SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Education Appropriations Committee

BILL: CS/SB 2480

SPONSOR: Education Committee and Senator Lynn

SUBJECT: Education

DATE: April 13, 2005 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carrouth/Matthews	O'Farrell	ED	**Fav/CS**
2.	Armstrong	Newman	EA	**Pre-meeting**
3.				
4.				
5.				
6.				

I. Summary:

This bill is a comprehensive education accountability package, commonly known as A++, which implements several education reforms in the following areas:

- Reading: The bill would establish scientifically based reading instruction to be funded through the Florida Education Finance Program (FEFP). The bill would require the establishment of Reading Compact Scholarships for certain students who continue to score at Level 1 on the reading portion of the Florida Comprehensive Assessment Test (FCAT). The bill codifies the establishment of the Just Read, Florida! Office and expands the office's area of responsibility to include review and approval of district comprehensive reading plans, and it codifies the establishment of the Florida Center for Reading Research at Florida State University and increases the center's responsibilities to include the development of reading intervention frameworks for courses for secondary schools.

- School Improvement Plans: The bill would require specific components in district and school improvement plans. The components reflect six steps commonly found in effective schools research and total quality management business practices that require continuous school improvement to be based on disaggregation of student achievement data and appropriate instructional strategies.

- School Choice Accountability: The bill provides for educational scholarship program reform by requiring all private schools participating in educational scholarship programs to: demonstrate fiscal soundness by being in operation at least three years or obtaining a surety bond or letter of credit; employ or contract with teachers who hold at least a

baccalaureate degree, have at least three years of teaching experience, or have a high school diploma and special skills in the subject areas taught; participate in standardized testing comparable to the FCAT and report student scores; and have any individual with unsupervised access to scholarship students to undergo level 2 background screening prior to employment or engagement to provide services.

- High School Reform: The bill would require school districts to establish policies to reform the delivery and appropriateness of existing high school curriculum. The bill also creates a High School Reform Task Force to make recommendations for high school reform.

- Middle Grades: The bill implements recommendations from the Middle Grades Task Force. The recommendations include the establishment of uniform grading and graduation requirements, intensive reading coursework for students reading below Level 4 on the reading portion of the FCAT, and credit recovery options for students who fail individual courses.

- Teacher Salary Increases and Incentives: The bill includes, contingent upon the passage of an amendment to the constitutional class size requirements, minimum beginning teacher salaries of $35,000 and a $2,000 elevation in salary for all other teachers. The bill requires district school boards to establish and implement performance- and differentiated-pay policies, and encourages districts to provide incentives for high performing teachers to work in low performing schools.

- Juvenile Justice Education Programs: The bill requires that academic performance data of students in juvenile justice education programs be reported for purposes of determining whether or not the state is making "adequate yearly progress" (AYP) under the federal No Child Left Behind Act.

- Alternative Schools: The bill extends the designation of school grades to include alternative schools, with exceptions, and provides for calculation of grades for both the sending school and the alternative school. Certain alternative schools would be graded based on learning gains as evidenced by student test scores.

- Effective School Leadership: The bill establishes school leadership designations for school administrators based on student learning gains and includes provisions for professional development opportunities to enhance and share leadership skills.

The bill amends the following sections of the Florida Statutes: 1001.03, 1001.42, 1003.05, 1003.415, 1003.42, 1003.431, 1003.52, 1003.57, 1003.58, 1004.04, 1007.261, 1008.22, 1008.25, 1008.31, 1008.33, 1008.34, 1008.36, 1009.531, 1011.62, 1012.21, 1012.22, and 1012.72.

The bill creates the following sections of the Florida Statutes: 1001.215, 1002.385, 1002.421, 1002.423, 1003.035, 1003.06, 1003.413, 1003.4155, 1003.4156, 1003.575, 1004.64, 1008.341, 1011.6855, 1012.2305, 1012.2315, and 1012.986.

The bill repeals the following sections of the Florida Statutes: 1003.03 concerning maximum class size, 1003.429 on accelerated high school graduation, 1011.685 concerning maximum class size, 1012.231 on the BEST program, and 1012.987 on principal leadership.

Sections 1003.03, F.S., and 1011.685, F.S., are repealed contingent upon an amendment to the constitutional class size requirements.

II. Present Situation:

Sunshine State Standards

The Sunshine State Standards were developed by educators from throughout the state and approved by the State Board of Education in 1996 to provide expectations for student achievement in Florida. The Standards were written in seven subject areas, each divided into four separate grade clusters (PreK-2, 3-5, 6-8, and 9-12). This format was chosen to provide flexibility to school districts in designing curriculum based on local needs. At the time, these standards represented a state consensus on what students needed to know and be able to do when they leave Florida's educational system. The Standards were approved to provide the framework for curriculum that would prepare students for success in the workplace and in postsecondary education.

Just Read, Florida!

The Just Read, Florida! Office (JRF) was established by the Governor and currently is administratively housed within the Department of Education. The JRF is involved in oversight of the following reading initiatives and programs:

- Reading First – Florida was one of the first three states to be awarded funds for this federal K-3 program. Florida will receive $300 million over the course of six years. The award for 2002-2003 was $45.6 million, and $52 million was allocated for 2003-2004. Through a highly competitive application process, districts are asked to submit application for these funds in order to support professional development, assessment, classroom libraries and instructional materials in eligible schools.
- Reading Coach Model Grant Recipients – $14 million was awarded for the 2003-2004 school year. These K-12 grants are serving 211 schools in 33 school districts. One hundred nineteen elementary schools, 42 middle schools and 50 high schools received awards. All model grant coaches were provided two weeks of intensive professional development in order to enhance their coaching skills. Also included were the seven schools in the state that received a school grade of "F" for two school years. This grant was also awarded for the 2002-2003 school year in the amount of $11 million.
- Research-Based Reading Grant – $2.96 million was awarded for the 2003-2004 school year. These grades 6 -12 grants in 22 districts were awarded to implement, enhance, or maintain an instructional design supported by scientifically based reading research. The grants support high quality reading instruction for academic improvement plan students. Fifty-three middle schools, one Department of Juvenile Justice site, and 40 high schools were awarded the grants. These grants were also awarded during the 2002-2003 school year. $3,046,392 was provided for the 2001-2002 school year.

- Florida Online Reading Professional Development (For- PD) – For PD is an online staff development project designed to help educators improve reading instruction for learners in grades preK-12. The project is funded through a $2 million grant from the Florida Department of Education. To date, 4,114 educators have been served in 63 participating districts and four universities.
- Florida Literacy and Reading Excellence Center (FLaRE) – This program supplies scientifically based reading professional development for teachers in participating FLaRE schools, with an emphasis on serving middle and high school educators. This grant has been awarded to FLaRE at UCF over several years, with a $2 million award for the 2003-2004 school year. A curriculum for grade 4-12 teachers has been developed and piloted and will be reviewed by JRF staff. To date, 268 schools have been served. This project was also awarded $5,541,291 during the 2002-2003 school year.
- Florida Reading Initiative (FRI) – The North East Florida Educational Consortium (NEFEC) was awarded $2 million for the 2003-2004 school year to provide school based K-12 professional development in reading components and strategies. A two week summer reading academy is hosted annually. Fifty one schools are being served. NEFEC also received a grant award for $1.3 million during the 2002-2003 school year.
- Summer Reading Professional Development Program – $1 million was awarded to Florida State University in January, 2002, to provide regional professional development via college courses in reading in four locations around the state. Approximately 380 educators participated during the summer of 2003. With grades 6-12 the priority, educators enjoyed waived tuition, text books at no charge, and a stipend based upon the number of courses taken. The JRF has been in discussion with FSU representatives and tentatively plans to fund the project with an additional $1 million in order to offer courses in eight sites around the state.
- Families Building Better Readers – $50,000 was awarded in 2003-2004 to fund workshops and instructional tool kits for parents of struggling third grade readers.
- Reading Diagnostics – JRF has provided funds for districts to order at no charge reading diagnostic assessments from the Department of Education for K-3 students. This project was awarded $2 million for both 2002-2003 and 2003-2004 for a total of $4 million.

Class Size

In November 2002 the voters of Florida approved an amendment to s. 1, Art. IX of the State Constitution to provide that by the beginning of the 2010-2011 school year the maximum number of students assigned to a teacher teaching in public school classrooms shall be as follows: for students in prekindergarten through grade 3 no more than 18; for students in grades 4-8 no more than 22; and for students in grades 9-12 no more than 25.

The amendment further provides that beginning with the 2003-2004 fiscal year, the Legislature shall provide sufficient funds to reduce the average number of students in each classroom by at least two students per year until the maximum number does not exceed the requirement in 2010-2011.

Indications are that the current number of teachers available is insufficient to both meet the amendment's requirements and to replace currently employed teachers who will be retiring or leaving the teaching profession for other reasons. The need for classroom facilities depends on

how districts choose to utilize existing facilities to meet the teacher/pupil ratios provided in the amendment.

Section 1003.03, F.S., provides that each school district that is not in compliance with the maximum class size requirements shall reduce the average number of students per classroom for each of the three grade groups by at least two students per year. Determination of the average number of students per classroom for each of the three grade groups shall be as follows:

- Fiscal years 2003-2004 through 2005-2006 shall be calculated at the district level.
- Fiscal years 2006-2007 through 2007-2008 shall be calculated at the school level.
- Fiscal years 2008-2009 through 2009-2010 shall be calculated at the individual classroom level.

The Department of Education must annually calculate district class size using student membership surveys.

School districts must consider but are not required to implement certain options to meet the class size reductions, including:

- Adopting policies to encourage qualified students to take dual enrollment courses;
- Adopting policies to encourage students to take courses from the Florida Virtual School;
- Repealing district school board policies that require students to have more than 24 credits to graduate from high school;
- Adopting policies to allow students to graduate from high school as soon as they pass the grade 10 FCAT and complete the courses required for high school graduation;
- Using methods to maximize use of instructional staff, such as changing required teaching loads and scheduling of planning periods; deploying district employees that have professional certification to the classroom; using adjunct educators; or any other method not prohibited by law;
- Using innovating methods to reduce the cost of school construction by using prototype school designs, using SMART Schools designs, or participating in the School Infrastructure Thrift Program;
- Using joint-use facilities through partnerships with community colleges, state universities, and private colleges and universities;
- Adopting alternative methods of class scheduling, such as block scheduling;
- Redrawing school attendance zones to maximize use of facilities while minimizing the additional use of transportation;
- Operating schools beyond the normal operating hours to provide classes in the evening or operate more than one session of school during the day;
- Using year-round schools and other nontraditional calendars that do not adversely impact annual assessment of student achievement;
- Reviewing and considering amending any collective bargaining contracts that hinder the implementation of class size reduction; and
- Using any other approach not prohibited by law.

Beginning in the 2003-2004 fiscal year, if any district does not meet the two-student-per-year reduction requirement, the Department of Education shall calculate an amount which is proportionate to the amount of class size reduction not accomplished. Upon verification of the department's calculation by the Florida Education Finance Program Appropriation Allocation Conference, the Executive Office of the Governor shall transfer undistributed funds equivalent to the calculated amount from the district's Class Size Reduction Operating Categorical allocation to the district's fixed capital outlay appropriation to be used to meet the class size reduction requirements. The amount transferred shall not be greater than the undistributed balance in the district's class size reduction operating categorical allocation. However, the Legislative Budget Commission may approve an alternate amount of funds to be transferred if the State Board of Education determines that a district has been unable to meet class size reduction requirements despite appropriate efforts.

Beginning in the 2005-2006 school year, each district that has not met the two-student-per-year reduction is required to implement one of the following policies in the subsequent school year:

- Year-round schools;
- Double sessions;
- Rezoning;
- Maximizing use of instructional staff by changing teacher loads and planning periods, using adjunct educators, returning district employees who have professional certification to the classroom, or operating beyond normal operating hours or more than one session per day.

Beginning in the 2006-2007 school year each district that has not met the two-student-per-year reduction is required to implement a constitutional compliance plan prepared by the Department of Education until the district complies with the constitutional class size maximum.

The Legislature has appropriated $700 million for capital outlay costs for class size reduction under the constitutional amendment. For FY 2004-2005, the Legislature appropriated $978.8 million for operational costs in meeting the class size amendment. Senate Bill 2600 proposes $1.5 billion for operational costs in meeting class size reduction requirements for FY 2005-2006.

Due to the variables concerned with implementing class size reduction, there is a wide range of estimated costs in complying with the class size amendment through the 2010-2011 school year. The Revenue Estimating Conference estimated a range of approximately $20 billion to $27 billion in meeting class size requirements through 2010-2011. The Department of Education has estimated a range of approximately $22 billion to $26.5 billion in meeting class size requirements through 2010-2011. These estimated ranges are predicated on certain assumptions such as classroom type and use, land costs, cost per student station, and utilization factors. These estimates were based on the procedure of current law and current practice. The cost figures will change as more accurate data on currently available space is collected and if there are changes in the current law and practice relating to flexibility in the use of funds, use of existing facilities construction standards, and requirements for the recruitment and retention of teachers.

Middle Grades

Currently, district school boards determine grading scales for students in the middle grades. Florida has made substantial progress in student achievement reading gains, primarily at the elementary level; however, progress is significantly lower at the middle grades and the high school level. For example, 4th grade students scoring at Level III rose from 53 percent in 2001 to 70 percent in 2004. Students in grade 8 reading at Level III over the same period rose from 43 percent to 45 percent and students in grade 10 scoring at Level III actually dropped from 37 percent to 34 percent. Furthermore, the complexity of passages and the increased demand on Cluster 4 type information (Research and Reference) at the secondary FCAT levels necessitates increasingly difficult demands in literacy skills. Secondary educators continue to stress the difficulty of making multiple year gains in reading. In 2004, the Legislature passed the Middle Grades Reform Act, which required the DOE to establish a Middle Grades Reform Task Force to make recommendations for further middle school reforms.

Juvenile Justice Education Programs

The federal No Child Left Behind Act (NCLB) sets forth specific testing requirements for public school students that are used to measure whether states, districts, and schools are making adequate yearly progress (AYP) toward state student proficiency goals. Schools with highly mobile populations (e.g., juvenile justice facilities) must be included in the statewide assessment system and in the district or state AYP calculation. As a result, data for these students influences whether states make AYP. These schools will not receive an AYP status designation. Rather, the students' performance and participation rates are "rolled up" to the district or state level.

Exceptional Students/ Residency & Eligibility

Currently there are out-of-state exceptional students who are placed in residential facilities by their parents or other states whose educational services are provided and funded by the state. The Department of Education considers any child in a residential facility in the state to be a state resident, regardless of the parents' state of residence, creating a financial obligation for the state and the local district where the facility is located to provide exceptional student services (ESE) to the child, even if the child's parents are residents of another state.

The Office of Program Policy Analysis and Government Accountability (OPPAGA) recently reviewed the number of out-of-state children living in the state's private residential facilities and the state's cost of providing exceptional student services to these children. OPPAGA determined that the state could avoid $1.5 million annually in exceptional student costs for these children by requiring the student's home state or the parent to provide payment for educational services rendered. OPPAGA recommended revising current law to clarify that, consistent with federal law, residency is a requirement for funding ESE services and that a child's residency is determined by the residency of the parent.

Teacher Preparation Programs

Current law regarding public accountability and state approval for teacher preparation programs addresses the following:[1]

- Uniform curriculum;
- Development of programs;
- State approval of programs; and
- Ongoing program approval criteria that includes written and verbal communication standards, knowledge of the Sunshine State Standards, classroom management knowledge, ability to integrate technology in the classroom, and differentiated instructional strategies.

The law further addresses required preservice field experience, standards of excellence, attainment of National Board Standards, articulation agreements with community colleges, teaching assistantships, and teacher education pilot programs.

Florida Center for Reading Research (FCRR)

The FCRR was originally established in 2002 to serve as a clearinghouse for development and dissemination of reading research. This clearinghouse provides technical assistance to school districts in literacy instruction and programs; conducts basic and applied research on reading, literacy instruction and assessment; disseminates information about research-based practices related to literacy instruction; collects, manages, and reports on assessment information through Florida's Progress Monitoring and Reporting Network; and establishes regional partnerships with other postsecondary institutions.

Technology and the Administration of FCAT

Section 1008.22, F.S. requires an annual assessment to determine individual learning gains on appropriate Sunshine State Standards and the use of assessment data to drive subsequent instruction, as well as development and refinement of education policies.

Student Progression and Remediation

Current law requires school districts to report to DOE the number and percentage of all students in grades 3 through 10 performing at Level 1 or 2 on FCAT reading, by grade, the number and percentage of all students retained in grades 3 through 10, by grade, and the total number of students who were promoted for good cause, by each category of good cause as specified in s. 1008.25(6)(b), F.S.

Performance Based Budgeting

Section 1008.31, F.S. requires the State Board of Education to work with all K-20 delivery systems to develop performance-based funding plans. The plans must provide that at least 10

[1] Section 1004.04, F.S.

percent of state funds appropriated for the K-20 system are contingent upon meeting or exceeding established performance standards. These plans have not been implemented except with respect to workforce education.

Staffing of High Quality Teachers in Low Performing Schools/ Collective Bargaining

Currently, s. 1012.231, F.S., prohibits school districts from assigning a higher percentage than the district average of new or low performing teachers into "D" and "F" schools or into schools with a high percentage of minority and economically disadvantaged students. It further prohibits school boards from signing collective bargaining agreements that fail to provide incentives sufficient to meet this requirement.

School Report Cards

Currently, school performance grade categories are based on a combination of student achievement scores, student learning gains as measured by FCAT assessments in grades 3 though 10, and improvement of the lowest 25th percentile of students in reading, math, or writing, unless these students were performing above satisfactory. These school performance grades are available online.

Florida School Recognition Program

School recognition funds are allocated as determined jointly by the school staff and school advisory council and current law includes specific provisions as to how these funds will be allocated in the event that these two entities cannot reach an agreement by November 1.[2]

Reading Instruction/ K-12 Funding

Current funding sources to support reading initiatives in Florida are primarily funded through competitive grants, either from the state or federal level. The chart below reflects funding history beginning with the 2001-2002 school year with the number of schools and/or districts receiving funds.

[2] Section 1008.36, F.S.

Year	Amount	Reading Coaches Grants	# of Coaches	Research-based program grants	# of schools/ districts
2001-02					
State	$3,046,392			$3,046,392	40 districts
Federal					
2002-03					
State	$11 million	$13.4 million (Title I supplemented)	206 (elementary and all FF schools)		
Federal	$48 million				
2003-04					
State	$25 million	$14 million	211 K-12 coaches	$2.96 million	53 middle schools 1 DJJ 40 high schools
Federal	$50 million	Reading First	330 K-3		
2004-05					
State	$46 million	$32 million	432 120 Elementary 282 Middle 30 High	$3 million (1 million JRF, 1 million IDEA, 1 million Title I)	22 districts
Federal	$53 million	Reading First	400 coaches (+70)		

State and Federal Reading Funding 2001-2005

Minimum Teacher Pay

There is currently no minimum threshold for teacher salaries throughout the state. These wages are the subject of collective bargaining agreements at the school district level. Therefore, there is a great deal of variance in beginning teacher salaries. According to the Department of Education the state average minimum salary for teachers is as follows:[3]

- Bachelor's degree $28,607
- Master's degree $30,761
- Specialist $31,997
- Doctorate $33,039

According to unverified data from the American Federation of Teachers, the state's average beginning teacher salary for 2002-2003 was $30,491.[4]

Performance Pay and Differentiated Pay Schedules for Teachers

Currently, district school boards are required to adopt performance-pay policies, subject to negotiations provided in ch. 447, F.S., to include a 5 percent pay supplement funded from reserve

[3] www.firn.edu/doe/eias/eiaspubs/pdf/tchsal04.pdf
[4] www.aft.org/salary/2003/download/2003Table2.pdf

funds adopted in the salary schedule. In addition, s. 1012.231, F.S, requires the State Board of Education to develop a long-range plan to implement a differentiated-pay model for teachers based on the following categories of teachers: associate teachers, professional teachers, lead teachers, and mentor teachers.

Professional Development and Salary Schedules for Principals

Section 1012.987, F.S., provides for the adoption of rules by the State Board of Education to provide that principals may earn leadership designations based upon teacher retention, overall student performance, and school grades.

III. Effect of Proposed Changes:

Section 1
Section 1001.03, F.S., is amended to require the State Board of Education to periodically review the Sunshine State Standards (SSS) to ensure adequate rigor and to evaluate the extent to which standards are being taught.

While student achievement continues to improve, a tenth-year review of the Sunshine State Standards would provide Florida with an opportunity to identify areas where the standards could be revised to further improve rigor and relevance leading to student success and to improve manageability in terms of numbers of benchmarks and clarity. Additionally, changes would be incorporated that reflect content advances and improvements in brain research and the understanding of how students learn.

Section 2
Section 1001.215, F.S., is created to codify the Just Read, Florida! Office (JRF), administratively housed within the Department of Education. In addition, the bill prescribes certain duties of the office to include: training teachers using scientifically based reading research, promoting parental involvement through workshops for parents of struggling readers, and encouraging community organizations and corporations to have members and employees serve as reading mentors. The bill would provide additional oversight by JRF! to review and approve district comprehensive reading plans.

Section 3
The bill amends s. 1001.42(16), F.S., to require specific components in district and school improvement plans. The components reflect six steps commonly found in effective schools research and total quality management business practices that direct continuous school improvement based on disaggregated student achievement data and appropriate prescriptive instructional strategies.

Section 4
The bill creates s. 1002.385, F.S., to establish the Reading Compact Scholarships Program (RCS). These scholarships are made available to students who have scored a Level 1 on the reading portion of the FCAT for three (3) consecutive years. The parent may request a scholarship for the student from the state to attend an eligible private school or attend another public school. The Department of Education estimates that 170,000 students are currently

eligible for the Reading Compact Scholarships Program. Of this number, the department estimates that 40 percent or approximately 68,000 are eligible for a McKay Scholarship, and 67 percent or approximately 113,900 students qualify for free and reduced-price lunch which makes them eligible for Corporate Tax Credit Scholarships.

Students who have not been previously identified as an exceptional student and who score at Level 1 on the reading portion of the FCAT for two (2) consecutive years, shall be recommended, with parental consent, for screening and evaluation to determine whether the student is eligible for exceptional student services. This requires parental consent for the screening in accordance with federal law.

To be eligible for a scholarship, the student must have been accepted for admittance to an eligible private school and the parent must have requested the scholarship from the Department of Education in a prescribed manner at least 60 days before the date of the first scholarship payment. Students are ineligible for the scholarship if the student is:

- Enrolled in a school operating for the purpose of providing educational services to youth in Department of Juvenile Justice commitment programs;
- Receiving a scholarship from an eligible nonprofit scholarship-funding organization for the corporate tax credit scholarship program under s. 220.187, F.S.;
- Receiving an educational scholarship, such as an Opportunity or McKay scholarship, under ch. 1002, F.S.;
- Participating in a home education program as defined in s. 1002.01, F.S.;
- Participating in a private tutoring program under s. 1002.43, F.S.; or
- Participating in a virtual school, correspondence school, or distance learning program that receives state funding pursuant to the student's participation.

Once a student receives a scholarship, the scholarship remains in force until the student returns to a public school or graduates from high school. The parent may, upon reasonable notice to the Department of Education, remove the student from the private school and place the student in a public school or transfer the student to another eligible private school.

If the parent chooses the public school option, and the choice is consistent with the district's school choice plan under s. 1002.31, F.S., the district shall provide transportation to the public school selected by the parent. If the parental chooses another public school in the district or in an adjacent district, the parent is responsible for transporting the student to the public school.

In order to maintain a scholarship, students participating in the program must meet attendance requirements unless excused for good cause. In addition, parents must ensure that the student takes the norm-referenced assessment offered by the private school or a statewide assessment offered under s. 1008.22, F.S. Moreover, the parent must restrictively endorse the scholarship warrant to the private school. The parent may not designate an attorney in fact to sign a scholarship warrant if the attorney in fact is associated with the participating private school.

School districts are required to notify the parent of each eligible student of all options available under this program and must offer the parent an opportunity to enroll the student in another public school within the district. The school district must also provide locations and times for the

student to take all statewide assessments if requested by the parent. The parent is responsible for transporting the student to the assessment site.

The Department of Education is required to establish a toll-free hotline that provides parents and private schools with information on participation in the program. In addition, the department is charged with establishing a procedure to entertain any allegations of violations of the program by any participating entity. The department must refer or conduct an investigation of any complaint that is signed and is legally sufficient. In addition, the department may investigate anonymous complaints.

The Department of Education must require each participating private school to submit an annual notarized sworn compliance statement certifying compliance with state laws. The department must cross-check the list of participating students with the public school enrollment lists and educational scholarship program lists.

The bill sets forth the Commissioner of Education's authority to deny, suspend or revoke a private school's participation in the program for noncompliance. In addition, the bill establishes an administrative hearing process under chapter 120, F.S. However, the commissioner shall immediately suspend payment if there is probable cause to believe that there is an imminent threat to the health, safety, and welfare of the students; or the private school has engaged in fraudulent activity. The immediate suspension of benefits entitles the private school to request an administrative hearing as provided above.

The amount of scholarship is the lesser of the private school's tuition and applicable instruction or transportation fees or the amount the student would generate under the Florida Education Finance Program. A student with disabilities must received the weighted funding for those services in accordance with s. 1011.62(1)(e), F.S. However, a Group II student who is attending a private school that does not provide additional services may only receive the basic cost factor. The scholarship must include the per-student share of instructional materials funds, technology funds, and other categorical funds as provided in the General Appropriations Act.

The program establishes a quarterly payment cycle and requires all documentation establishing the student's participation at least 30 days before the first quarterly payment is made. Subsequent payments shall be made upon verification of continued enrollment and attendance at the private school. The Department of Financial Services shall randomly review endorsed warrants to confirm compliance with endorsement requirements.

The bill provides that the state incurs no liability on the basis of an award or use of the scholarship. The bill further provides that the State Board of Education must adopt rules to administer this program.

Section 5
The bill creates s. 1002.421, F.S., which establishes the obligations of private schools to participate in state school choice scholarship programs under chapter 1002, F.S., (McKay Scholarships, Opportunity Scholarships, and Reading Compact Scholarships) or s. 220.187, F.S., the Corporate Tax Credit Scholarship Program.

Participating private schools must additionally comply with private school requirements in s. 1002.42, F.S.; program requirements of the specific scholarship; state laws, local codes, and rules relating to health, safety and welfare that pertain to private schools; anti-discrimination provisions of 42 U.S.C. s. 2000d;[5] and department reporting requirements such as the sworn compliance form, student enrollment and student attendance verification requirements. In addition, the private school must demonstrate fiscal soundness be being in operation for at least three years or obtaining a surety bond or letter of credit for the amount equal to the scholarship funds for any quarter. The private school must employ or contract with teachers who hold baccalaureate or higher degrees, have at least three years of teaching experience in public or private schools, or have at least a high school diploma and special skills, knowledge, or expertise that qualifies them to provide instruction in the subjects that are being taught.

Finally, a private school must require each individual, prior to employment or engagement to provide services, having unsupervised access to a scholarship student to be of good moral character and to be subject to a level 2 background screening without the state bearing the cost. If the private school continues to employ an individual after notification that the individual has failed the level 2 background check, the private school is ineligible to participate in the scholarship program.

Section 6
The bill creates s. 1002.423, F.S. to establish requirements for all state scholarship programs, including the Corporate Tax Credit Scholarship Program. The bill requires the Department of Education to identify all nationally norm-referenced tests comparable to FCAT and to select a private research organization to which private schools must report test scores. Private schools are required to administer or make provision for administering one of the tests identified by the department under this section. Students with disabilities for whom standardized testing would not be appropriate are exempt from this requirement. However, these students must participate annually in a student assessment which, as determined by the private school and the student's parent, would demonstrate the student's skill level to the parent.

Student scores must be reported to the parent and an independent private research organization selected by the department. The private research organization must report student performance data in a manner that does not disclose the academic level of students. The department is required to conduct analyses of matched students from the public school assessment data and calculate control group learning gains using an agreed-upon methodology outlined in the contract with the third-party evaluator.

Section 7
The bill creates s. 1003.035, F.S., to provide that class size requirements beginning in the 2007-2008 school year, contingent upon passage of an amendment to the State Constitution for core curricula courses, shall be calculated on a district average as follows:

- Prekindergarten to grade 3 – not to exceed 18 students
- Grades 4 through 8 – not to exceed 22 students
- Grades 9 through 12 – not to exceed 25 students

[5] This provision does not prohibit discrimination on the basis on religion.

Under current law, class size calculations would be at the school level for FY 2006-2007 through 2007-2008 and at the classroom level for FY 2008-2009 and beyond.[6]

Section 8
The bill amends s. 1003.05(3), F.S., giving preference of special academic programs in public schools to transitioning students from military families, provided that the program has not reached maximum enrollment. The bill excludes charter schools from the student preference options for special programs.

Section 9
The bill creates s. 1003.06, F.S., to establish the High School Reform Act. The High School Reform Act requires school districts to establish policies beginning in the 2005-2006 school year to support retention, timely graduation and effective preparation for postsecondary education and the workforce. The bill establishes intensive reading intervention for students scoring Level 1 and 2 on the reading portion of the FCAT, provides for credit recovery options, parental notification for struggling students, appropriate alternative programs and curricula and summer reading institutes for incoming ninth graders who score below Level 3 on FCAT reading.

Section 10
The bill creates the High School Reform Task Force, prescribes membership and requires the Task Force to address, at minimum, graduation requirements, redesign of courses, strategies for remediation, credit recovery options, alternative programs that include applied curricula, small learning communities, support services and increased discipline. The Task Force is required to vote on a final report of recommendations no later than January 1, 2006 and to submit their report to the Governor, the President of the Senate, and the Speaker of the House no later than February 1, 2006.

Section 11
The bill deletes obsolete provisions relating to the Middle School Task Force, which has completed its initial report.

Section 12
The bill creates s. 1003.415, F.S., and implements the recommendations of the Middle School Task Force by establishing a uniform school course grading scale. The bill would require a common grading system, identical to that in statute for high schools, as follows:

- Grade “A” equals 90 percent through 100 percent and has a grade point average value of 4.
- Grade “B” equals 80 percent through 89 percent and has a grade point average value of 3.
- Grade “C” equals 70 percent through 79 percent and has a grade point average value of 2.
- Grade “D” equals 60 percent through 69 percent and has a grade point average value of 1.
- Grade “F” equals 0 percent through 59 percent and has a grade point average value of 0.
- Grade “I” equals zero percent, has a grade point average of zero, and is defined as “incomplete.”

[6] Section 1003.03(2)(b), F.S.

Section 13
The bill creates s. 1003.4156, F.S., which outlines general requirements for middle school promotion beginning with the 2005-2006 school year to require:

- Successful completion of 12 academic credits to consist of: 3 credits in middle school or higher level English/Language Arts; 3 credits in middle school or higher level math; 3 credits in middle school or higher level social studies; and 3 credits in middle school or higher level science;
- Students scoring at Levels 1 and 2 on the reading portion of the FCAT to complete a full year of intensive reading coursework to include integration of core content standards and informational text;
- Students scoring at Level 3 to complete a full semester of intensive reading to include integration of core content standards and informational text;
- A uniform definition of one credit, which means a minimum of 135 hours of instruction that includes standards for student performance (120 hours for block scheduling);
- State Board of Education approved school district policies that allow a student to recover credits, be promoted on time for high school, and that offer special programs to improve student achievement; and
- The State Board of Education to adopt rules to administer the middle school requirements including alternative middle school promotion standards.

Section 14
The bill amends section 1003.42, F.S., regarding required instruction. The bill includes additional provisions of instruction related to the U.S. Constitution and the history of the United States and encourages the Department of Education to pursue adoption of standards and assessment components to address the requirements of the bill.

Section 15
The bill repeals section 1003.429, F.S., effective for students entering ninth grade in the 2005-2006 school year and thereafter, relating to options for accelerated high school graduation. The proposed changes would repeal a school district's option to offer a three-year accelerated graduation opportunity and are based on a Senate Education Committee study that surveyed school districts regarding the status of accelerated graduation options. The findings reflected extremely low participation of students and cited examples, a sample of which follows:

- Other options, such as AP, IB, and dual enrollment, are preferred and chosen;
- Concern on the part of students and parents that university admission and eligibility may be adversely impacted; and
- Parents and students consider the senior year an important time in their education careers.

Sections 16, 17, 18, and 19

The bill amends ss. 1003.431, 1007.261, 1008.22, and 1009.531, F.S., to conform to the repeal of the accelerated high school graduation options.

Section 20
The bill amends s. 1003.52(15), F.S., to require that the academic performance data of students in juvenile justice education programs be reported for purposes of determining whether or not the state is making "adequate yearly progress" (AYP) under the federal No Child Left Behind Act. For students in juvenile justice education programs, the Department of Education is tasked with developing procedures to accurately report the student academic performance data and assessment participation rates and provide an opportunity for validation of the data by the schools serving these students.

Section 21
The bill amends s. 1003.57, F.S., to:

- Provide that nonresident students who receive instruction in any type of educational facility in Florida are residents of the state in which the student's parent or guardian is a resident;
- Make the "home" state or the parent responsible for paying for these items, whichever one makes the placement decision. This financial obligation is similar to that required under federal law;
- Prohibit school districts from reporting these students as FTE for funding in the Florida Education Finance Program;
- Direct the Department of Education to provide specific information and assistance to school districts, including a process for prior district school board review of the residency of exceptional students who live in a Florida residential facility; and
- Make residential facilities responsible for billing and collecting payment from the student's home state.

Section 22
The bill amends s. 1003.575, F.S., to require the Department of Education to develop a form for individual education plans for exceptional students and requires the form to be used by all school districts.

Section 23
Section 1003.58, F.S., is amended to conform to section 22 of the bill.

Section 24
The bill amends s. 1004.04, F.S., to require the Council for Educational Policy Research and Improvement to report on the effectiveness of graduates in state-approved teacher preparation programs and state-approved alternative certification programs, based on student progress as reflected on statewide assessments.

While current law requires both preservice field experience and teaching assistantships, the quality of such experiences for beginning teachers may vary based on factors such as the quality and length of experience of the mentor teacher to whom an intern teacher is assigned, the quality of a district's inservice delivery program for all teachers, and assignment and quality of mentor teachers assigned to work with new staff.

Section 25
The bill creates s. 1004.64, F.S., to establish the Florida Center for Reading Research (FCRR) as a joint project between the College of Arts and Sciences and the Learning Systems Institute (LSI) at Florida State University. FCRR already exists. It was originally established in 2002 to serve as a clearinghouse for development and dissemination of reading research at Florida State University (FSU). The bill also provides specific responsibilities of the center to include providing technical assistance to school districts in literacy instruction and programs; conducting basic and applied research on reading, literacy instruction and assessment; developing reading intervention course frameworks for middle and high schools; disseminating information about research-based practices related to literacy instruction; collecting, managing, and reporting on assessment information through Florida's Progress Monitoring and Reporting Network; and establishing regional partnerships with other postsecondary institutions.

Section 26
Section 1008.22, F.S., is amended to provide legislative intent relating to the administration of FCAT as late as practicable with receipt of scores prior to the end of the school year and the release of scored FCAT items when sufficient test items are available without sacrificing security or validity of the test. Implementation is subject to legislative appropriation. The release provision does not apply to the norm-referenced provisions of the FCAT.

In addition, the bill revises the FCAT testing schedule to require assessment of reading and math (only) at grades 3 through 10 and the assessment of writing and science at least once at the elementary, middle, and high school level. The administration of the science FCAT would likely be rescheduled to the 11th grade under this format.

Section 1008.22, F.S. requires annual assessment of students to determine individual learning gains on appropriate Sunshine State Standards. These requirements include the use of assessment data to drive subsequent instruction, as well as to develop and refine education policies. The impetus behind this provision is twofold; to provide maximum instructional time prior to administration of FCAT assessment and to supply rapid response time on assessment results in order to make sound curriculum decisions for the ensuing school year.

Proposed changes would require the Department to pursue technological innovations that would allow for more expedient return on test results; however, due to the nature of assessing extended responses required through FCAT, additional review staff may have to be employed by the contractor(s).

The bill makes permanent the use of the SAT and ACT tests as alternative assessments to the grade 10 FCAT for purposes of high school graduation.

Section 27
The bill amends s. 1008.25, F.S., to require the Department of Education to establish a uniform reporting format for school districts for the annual report on public school student progression, the number of students performing at Levels 1 and 2 on the reading portion of the FCAT, and the number of students retained or promoted on the basis of good cause. Additionally, the department must submit an annual report on longitudinal performance of students in reading and math, on efforts to close the achievement gap, and longitudinal performance of students on

FCAT and other national norm-referenced tests. The proposed changes could establish a clearinghouse of best instructional practices; however, the department currently has this authority.

Section 28
The bill amends s. 1008.31, F.S., to revise the Department of Education's measures under the K-20 accountability system. In addition, the bill provides legislative intent that the Board of Governors establish performance measures and standards for state universities. Most importantly, the bill eliminates performance-based funding for the K-20 education system. This provision is of particular importance to the Board of Governors. The bill requires the State Board of Education to adopt rules to administer this section.

Section 29
The bill amends s. 1008.33, F.S., to authorize the State Board of Education to recommend to school districts to transfer high quality teachers to "F" schools to improve student performance.

Section 30
Section 1008.34, F.S., is amended to require school report cards to include the school's grade, information regarding school improvement, an explanation of school performance as evaluated by the federal No Child Left Behind Act, and indicators of return on investment. All of these provisions; however, are currently available on the Department of Education's website of Annual Report Cards.[7] The bill would eliminate the option of making lowest quartile gains in writing or math and would require learning gains of the lowest quartile students only in the area of reading.

The bill requires that scores of students attending alternative schools be used in the calculation of the school grade for the school the student attended prior to the alternative school. The bill also requires the student scores to be used in calculating the school grade for the alternative school in which the student is currently enrolled. Alternative schools may opt to be graded based on their students' FCAT scores and not report the scores to be used in the originating school's grade calculation.

Section 31
The bill creates s. 1008.341, F.S. to establish grading for alternative schools and to require the Commissioner of Education to prepare an annual report on the performance of alternative schools. The bill provides school grade designations to be based on student learning gains as evidenced by developmental scale scores on the FCAT and improvement of FCAT reading scores for the lowest quartile of students. Student assessment data used to determine school grades shall be based on students enrolled during October and February FTE counts who have been assessed on the FCAT and who have FCAT or comparable scores for the preceding school year and those students enrolled during October and February FTE counts who have been assessed on the FCAT and have scored in the lowest 25 percentile of students in the state on the reading portion of the FCAT. Alternative schools for students who are expelled for repeated and serious offenses, schools serving as dropout retrieval programs, and programs operated as DJJ schools shall be rated based on progress from performance at the previous school. The bill

[7] http://web.fldoe.org/NCLB/reportCard/

requires school improvement ratings for alternative schools based on student performance learning gains and provides eligibility for school recognition awards pursuant to s. 1008.36, F.S.

However, alternative schools serving students who are subject to school board policies for expulsion for repeated or serious offenses, dropout retrieval programs serving students officially designated as dropouts, and Department of Juvenile Justice operated and contracted programs shall not receive a school grade. Instead, the State Board of Education shall approve a rating scale that represents the progress of students as compared to their progress prior to being assigned to the alternative schools. If an alternative school serves multiple student populations, the school would receive a grade absent the performance of students subject to expulsion or dropout if the school meets the minimum requirements regarding the number of students with valid FCAT scores. Each school shall receive a school improvement rating of "improving," "maintaining," or "declining."

Section 32
The bill amends s. 1008.36, F.S., regarding the Florida School Recognition Program. The bill specifies that school recognition funds may be used for any of the following:

- Nonrecurring bonuses for faculty and staff who are presently employed at the school or who were employed at the school during the year of improved performance;
- Nonrecurring expenditures for educational equipment or materials; or
- Temporary personnel to assist in maintaining and improving school performance.

The bill requires that the school staff determine how appropriated recognition funds are to be spent based on the above parameters. The bill eliminates the role of school advisory councils in the distribution of the funds.

Additionally, the bill authorizes a school serving any combination of kindergarten through grade 3 students that does not receive a school grade under s. 1008.34, F.S., to receive the school performance grade of the feeder pattern school designated by the Department of Education and verified by the school district. A feeder school pattern is defined as where at least 60 percent of the students in the school serving a combination of kindergarten through grade 3 students are scheduled to be assigned to the school receiving the school grade. Finally, the feeder pattern school is subject to the Opportunity Scholarship Program.

Section 33
The bill amends s. 1011.62, F.S., to establish a Reading-Instruction Allocation to provide comprehensive reading instruction to students in kindergarten through grade 12. The funds shall be allocated to each school district for the same minimum amount as specified in the General Appropriations Act; however, any remaining funds shall be distributed based on each school district's proportionate share of the statewide total unweighted FTE population. The Legislature is required to annually increase the allocation at least as much as the overall FEFP increase.

School districts must submit their plan for the use of the funds to the Just Read, Florida! Office for approval. Funds allocated must be used to support comprehensive reading instruction and may be used for the provision of:

- Highly qualified reading coaches;
- Professional development in scientifically-based reading instruction;
- Summer reading camps for students scoring Level I on the FCAT;
- Scientifically-based supplemental reading materials; and
- Intensive interventions for middle and secondary students reading below grade level.

The plan must be submitted by a date determined by the department. Once the plan is submitted, funding from the allocation may be released. The State Board of Education may withhold funds if the plan is not approved.

Section 34
The bill creates s. 1011.6855, F.S., to establish a categorical fund for minimum teacher salary and class size reduction, contingent upon passage of an amendment to s. 1, Art. IX to the State Constitution. Funds appropriated under the categorical fund shall be used to provide a minimum beginning teacher salary of $35,000 or more as specified by the General Appropriations Act and an increase in salary of all teachers of at least $2,000.

The bill defines the term, "teacher," for purposes of the amendment to mean all full-time, certified instructional personnel identified in s. 1012.01(2)(a)-(d), F.S. Section 1012.01(2)(a)(d), F.S., would include guidance counselors, librarians, and media specialists in the definition of teacher for purposes of minimum teacher salary requirements as long as these individuals were full-time certificated instructional personnel. Part-time teachers, substitute teachers, adjuncts, and administrative personnel would not qualify.

There may be problems in establishing an accurate national average beginning public school teacher salary. Neither Senate Joint Resolution 2090, the proposed constitutional revision that enacts the constitutional teacher salary, nor this bill indicate the manner in which the salary is to be calculated and by whom. According to the American Federation of Teachers (AFT), the national average beginning teacher salary in 2002-2003 was $29,564, and the estimated national average for 2003-2004 was $30,496. However, there are limitations to the usefulness of this data. First, the data may not be timely for purposes of meeting the constitutional obligations. States do not respond simultaneously to teacher salary surveys. Second, states vary in the manner in which they collect and analyze teacher salary data.[8] These figures may not be calculated consistently. Third, AFT estimated the average beginning salary in 2002-2003 for eight (8) states.[9] In addition, the salary calculations of seven states included some combination of benefits or supplemental pay.[10] Moreover, several states indicated that further explanation of their salary calculations was required.[11] Fourth, the national average was not weighted by the number of teachers in each state.[12] Finally, the estimates for 2003-2004 assumed that the same rate of salary change would apply to all states, even though the rates of change varied widely across the states between 2001-2002 and 2002-2003.[13]

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[8] *Memorandum re: Beginning Teacher Salaries, Office of Program Policy Analysis and Government Accountability, March 2, 2005.*
[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Id.*

The $2,000 salary increase may not prevent teachers with significant experience or advanced degrees being paid at a rate commensurate with a beginning teacher.

In addition, the bill provides for remaining funds from the categorical, after salary requirements are met, to be used for class size reduction until requirements of the State Constitution are achieved.

Section 35
Section 1012.21, F.S., is amended to require the posting of school district collective bargaining contracts online and in a form prescribed by the Department of Education.

Section 36
The bill amends s. 1012.22, F.S., to require district school boards to adopt differentiated-pay policies for school administrators and instructional personnel beginning in the 2005-2006 school year. The policy as applied to instructional personnel is subject to collective bargaining under chapter 447, F.S. Differentiated pay may be based upon:

- Critical shortage areas;
- School economic demographics/eligibility percentages for free and reduced-price lunch;
- Performance of school administrators and instructional personnel; and
- Classroom teacher responsibilities.

The State Board of Education is authorized to withhold funds from the Education Enhancement Trust Fund, when recommended by the Commissioner of Education, if a district fails to adopt differentiated-pay policies.

Section 37
The bill creates s. 1012.2305, F.S., to prescribe a minimum teacher salary contingent upon passage of an amendment to the State Constitution with regard to average maximum class size and minimum instructional personnel salary. The minimum salary for full time teachers is prescribed at $35,000 and shall be established by the Legislature to remain above the national average public school teacher beginning salary.

Section 38
The bill creates s. 1012.2315, F.S., to authorize the State Board of Education to take action when notified that a school district has assigned a higher percentage of first-time teachers, temporarily-certified teachers, teachers in need of improvement, or out-of-field teachers to schools that have more than the school district average of minority and economically disadvantaged students or to schools that are graded “D” or “F.” The bill does not specify what actions the State Board of Education may take. This provision is current law[14].

The bill authorizes school districts to provide salary incentives to meet the assignment requirement and prohibits a district from entering collective bargaining agreements that precludes a school district from assigning high quality teachers to low performing schools.

[14] Section 1012.231(2), F.S.

Section 39
Section 1012.72, F.S., is amended to require the Council for Education Policy Research and Improvement to conduct research to determine the effectiveness of the Dale Hickam Excellent Teaching Program. This program provides a process for certified teachers in Florida who meet National Board of Professional Teaching Standards (NBPTS) to receive financial rewards equal to 10 percent of the prior fiscal year's statewide average classroom teacher salary.

Section 40
The bill creates s. 1012.986, F.S., to establish the Developing Educational Leaders for Tomorrow's Achievers (DELTA) Program, a comprehensive and coordinated professional development program for school leaders designed to make them more effective instructional leaders primarily in the area of reading. The act provides for leadership designations based on student learning gains as follows:

- One point for each percent increase over the previous year, by grade, of students who score at or above FCAT Level 3 in reading;
- One point for each percent increase over the previous year, by grade, of students who score at or above FCAT Level 3 in math;
- One point for each percent increase over the previous year, by school, of students who score 3.5 or higher on FCAT writing;
- One point for each percent increase over the previous year of students making learning gains in reading;
- One point for each percent increase over the previous year of students making learning gains in math; and
- One point for each percent increase over the previous year of the lowest quartile making learning gains in reading.

The bill requires the program to be based upon standards adopted by the State Board of Education, standards of the National Staff Development Council, and high quality professional development requirements as outlined in the federal *No Child Left Behind* Act (NCLB). In addition, the program must be competency-based using pre- and post-diagnostic evaluations and individualized professional development plans and must reflect best practices identified in current effective leadership training in districts.

The Department of Education must offer multiple systems for program delivery to include approved district training programs, interactive technology-based instruction, and state, regional, and local leadership academies to implement this professional development for school leaders. The State Board of Education is required to adopt rules to implement the professional development program.

Section 41
The bill repeals s. 1012.987, F.S., which authorizes the department to develop a principal leadership program through State Board rule, to conform to the creation of s. 1012.986, F.S. relating to the DELTA Program.

In addition, the bill repeals the BEST Florida Teaching salary career ladder program, as provided in s. 1012.231, F.S.

Section 42
The bill repeals s. 1003.03, F.S., relating to class size reduction requirements, and s. 1011.685, F.S., relating to the class size operating categorical fund, contingent upon amendment of the constitutional class size requirements.

Section 43
The bill provides a severability clause.

Section 44
The bill takes effect upon becoming a law except as otherwise provided.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Collective Bargaining

The State Constitution provides, in pertinent part, that the right of employees to bargain collectively through a labor organization may not be abridged or denied.[15] The courts have interpreted this right to apply to public employees.[16] However, while the courts recognized that public employees have the same rights to collective bargaining as private employees, the courts have also indicated that public bargaining is inherently different from private bargaining.[17]

The constitutional right to bargain is construed in accordance with all provisions of the State Constitution, including separation of powers doctrine.[18] The Legislature maintains

[15] Art. 1, s. 6, FLA CONST.
[16] *Dade County Classroom Teachers' Association v. Ryan, 225 So.2d 903, 905 (Fla. 1969).*
[17] *State v. Florida Police Benevolent Association, Inc., 613 So.2d 415, 417 (Fla. 1992) citing United Teachers of Dade v. Dade County School Board, 500 So.2d 508, 512 (Fla. 1986) and Antry v. Illinois Educational Labor Relations Board, 195 Ill.App.3d 221, 141 Ill.Dec. 945, 552 N.E.2d 313 (1990).*
[18] *Id. At 418.*

exclusive control over public funds.[19] Accordingly, the courts have held that the Legislature's failure to fund a collective bargaining agreement at the level requested by the public employer is not an impairment of contracts proscribed by Art. 1, s. 10 of the State Constitution.[20] Moreover, the Legislature may impose conditions on the use of the funds when it does not fund the collective bargaining agreement at the level requested by the public employer even if contradictory to the negotiated agreement.[21] However, if the Legislature provides enough money to implement the negotiated benefit, the Legislature may not unilaterally change the benefit.[22]

Finally, once the executive bargaining unit has negotiated a collective bargaining agreement and the Legislature has accepted and funded the agreement, the state and all of its organs are bound by the agreement under contract law.[23] The right to contract is sacrosanct and is enforceable in labor contracts by virtue of sections 6 and 10, Article I of the State Constitution.[24] Accordingly, if the Legislature attempts to unilaterally change a collective bargaining agreement that has been funded, the statute would be subject to strict scrutiny, which would require the Legislature to demonstrate a compelling state interest justifying the abridgement of the right to collectively bargain.[25] To demonstrate a compelling state interest, the Legislature would need to show no other reasonable alternative means of preserving the collective bargaining agreement, in whole or in part, exists.[26]

Section 1008.33, F.S., authorizes the State Board of Education to recommend to district school boards certain actions to enable students in schools designated with a grade of "F" to be academically well served. Section 30 of the bill adds to the list of actions, which the State Board of Education may recommend to a school district, the recommendation to transfer high-quality teachers, faculty, and staff to improve the performance of students in any low-performing school. Current law authorizes the State Board of Education to withhold the transfer of state funds to a school district if the school district fails to comply with the recommended action.[27]

Section 38 of the bill requires, in pertinent part, that beginning in the 2005-2006 fiscal year, each district school board to adopt a differentiated-pay policy for school administrators and instructional personnel. The differentiated-pay policy for instructional personnel is subject to negotiation as provided in chapter 447, F.S. However, the policy must allow the affected personnel to receive differentiated pay based on certain enumerated factors. This section further requires the Commissioner to recommend to the State Board of Education that the board withhold disbursements from the Educational Enhancement Trust Fund if the district's differentiated-pay policy does not comply with

[19] Art. VII, s. 1(c), FLA CONST. ("No money shall be drawn from the treasury except in pursuance of appropriation made by law.").
[20] *United Faculty of Florida v. Board of Regents, 365 So.2d 1073, 1078 (Fla. 1st DCA 1979).*
[21] *State v. Police Benevolent Association, Inc., 613 So.2d at 421.*
[22] *Id.*
[23] *Chiles v. United Faculty of Florida, 615 So.2d 671, 672-673 (Fla. 1993).*
[24] *Id. at 673.*
[25] See *State v. Police Benevolent Association, Inc., 613 So.2d at 421 (FN11).*
[26] *See Chiles v. United Faculty of Florida, 615 So.2d at 673.*
[27] *Section 1008.33(4), F.S.*

the requirements of this section. The State Board of Education may withhold the funds upon the commissioner's recommendation.

Section 40 of the bill prohibits school districts from assigning a higher percentage than the school district average of first-time teachers, temporarily certified teachers, teachers in need of improvement, or out-of-field teachers to schools that have more than the school district average of minority and economically disadvantages students or to schools that are graded "D" or "F." No collective bargaining provision may prohibit a school district from assigning high-quality teachers to teach in low-performing schools. This provision is current law.[28]

These provisions may be constitutionally challenged under Art. I, s. 6 of the State Constitution as an abridgement of the public employees' right to collectively bargain.

Establishment Clause

The State Constitution provides, in pertinent part, that "No revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution.[29] In 1999, certain parents of children in the state's public schools and several organizations[30] challenged the constitutionality of the state's Opportunity Scholarship Program,[31] alleging that the program violated Art. I, s. 3 and Art. IX, s. 1 of the State Constitution.[32] The Opportunity Scholarship Program allows a student attending certain failing public schools to attend a private school, sectarian or nonsectarian, with the financial assistance of the state. The parent selects the private school under which their child shall attend under the program.

The trial court first determined that the Opportunity Scholarship Program violated Art. IX, s. 1 of the State Constitution, which required that "[a]dequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools…" The 1st District Court of Appeal reversed the trial court's finding that Art. IX, s. 1 does not prohibit the Legislature from authorizing the well-delineated use of public funds for private school education, particularly when the Legislature finds such use is necessary.[33] On remand, the trial court determined that the program facially violated Art. I, s. 3 of the State Constitution, which prohibited the use of state revenues directly or indirectly in aid of sectarian institutions. This decision was upheld by a three-judge panel

[28] *Section 1012.231, F.S.*
[29] Art. I, s. 3, FLA. CONST.
[30] The organizations consisted of the Florida State Conference of Branches of the NAACP, the Citizen's Coalition for Public Schools, the Florida Congress of Parents and Teachers, Inc., and the League of Women Voters, Inc.
[31] Codified in s. 229.0537, F.S. (1999), now codified in s. 1002.38, F.S.
[32] The plaintiffs also alleged a violation of the Establishment Clause of the First Amendment to the United States Constitution, 42 U.S.C. s. 1983, and Art. IX, s. 6 of the State Constitution. Following the *Zelman v. Simmons-Harris, 536 U.S. 639, 122 S.Ct. 2460, 153 L.Ed.2d 604 (2002),* decision which upheld a Cleveland tuition voucher program under the U.S. Constitution Establishment Clause, the plaintiffs voluntarily dismissed these challenges.
[33] *Bush v. Holmes, 767 So.2d 668, 675 (Fla. 1st DCA 2000)(footnote omitted).*

of the 1st District Court of Appeal.[34] On November 12, 2004, the 1st District Court of Appeals issued en banc opinion finding that the Opportunity Scholarship Program violated Art. I, s. 3 of the State Constitution because the program authorizes state funds to be paid to sectarian schools.[35] In addition, the court held that so-called "no-aid provision" does not violate the Free Exercise clause of the United States Constitution.[36] Finally, a five-judge concurring opinion also found the program to violate s. 1, Art. IX of the State Constitution.[37] The opinion has been appealed to the Florida Supreme Court. Oral argument before the court is scheduled for June 7, 2005.

Section 5 of the bill establishes the Reading Scholarships Program, which, among other things, authorizes a parent of a child who has scored at Level 1 on the reading portion of the Florida Comprehensive Assessment Test (FCAT) for three (3) consecutive years to receive state funds to attend a private school of the parent's choice that may be a sectarian institution. Despite programmatic differences between the Opportunity Scholarship Program and the Reading Compact Scholarships Program, both programs enjoy similar funding mechanisms. Accordingly, this provision of the bill may be constitutionally challenged pending finality in the Opportunity Scholarships case. This finality may not occur in the State Supreme Court depending on the court's disposition of the state's no-aid constitutional provision or the Free Exercise Clause claim under the U.S. Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Participating private schools would benefit from the Reading Compact Scholarships Program. The amount of a student's scholarship would approximate the lesser of the Florida Education Finance Program (FEFP) base funding per student plus funds for instructional materials and technology or the tuition and fees for the private school. The average amount from the current FEFP for a student in a basic program plus the categorical amounts is roughly $3,800. The scholarship for this student would be this amount or the private school tuition and fees, whichever is the lesser.

With respect to exceptional student services, private residential facilities may incur some additional costs associated with billing and collecting payment from the "home" state for the educational and related services provided to nonresident exceptional students.

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[34] *Bush v. Holmes, 2004 WL 1809821, 29 Fla. L. Weekly D1877 (Fla.App. 1 Dist. Aug 16, 2004) (NO. 1D02-3160, 1D02-3163, 1D02-3199).*
[35] *Bush v. Holmes, 886 So.2d 340 (Fla. 1st DCA 2004).*
[36] *Id. citing Locke v. Davey, 540 U.S. 712, 124 S.Ct. 1307, 158 L.Ed.2d 1 (2004) (which upheld a Washington state statute that prohibited certain scholarship funds from being used to pay for a theology degree (program taught from a religious viewpoint rather than a comparative study of religion) from a challenge alleging that the statute discriminated against religious viewpoints in violation of the Free Exercise Clause of the 1st Amendment to the U.S. Constitution).*
[37] *Id. at 371 (Benton, J., concurring opinion).*

C. Government Sector Impact:

Class Size

In conjunction with Senate Joint Resolution 2090, the bill may have a positive fiscal impact on meeting class size reduction requirements. In order to meet class size requirements as currently provided in the State Constitution, the Revenue Estimating Conference has estimated a total cost in the range of $20 billion to $27 billion through 2010-2011. The Department of Education has estimated a range of approximately $22 billion to $26.5 billion in meeting class size requirements through 2010-2011. It is anticipated that the state would experience cost savings in not having to reduce class size to the school or classroom level, particularly for the capital outlay expenditures. However, these savings may be somewhat mitigated by the minimum teacher salary requirements.

Teacher Salaries

The Governor's office has released an initial cost estimate of $490 million per year with respect to implementing the $35,000 beginning teacher salary and the $2,000 parity adjustment for remaining teacher salaries. However, this figure does not take growth into consideration. Additionally, due to the vagaries in calculating the national average beginning teacher pay, the cost of implementing the salary provisions may increase in the future.

The Reading Compact Scholarships Program

This provision may be revenue neutral for the state in that current funding for the scholarships would follow the student. However, there may be an indeterminate cost savings for any Group II student who attends a private school that does not provide exceptional services. The amount of a student's scholarship would approximate the lesser of the Florida Education Finance Program base funding per student plus funds for instructional materials and technology or the tuition and fees for the private school. The average amount from the current FEFP for a student in a basic program plus the categorical funds is roughly $3,800. The scholarship for this student would be this amount or the private school tuition and fees, whichever is the lesser.

Exceptional Student Residency

The Office of Government Program Accountability (OPPAGA) has reported a cost savings of approximately $1.5 million per year by requiring the "home" state to pay for exceptional student education of its residents who attend a Florida residential facility.

Reading Programs

The Governor has recommended $111.8 million in his budget for the reading allocation to fund comprehensive reading programs to include a $50,000 minimum per district and

allocation of the remaining funds based on FTE enrollment. Senate Bill 2600 has allocated $43 million for this program; House Bill 1885 has allocated $74 million.

Developing Educational Leaders for Tomorrow's Achievers (DELTA)

The Governor has recommended $5.6 million to implement the DELTA program for school leaders. Of these funds, the Governor requested $3.6 million to develop, implement, and administer the program. The remaining $2 million would provide $5,000 bonuses for up to 400 principals who attain certain school leader designations.

Sunshine State Standards

The Governor has recommended $250,000 in new funds to update the Sunshine State Standards. The bill requires the State Board of Education to periodically review the standards to ensure adequate rigor and evaluate the extent to which the standards are being taught at each grade level.

Middle School Reform

The Governor has recommended $500,000 to further implement the Middle Grades Reform Act.

Department of Education

For the Department of Education (DOE), the multiple provisions of this bill may require additional effort, cost and/or a reallocation of resources. Initiatives in the bill which will require additional effort and a realignment of resources are: implementation of the Reading Compact Scholarship program, review of the sunshine state standards, analysis of the performance of students who take scholarships to private schools, department support of the High School Reform Task Force, and implementation of the DELTA program for principal training. The Department of Education predicts an undetermined fiscal impact resulting from the requirement to develop a standard form for individual education plans.

The bill would also provide cost savings to the DOE resulting from the reduction in the frequency of administration of FCAT writing. The elimination of the 10% performance based funding requirement will eliminate cost associated with planning and implementation for this effort.

The bill suggests the need for a future appropriation for the technology and resources to implement a later administration of the FCAT which would then require a quicker turnaround of scores. The same would apply to the development of a test item data bank.

School Districts

School districts will also need to expend additional effort and/or cost for implementation of a number of provisions of this bill. Some of the more significant of these are: the

development of a reading plan and its subsequent implementation; the incorporation of differentiated pay in salary schedules; and, ultimately, implementation of recommendations resulting from the High School Reform Task Force. The DOE also indicates that there will be some additional district effort associated with the determination of residency status of ESE non-resident students in residential facilities.

Funding Contingencies

Some provisions of the bill may require district compliance for funding to be received. Reading allocation funds may be subject to being withheld by the State Board of Education upon Commissioner recommendation if the district does not submit a reading plan by the DOE-established deadline or if the district does not implement the plan as approved.

In addition, if the district does not adopt a salary schedule with the requirements for differentiated pay as enumerated in the bill, then the State Board of Education may withhold lottery fund distributions upon Commissioner recommendation until the salary schedule complies with the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Pursuant to s. 1.04, F.S., acts passed during the same legislative session and amending the same statutory provision are in pari materia, and full effect should be given to each, if that is possible. Amendments enacted during the same session are in conflict with each other only to the extent that they cannot be given effect simultaneously. Senate Bill 2, which passed this committee, amends several provisions relating to the John M. McKay Scholarships for Students with Disabilities Program[38] and the Corporate Tax Credit Scholarship Program.[39] These changes may be in conflict with the bill's requirements of private schools participating in these programs.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

[38] Section 1002.39, F.S.
[39] Section 220.187, F.S.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.