionals.

⁴ Section 1012.01(2)(a), F.S., defines “classroom teachers” to mean “staff members assigned the professional activity of instructing students in courses in classroom situations, including basic instruction, exceptional student education, career education, and adult education, including substitute teachers.”

⁵ Title I, Part A of the federal Elementary and Secondary Education Act of 1965, as amended and reauthorized under the No Child Left Behind Act of 2001, provides financial assistance to school districts and schools with high numbers or high percentages of disadvantaged children to help ensure that all children meet challenging state academic standards.

⁶ The term “eligible students” means students who are in grades or subjects tested by the statewide assessment, the FCAT. See email from the Foundation for Florida’s Future to staff, March 19, 2008 (on file with the Committee on State Affairs).

The Department of Education (Department) must identify annually those instructional personnel and classroom teachers who qualify for participation in the program. If a person qualifies as both instructional personnel and a classroom teacher, then the Department only identifies that person for the category receiving the greater of the two benefits, which would be designation as a qualified classroom teacher. Beginning July 1, 2009, and each July 1 thereafter, the Department must certify to each school district those personnel and teachers eligible for participation in the program.

Each school district must provide a tax-sheltered annuity or custodial account for each instructional personnel and classroom teacher, within its district, who was certified by the Department for eligibility in the program. For each certified instructional personnel, the school district must pay an amount equal to 1.95 percent of that personnel's annual salary to:

- An insurance company licensed to do business in Florida;
- A credit union, bank, or savings and loan association qualified to do business in Florida; or
- A custodial account to be invested in regulated investment company stock to be held in such custodial account, as selected by the person, as premiums on an annuity contract issued in the name of such person or as payment into a qualified custodial account established pursuant to s. 403(b) of the United State Internal Revenue Code.⁷

For each certified classroom teacher, the school district must pay an amount equal to 4.40 percent of that teacher's annual salary to one of the aforementioned accounts.

Each certified instructional personnel and classroom teacher participating in the program may pay matching funds to the same account established by the school district.

The amount of any payments made to such account cannot exceed the amount excludable from income under the requirements of s. 403(b) of the United States Internal Revenue Code. In addition, the amount contributed is considered part of the employee's salary for all purposes other than federal income taxation.

The purchase of a tax-sheltered annuity or other qualified investment does not impose liability or responsibility on the employing agency.

The bill authorizes the State Board of Education (SBE) to adopt necessary rules to create a process for identifying eligible instructional personnel and classroom teachers. It also authorizes the SBE to adopt rules to create a process for certifying qualified participants to the appropriate school districts.

By October 1, 2008, the Department must request from the Internal Revenue Service a letter ruling whether the provisions of the bill comply with the Internal Revenue Code.

Background

K-20 Education System

The State Board of Education (SBE) is the chief implementing and coordinating body of public education in Florida, except for the State University System.⁸ The SBE is responsible for approving the student performance standards known as the Sunshine State Standards.⁹ The Commissioner of

⁷ Section 403(b), IRC, covers educational employers and not-for-profit organizations. School boards already may provide a 403(b) plan for their employees' deferred compensation program. Creation of such a plan would allow for the deferment of taxation of benefits accrued under this program until the participant directly receives the benefit. *See* Email from the Division of Retirement of the Department of Management Services to staff, February 7, 2008 (on file with the Committee on State Affairs).

⁸ Section 1002.02(1), F.S.

⁹ Section 1001.03(1), F.S.

Education is the chief educational officer and is responsible for assisting the SBE in enforcing compliance with the mission and goals of the K-20 education system.¹⁰

Each county constitutes a school district. The school officials for each school district are responsible for the actual operation and administration of schools within their district.¹¹

Accountability System

The Department maintains an accountability system that measures student progress toward the following goals:

- Highest student achievement, as indicated by evidence of student learning gains at all levels.
- Seamless articulation and maximum access, as measured by evidence of progression, readiness, and access by targeted groups of students identified by the Commissioner of Education.
- Skilled workforce and economic development, as measured by evidence of employment and earnings.
- Quality efficient services, as measured by evidence of return on investment.
- Other goals as identified by law or rule.¹²

The Commissioner of Education prepares annual reports of the results of the statewide assessment program. The reports describe student achievement in the state, each district, and each school.¹³ It also provides the grade assigned to each school. School grades are based on certain criteria¹⁴ and student assessment data.¹⁵

Learning Gains

An "annual learning gain" is an increase in a student's learning from the prior year, as measured by the Florida Comprehensive Assessment Test (FCAT). A student makes a learning gain if one of the following three criteria are met:

- Improved FCAT achievement level from prior year (e.g., from level 1 to level 2);
- Maintained FCAT achievement levels 3, 4, or 5 from prior year; or
- Maintained FCAT achievement levels 1 or 2 and demonstrated more than 1 year's growth according to FCAT developmental scale scores, which establish by grade level the anticipated increase in a student's FCAT scale scores from the prior year. A retained student's increase in developmental scale scores for repeated grade levels is not used to calculate learning gains.¹⁶

A student is not included in the calculation of learning gains if the student's FCAT achievement level declines from the prior year, even if the lower score is at or above grade level.¹⁷

¹⁰ Section 1001.10(1), F.S.

¹¹ Section 1001.30, F.S.

¹² Section 1008.31(2)(c), F.S.

¹³ Section 1008.34(1), F.S.

¹⁴ The criteria consist of a combination of: Student achievement scores, including achievement scores for students seeking a special diploma. Student learning gains as measured by annual FCAT assessments in grades 3 through 10; learning gains for students seeking a special diploma, as measured by an alternate assessment tool, shall be included not later than the 2009-2010 school year. Improvement of the lowest 25th percentile of students in the school in reading, math, or writing on the FCAT, unless these students are exhibiting satisfactory performance. Section 1008.34(3)(a), F.S.

¹⁵ Student assessment data used in determining grades includes: The aggregate scores of all eligible students enrolled in the school who have been assessed on the FCAT. The aggregate scores of all eligible students enrolled in the school who have been assessed on the FCAT, including Florida Writes, and who have scored at or in the lowest 25th percentile of students in the school in reading, math, or writing, unless these students are exhibiting satisfactory performance. Effective with the 2005-2006 school year, the achievement scores and learning gains of eligible students attending alternative schools that provide dropout prevention and academic intervention services pursuant to s. 1003.53, F.S. Section 1008.34(3)(b), F.S.

¹⁶ School Grades Fact Sheet by the Schools & Learning Council, January 2008, at question 3 (on file with the Committee on State Affairs).

¹⁷ *Id.*

Florida Retirement System

Chapter 121, F.S., is the Florida Retirement System Act and it governs the Florida Retirement System (FRS). The secretary of the Department of Management Services (DMS) through the Division of Retirement (Division) administers the FRS.¹⁸

The FRS is the primary retirement plan for employees of state and county government agencies, district school boards, community colleges, and universities. The FRS offers a defined benefit plan that provides retirement, disability, and death benefits for over: 680,000 active members, 264,000 retirees and surviving beneficiaries, and 31,000 Deferred Retirement Option Program (DROP) participants.¹⁹

As of June 30, 2007, district school boards represent nearly half (48.70 percent) of the FRS membership.²⁰

Currently, instructional personnel receive increased retirement benefits under DROP. Such personnel may indefinitely postpone the decision to join DROP. Other FRS participants must make the decision within 12 months from when the member first qualifies for normal retirement based on age or years of service.²¹ In addition, instructional personnel may participate in DROP for up to 96-months, whereas other FRS participants are authorized to participate for up to 60-months.²²

Section 403(b) of the United States Internal Revenue Code

Under a 403(b) qualified plan, there is an annual cap on the total contributions that can be contributed. Both employer and employee contributions count towards this cap. For instance, in 2007 the limit was the lesser of 100 percent of the employee's earnings or \$45,000. If an employee were to have multiple 403(b) plans, the total contributed between their various 403(b) plans could not exceed the maximum contribution limit for the calendar year.²³

C. SECTION DIRECTORY:

Section 1 provides a declaration of important state interest.

Section 2 creates s. 1012.721, F.S., to create the Distinguished Educator Retirement Option Program.

Section 3 requires a letter ruling from the Internal Revenue Service.

Section 4 provides an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.²⁴

¹⁸ Section 121.025, F.S.

¹⁹ Department of Management Services 2008 Substantive Bill Analysis for HB 67, September 16, 2007, at 1 (on file with the Committee on State Affairs).

²⁰ Department of Management Services 2008 Substantive Bill Analysis for HB 67, September 16, 2007, at 2.

²¹ See s. 121.091(13), F.S.

²² *Id.*

²³ Email from the Division of Retirement of the Department of Management Services to staff, February 7, 2008 (on file with the Committee on State Affairs).

²⁴ Per the Department of Education, the bill does not appear to create a fiscal impact on the department. Email from the Department of Education to staff, March 19, 2008 (on file with the Committee on State Affairs).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Businesses could see increased investments by local school districts on behalf of instructional personnel and classroom teachers who qualify for the Distinguished Educator Retirement Option Program.

D. FISCAL COMMENTS:

The provisions of the bill are funded by the Florida Education Finance Program (FEFP). Florida school districts and developmental research schools receive State funding through the FEFP. The funding provided by FEFP is based upon the numbers of individual students participating in particular educational programs. A numerical value is assigned to each student according to the student's hours and days of attendance in those programs.²⁵

The fiscal impact per school district is unknown; however, based on data from 2006 and 2007, the following instructional personnel and classroom teachers would have qualified for the program:

- Title I schools with 75 percent of students making gains in reading and math: 48 schools qualified, making the benefit applicable to 2039 instructional personnel.²⁶
- Teachers in Title I schools with 75 percent of students making gains in reading or math: 885 schools qualified, making the benefit applicable to 2563 teachers.²⁷

The following is the estimated annual contribution for each certified instructional personnel and classroom teacher whose annual salary ranges from \$40,000 to \$60,000.²⁸

SALARY	4.4% Contribution Rate (Qualified Classroom Teachers)	1.95% Contribution Rate (Qualified Instructional Personnel)
\$30,000	\$1,320	\$585
\$40,000	\$1,760	\$780
\$50,000	\$2,200	\$975
\$60,000	\$2,640	\$1,170

²⁵ The individual student thus becomes equated to a numerical value known as an unweighted FTE (full-time equivalent student). For example, one student would be reported as one FTE if the student was enrolled in six classes per day at 50 minutes per class for the full 180-day school year (i.e., six classes at 50 minutes each per day is five hours of class a day or 25 hours per week, which equals one FTE). Summary of Florida Auditor General Report 2007-199, *FEFP-Alexander D. Henderson University School*, June 28, 2007, available at <http://www.myflorida.com/audgen/pages/summaries/2007-199.htm> (site last visited March 19, 2008).

²⁶ The data is based upon 2007 staff (number of instructional personnel) and school grades data. Email from the Department of Education to the Foundation for Florida's Future, February 28, 2008 (on file with the Committee on State Affairs).

²⁷ The data is based upon 2006 student performance. Email from the Department of Education to the Foundation for Florida's Future, February 28, 2008 (on file with the Committee on State Affairs).

²⁸ Email from the Division of Retirement of the Department of Management Services to staff, February 7, 2008 (on file with the Committee on State Affairs).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides the State Board of Education (Board) with rulemaking authority. It authorizes the Board to adopt rules necessary for creating a process for identifying instructional personnel and classroom teachers eligible for the program. The bill also authorizes the Board to adopt rules to create a process for certifying to the appropriate school districts those personnel and teachers who are qualified participants for the program.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

One of the most noble things we could do is show our teachers respect. One way to show them respect is through their compensation package. After all, what more noble thing could we do then to reward the instructional personnel of a Title I school for raising the learning gains of its students? What about the teacher who raises the learning gains in his or her own classroom? What if we could challenge those teachers to go and teach in the low, disadvantaged schools throughout our state? Any teacher who raises learning gains within their classroom and who is willing to teach the disadvantaged, should be rewarded with the highest retirement benefit reserved only for our elected officials. This bill will accomplish that vision.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 20, 2008, the Government Efficiency & Accountability Council heard PCB GEAC 08-21 and adopted one amendment to the PCB. The amendment narrows the scope of the benefit for classroom teachers by only including those classroom teachers employed by a Title I school. It also corrects a cross-reference in the definition of "learning gains" and corrects a drafting error.